



SOUTH FLORIDA WATER MANAGEMENT DISTRICT DESIGN/BUILD SOLICITATION (CCNA)

<p>South Florida Water Management District Attn: Procurement Bureau B-1 Building, 2nd Floor West 3301 Gun Club Road West Palm Beach, FL 33406</p>	<p>SOLICITATION NUMBER: 6000001215 ISSUE DATE: MARCH 12, 2021</p> <p style="text-align: center;">PRE-PROPOSAL CONFERENCE</p> <p><u>Date:</u> March 22, 2021 <u>Time:</u> 10:00 A.M. <u>Location:</u> Via ZOOM - The following Link must be used to register in advance of this meeting: https://zoom.us/webinar/register/WN_TXkeH7jwTTW5RoNbZyVj6A</p>
<p>TITLE: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT</p>	
<p>Purpose: The purpose of this Solicitation is to solicit responses from qualified design/build organizations for the design, construction, operation and maintenance of a Lower Kissimmee Basin Stormwater Treatment Project. At the end of the construction, the successful Respondent shall operate and maintain the facility for 5 years. At the end of the 5-year period, the facility and title of land will be transferred to the District, at the District's sole discretion. This Solicitation is issued subject to the legal requirements established under the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes.</p>	
<p>Inquiry Period:</p> <p>March 12, 2021 – March 29, 2021</p> <p>Inquiries may be made between the hours of 8:00 A.M. and 5:00 P.M. weekdays.</p>	<p>Direct All Inquiries to Procurement:</p> <p>Johanna Labrada, Procurement Bureau Chief Telephone No: (561) 682-2520 E-Mail: jlabrad@sfwmd.gov</p>
<p>Note: All technical inquiries must be submitted in writing via E-Mail.</p>	
<p>Deadline for Submission (Submission Due Date): APRIL 12, 2021 - 2:30 P.M. Electronic Copy to be Submitted ALL RESPONSES <u>MUST</u> BE SUBMITTED TO <u>PROCUREMENT@SFWMD.GOV</u> Confirmation of timely receipt may be made by calling (561) 682-2011</p>	
<p>Note: All information submitted in response to this Solicitation is subject to the public records law in Chapter 119, Florida Statutes. Any material that a firm believes is exempt from public records must be clearly identified, with explicit notation of the applicable statutory exemption.</p>	
<p style="text-align: center;">SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION GOAL: <u>25%</u></p> <p>The District has established a minimum SBE participation goal for this Solicitation. The Response shall either meet the established SBE goal or be deemed non-responsive.</p>	
<p>This Solicitation is Comprised of a Response Checklist and 9 Sections:</p> <p>Section 1: Background Section 2: Project Overview Section 3: Design/Build Services Section 4: Procurement Process Section 5: Response Submission Requirements Section 6: Response Evaluation and Selection Section 7: Rights and Reservations of District Section 8: Protests Section 9: Miscellaneous</p>	<p>Attachments:</p> <p>Attachment A: Definition of Terms Attachment B: Design/Builder's Preliminary (Phase One) Services Attachment C: Design/Build Contract Attachment D: Reference Documents Attachment E: Project Design Criteria Attachment F: Forms for Affirmation of Compliance Attachment G: Project Experience Verification Form - (for informational purpose only)</p>

RESPONSE CHECKLIST

This Response Checklist is provided for the convenience of the Respondent and shall not be relied upon in lieu of the instructions or requirements of this solicitation. To ensure that your Response is complete and to maximize the number of points you may receive, please review the following items to confirm that they have been addressed and are enclosed. There is no requirement to return this checklist with your Response.

		Have you met the Response submission deadline established in the solicitation?
		Have you submitted 1 Electronic response with 2 separate packages? See instructions for Submission of Response.
		Does the Original contain all required documentation to meet the Responsiveness and Responsibility requirements?
		Have you attached a completed and signed Compliance Disclosure Form?
		Are there minimum license requirements? If yes, has evidence been included in the Response?
		Have you attached a copy of a letter from your surety company?
		Have you provided evidence of the ability to obtain appropriate insurance coverage?
		Are you in good standing with the Florida Secretary of State (corporations and partnerships)?
		Have you completed the Qualifications Package of the Response? Does it include the following?
		<ul style="list-style-type: none"> • Transmittal letter
		<ul style="list-style-type: none"> • Respondent's Profile information
		<ul style="list-style-type: none"> • Project Team information including Key Personnel commitment statement
		<ul style="list-style-type: none"> • Experience information including profiles of Representative Projects
		<ul style="list-style-type: none"> • Safety Record records/statistics
		<ul style="list-style-type: none"> • Small Business Enterprise "SBE" Utilization
		<ul style="list-style-type: none"> • Appendix A Forms required for Affirmation of Compliance • Appendix B Resumes
		Have you completed the Project Approach Package of the Response? Does it include the following?
		<ul style="list-style-type: none"> • Project Approach information
		Have you met the Small Business Enterprise (SBE) goal?
		<ul style="list-style-type: none"> • Have you completed and signed the Statement of Intent to Perform as an SBE Subcontractor form?
		<ul style="list-style-type: none"> • Have you completed and signed the SBE Subcontractor Participation Schedule?

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
DESIGN/BUILD SOLICITATION
DESIGN/BUILD OF A LOWER KISSIMMEE BASIN
STORMWATER TREATMENT PROJECT
INSTRUCTIONS TO RESPONDENTS**

1 BACKGROUND AND INTRODUCTION

This Design/Build solicitation (Solicitation) for a Lower Kissimmee Basin Stormwater Treatment Project, (Project) invites statements of qualifications (Responses) according to the requirements set forth in this Solicitation, including the format and content guidelines in Section 5. The Responses will be reviewed and evaluated using the single-step, qualifications-based selection process described in Section 6. The capitalized terms in this Solicitation have the meanings as first used in the text of this Solicitation and as defined in Attachment A - Definition of Terms. The purpose of this Solicitation is to solicit responses from qualified design/build organizations for the design, construction, operation and maintenance of a Lower Kissimmee Basin Stormwater Treatment Project. At the end of the construction, the successful Respondent shall operate and maintain the facility for 5 years to demonstrate the facilities performance. At the end of the 5-year period, the facility and title to the land will be transferred to the District, at the District's sole discretion.

The Respondent must purchase or own the land for this Project prior to Phase One. The Project shall be designed and constructed in two phases as follows:

- Phase One: Prepare design and necessary permits to the levels established in Attachment B (Scope of Design/Builder Preliminary Services) and develop a stipulated price proposal of the Phase Two services.
- Phase Two: If the South Florida Water Management District (District/SFWMD) accepts the stipulated price proposal, complete design, permitting, construction and post-construction tasks, including performance testing, commissioning, operation and maintenance, training and support.

At completion of the evaluation of Responses, the District will select a Respondent to award, or enter into negotiations for award of, the Design/Build Contract (Contract). This Design/Build Solicitation is subject to revision after the date of issuance via written addenda. Any such addenda will be posted on the District's web site (not distributed directly to potential Respondents). It is each Respondent's responsibility to obtain all Design/Build Solicitation addenda prior to submitting its Response. In no event, will the District be liable for any costs incurred by any Respondent or any other party in developing or submitting a Response.

District's Overview and Mission

The District headquarters is located in West Palm Beach, Florida. The District's area of responsibility extends over 16 counties from Orlando to Key West. The Mission of the District is to safeguard and restore South Florida's water resources and ecosystems, protect our communities from flooding, and meet the region's water needs while connecting the public and stakeholders. The key elements of the Mission are environmental protection and enhancement, water supply, flood protection and water quality protection. The Mission is accomplished through the combined efforts of planning and research, operations and maintenance, community and government relations, land management, regulation and construction.

Design/Build Solicitation Organization

This Solicitation consists of nine Sections and seven Attachments:

- Section 1: Background and Introduction
- Section 2: Project Overview
- Section 3: Design/Build Services

- Section 4: Procurement Process and Requirements
- Section 5: Response Submission Requirements
- Section 6: Response Evaluation and Selection
- Section 7: Rights and Reservations of District
- Section 8: Protests
- Section 9: Miscellaneous
- Attachment A: Definition of Terms
- Attachment B: Design/Builder's Preliminary (Phase One) Services
- Attachment C: Design/Build Contract
- Attachment D: Reference Documents
- Attachment E: Project Design Criteria
- Attachment F: Forms for Affirmation of Compliance
- Attachment G: Project Experience Verification Form (informational purposes only)

Owner's Objectives

The District's objectives for delivery of the Project are as follows:

- **Quality**: Provide infrastructure that will be sustainable and will reliably meet the District's user needs while being in full compliance with federal, state, and local regulations and industry standards.
- **Cost**: Cost effective design and construction to comply with District's project budget.
- **Schedule**: Achieve the scheduled completion date for design, construction, and performance testing of the Project.
- **Risk**: Achieve an optimal balance of risk allocation between the District and the Design/Builder.
- **Safety**: Implement an effective safety program incorporating best industry practices.

By selecting the two-phase design/build delivery method for the Project, the District is committed to working in close collaboration with the Design/Builder to develop the Project's design, to achieve the Project objectives, and to obtain a mutually-agreeable stipulated price for delivery of the Project. As set forth in Attachment E - Project Design Criteria, the District has certain technical requirements and standards that will apply to the Project's design.

2 PROJECT OVERVIEW

Project Overview

The Project consists of land acquisition, the design, construction, operation and maintenance of a Lower Kissimmee Basin Stormwater Treatment Project. At the end of the construction, the successful respondent shall operate and maintain the facility for 5 years. At the end of the 5-year period, the facility and title to the land will be transferred to the District, at the District's sole discretion. Land acquisition will require a Phase II Environmental Assessment and cultural resources assessment to demonstrate environmentally clean land and no cultural resources present.

The Project scope, codes and standards, and performance requirements are described in more detail in Attachment E (Project Design Criteria).

Project Budget and Funding

The estimated cost for land acquisition, design, construction, operation and maintenance of the Project (Phase One and Phase Two) is currently **\$300 million**. Such budget does not include the District's other Project costs, such as professional advisory services, property or access rights, site investigations, environmental studies, certain governmental approvals, taxes, etc.

A Not-To-Exceed cost for the Design/Builder's Phase One services, as described specifically in Attachment B - Design/Builder's Preliminary (Phase One) Services, will be established. The actual costs for Phase One services will be subject to negotiation.

Project Schedule

As indicated in Section 4 of this Solicitation, it is anticipated that the Design-Build Contract will be executed after District Governing Board approval on May 13, 2021. The land acquisition, design, permitting, construction, and performance testing of the completed Project are expected to be completed no later than **3287 days from the Notice to Proceed subject to contract negotiations**

3 DESIGN/BUILD SERVICES

General

The services to be undertaken by the Design/Builder include all Work defined in the Design/Build Contract, including all Design Professional Services, Permitting, Construction and other obligations to be performed by Design/Builder under the Contract Documents, including without limitation project management, supervision, training, testing, commissioning, and all other services and deliverables required by Design/Builder to achieve Final Acceptance of the Project in accordance with the Contract Documents.

As noted in Section 1, the Design/Builder will provide services in two distinct phases.

Phase One services generally consist of preliminary engineering, geotechnical investigations, existing conditions, investigation and verification, and design development, as well as preparation, in close collaboration with the District, of a proposed price and schedule. The Respondent must purchase or own the land for this Project prior to Phase One. An overview of the Phase One services consists of the following:

- Develop the Project Work Plan, including Project schedule.
- Produce the Design Documentation Report (DDR) and/or engineering report.
- Develop the engineering design (including preparing and submitting intermediate design review packages) to a level agreed-upon by the District, with it currently being anticipated that such level will be preliminary design and intermediate design.
- Perform value-engineering activities in conjunction with District staff.
- Prepare a detailed project cost model, project schedule, and provide detailed cost estimates as the design and design alternatives are advanced. At a minimum, comprehensive estimates will be provided at the DDR, preliminary design and intermediate design.
- Submit and negotiate a Stipulated Price to complete the Phase Two services.
- Perform engineering studies (such as subsurface investigations, verification of existing conditions, etc.) to support design and cost estimating.
- Identify Project permitting requirements and initiate certain permitting activities.

- Secure all required insurance and bonding for project.

Phase Two services generally encompass completing the Project's final design, permitting, construction, and performance testing. An overview of the Phase Two services consists of the following:

- Complete the final design.
- Procure equipment and subcontractors.
- Secure necessary permits, insurance, and bonding for project.
- Provide routine schedule, cost, and risk updates
- Construct the Project.
- Conduct commissioning and performance testing.
- Provide training to District staff.
- Provide warranty coverage.
- Operate and maintain infrastructure for 5 years. At the end of the 5-year period, the facility and title to the land will be transferred to the District, at the District's sole discretion.

Roles and Responsibilities

The following are general roles and responsibilities of the parties, with the understanding that the ultimate roles and responsibilities are to be defined in the Design-Build Contract.

District: The District will cooperate with the Design/Builder and will fulfill its responsibilities in a timely manner to facilitate the Design-Builder's timely and efficient performance of services. District responsibilities include:

- Review submissions and provide comments to Design/Builder.
- Provide information and provide (or engage Design/Builder to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide timely payment of invoices.
- Provide access to the Project site and any necessary easements if required on District owned lands.
- Obtain the governmental approvals and permits the District is responsible for and assist Design/Builder in obtaining governmental approvals and permits that the Design/Builder is responsible for.
- Provide necessary data and inputs for Project startup and performance testing.

Design/Builder: The Design/Builder will cooperate with the District and will provide in a timely manner the Phase One and Phase Two services necessary to complete the Project scope specified in this Solicitation. Design/Builder responsibilities include:

- Prepare design and construction documents.
- Supervise subcontractors and Design/Builder personnel.
- Obtain certain governmental approvals and permits as described in Attachment E Section 8.
- Maintain site security.
- Provide a comprehensive Risk register that is updated monthly
- Conduct performance testing and staff training.
- Implement quality-management procedures.
- Implement Project health and safety practices.

4 PROCUREMENT PROCESS AND REQUIREMENTS

Communications and District Contact

The District's sole point of contact ("District's Point of Contact" or "District Contact") for this Solicitation shall be Johanna Labrada, who can be contacted at the address, phone number, and email address indicated below. The District's Point of Contact is the only individual authorized to discuss this Solicitation with any interested parties. All technical inquiries relating to this solicitation shall be submitted in writing by E-Mail and shall specifically reference Solicitation No. 6000001215. No oral communications from the District's Point of Contact shall be binding.

Name:	Johanna Labrada, Procurement Bureau Chief
Mailing Address:	South Florida Water Management District Attn: Procurement Bureau B-1 Building, 2nd Floor West 3301 Gun Club Road West Palm Beach, Florida 33406
Phone:	(561) 682-2520
E-Mail:	jlabad@sfwmd.gov

The District disclaims the accuracy of information derived from any source other than the District's Point of Contact and the use of any such information is at the sole risk of the Respondent.

Procurement Schedule

The current procurement schedule is as follows:

- | | |
|-------------------------------------|-----------------|
| • Solicitation Issue Date | March 12, 2021 |
| • Solicitation Conference | March 22, 2021 |
| • End Inquiry Period | March 29, 2021 |
| • Response Submission Due Date | April 12, 2021 |
| • Evaluation Committee Meeting - | |
| Shortlist Determined | April 21, 2021 |
| Alternate Date | April 22, 2021 |
| • Evaluation Committee Meeting | April 28, 2021 |
| Alternate Date | April 29, 2021 |
| • Oral Presentation/Interview | May 3 – 4, 2021 |
| • District Governing Board Approval | May 13, 2021 |

Solicitation Conference

District will conduct a solicitation conference for those interested in responding to the Solicitation. **Attendance at this meeting is optional.** The meeting will be held **March 22, 2021 via ZOOM starting at 10:00 am** (see solicitation cover page). At this meeting, the District will offer information about the Project and the procurement process.

Modifications or Withdrawal of Responses

Responses may be modified or withdrawn by providing an appropriate document requesting withdrawal of the Response duly executed by an authorized representative and delivered to the place where Responses are to be submitted at any time

prior to the Response Submission Due Date. Individuals making the withdrawal shall provide evidence of serving as an authorized representative of the Respondent. Responses, once received, will become the property of the District, and will not be returned to the Respondent even when they are withdrawn from consideration. Responses, once opened by the District at the time of Response Submission Due Date, shall not be withdrawn or modified except to the extent agreed to by the District during subsequent contract negotiations.

Validity of Proposals

The offer represented by each Response will remain in full force and effect for up to a maximum of one hundred and eighty (180) days after the Response Submission Due Date. If Award of Contract has not been made by the District within one hundred and eighty (180) days after the Response Submission Due Date, each Respondent that has not previously agreed to an extension of such deadline shall have the right to withdraw its Response. The District may, at its sole discretion, allow a Respondent to withdraw its Response prior to that date.

Addenda

If any revisions to the Solicitation or procurement process become necessary or desirable (at the District's sole discretion), the District may issue written addenda. The District will not transmit addenda to potential Respondents. The District will post all addenda on the District Project website at the following address (www.SFWMD.gov/procurement), select Current Solicitations/Contract Opportunities Calendar). It is Respondent's responsibility to obtain all addenda prior to submitting its Response.

If any revisions become necessary (other than changes to the Response Submission Due Date), the District will post written addenda on the District's web site (www.SFWMD.gov/procurement), select Current Solicitations/Contract Opportunities Calendar) at least seven (7) calendar days before the Response Submission Due Date. The District may revise the Response Submission Due Date at any time. **It is the responsibility of all Respondents to ascertain whether any addenda have been issued before the Solicitation deadline by either calling the District's Point of Contact or checking the District's web site (www.SFWMD.gov/procurement), select Current Solicitations/ Contract Opportunities Calendar).** All addenda placed on the District's web site can be downloaded.

All questions about the meaning, intent, or any other aspect of the Solicitation shall be submitted in writing to the District's Point of Contact. Interpretations or clarifications considered necessary in response to such questions will be issued by Addendum to all Respondents. Questions received after the End Inquiry Period date of this Solicitation may not be answered. Only answers issued by Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect.

Small Business Enterprise ("SBE") Guidelines and Information

(1) *Small Business Enterprise Program* – The District's Small Business Enterprise (SBE) Program is designed to help small businesses, including those owned by women and minorities, to participate in District procurement and contract activities. The purpose of the program is to spur economic development and support small businesses, including women-owned and minority-owned businesses, to successfully expand in the marketplace.

(2) *SBE Rule* – The District has implemented Chapter 40E-7.668-.678, F.A.C., the "Small Business Enterprise Contracting Rule" ("SBE Rule"). The provisions of the Rule shall apply to all competitive Solicitations for commodities, construction, professional and other contractual services and any resulting contract documents including change orders, and amendments.

Pre-submittal requirements, in order to comply with the SBE requirements, are defined herein. Failure to comply with these requirements or to submit any of the information required herein shall result in a finding that the Response is non-responsive and will result in rejection of the Response.

(3) **Minimum Goal** – The District has established a 25% participation goal for this Solicitation. The response shall either meet the established SBE goal or be deemed non-responsive.

(4) **Submission of SBE Subcontractor Utilization Plan** – The Respondent shall submit all District certified SBE subcontractors and the percentage of work that the SBE subcontractor(s) will perform by providing a Small Business Enterprise Subcontractor Utilization plan. The SBE Subcontractor Utilization Plan shall consist of the following documentation:

1. *The SBE Subcontractor Participation Schedule* (Form No. 0956), which identifies all District certified SBE firms which will be utilized as subcontractors, delineates the specific elements of work each SBE firm will be responsible for performing, and identifies the dollar value of the SBE work.
2. *The Statement of Intent to Perform as a Small Business Enterprise Subcontractor* (Form No. 0957), which confirms (1) the intent of the prime to establish a business relationship with each SBE subcontractor; and (2) the SBE participation amount. One form must be completed and signed by each proposed SBE subcontractor.

Failure to meet the goal set by the District will result in a breach of contract by the Prime Contractor.

A directory of District certified Small Business Enterprise firms is available at www.SFWMD.gov/Procurement, under the SBE Directory. The District has provided the following primary commodity code(s) to assist Respondents in the use of the directory: 906- Architect-Engineer and Other Professional Design Services; 968- Public Works, Construction and Related Services.

Any participation by firms not certified with the District at the time of the deadline for response submission will not count towards SBE goal attainment. Respondents are strongly encouraged to contact the District's Small Business Enterprise staff at (561) 682-6446 well in advance of the date set for receipt of proposals to allow sufficient time for review and determination of SBE eligibility and certification.

(5) **SBE Compliance and Substitution** – The contractual provisions that will apply in the event of a contract award are delineated in the Sample Contract attached to this Solicitation. The following is an excerpt of the key aspects.

A. Compliance. The District shall monitor compliance with the provisions of the SBE Rule. During the term of any subsequent contract, the Contractor shall comply with the SBE Subcontractor Utilization Plan made in its Response. Compliance for use of SBE's shall include tasks and proportionate dollar amounts throughout the term of the contract, including amendments and change orders. After Contract execution, the Contractor shall maintain the level of SBE participation established in the Contract. Failure to comply with the SBE requirements of an awarded Contract will be considered a material breach of Contract and may further result in the in suspension or debarment pursuant to District Rule 40E-7, F.A.C.

B. SBE Substitution or Addition. The Contractor must notify the District's Small Business Enterprise staff when the need to replace or add an SBE subcontractor occurs. The Contractor must submit to the District's SBE staff the following:

1. *Small Business Enterprise Subcontractor Revised Participation Schedule* (Form No. 1373)
2. *Statement of Intent to Perform as a Small Business Enterprise Subcontractor* (Form No. 0957)

Business Licensing Requirements

Each Respondent is responsible for determining and complying with all applicable business licensing requirements necessary to complete the Project's scope of work. Evidence of current licenses shall be required in accordance with the requirements detailed in this Solicitation.

Contractor and Designer License Requirements

Each Respondent is responsible for determining and complying with all applicable contractor and designer license requirements necessary to complete the Project's scope of work. Evidence of current Florida licenses shall be required in accordance with the requirements detailed in this Solicitation.

Contract

The Respondent understands that this Solicitation or the Response shall not constitute a contract with the District. No contract is binding or official until Responses are reviewed and accepted by appointed District staff, approved by the appropriate level of authority within the District, and an official contract is duly executed by the parties.

Attachment C contains the sample Design/Build Contract (Contract). The District anticipates that the final Contract will be in substantial conformance with the sample contract. Nevertheless, Respondents are advised that the District may make changes to the sample contract.

5 RESPONSE SUBMISSION REQUIREMENTS

Submission of Response

Each Respondent shall submit at the same time and by the Response Submission Due Date (see solicitation cover page), **two (2) separate** and sealed pdf electronic packages consisting of 1) One (1) Qualifications Package; and 2) One (1) Project Approach Package. The Qualifications Package and Project Approach Package together comprise the Respondent's Response.

The novel Coronavirus (COVID-19) has created a public health emergency throughout the entire State of Florida. Governor Ron DeSantis' Executive Order 20-52, including any extension, and the South Florida Water Management District's (SFWMD) Emergency Authorization 2020-004-DAO, including any extension, allow for the District to modify its normal procurement practices and policies to protect the public from the threat posed by COVID-19. Because the Florida Department of Health and the Centers for Disease Control and Prevention recommend avoiding in-person meetings, the SFWMD will process response submittals and openings as follows:

SFWMD will accept pdf electronic Responses submitted on the date and time set forth above via email to Procurement@sfwmd.gov. An auto-generated response documenting receipt of your submittal will be sent to your email address. If a Respondent does not receive the auto-generated response within 5 minutes of submittal, please contact Procurement at 561-682-2011. To ensure proper receipt of responses, Respondent must:

1. Identify the solicitation number and title in the subject line of the email.
2. Convert submittal document to pdf file format.
3. Submit one bid response in one single email. If multiple documents are being submitted that require more than one email, label each email 1 of 2, 2 of 2, etc.

The SFWMD assumes no responsibility for responses not properly marked.

Preliminary results that indicate the responses received will be posted on the SFWMD website, <https://www.sfwmd.gov/doing-business-with-us/procurement> following the bid opening.

Respondent shall assume full responsibility for timely delivery of the Response. Responses received after the specified Response Submission Due Date will not be accepted, and the Respondent submitting such untimely Response shall be deemed non-responsive.

Oral, telephone, facsimile, telegraph, are invalid and will not receive consideration. No Respondent may submit more than one Response. Multiple Responses under different names will not be accepted from one firm or association; in this case, the second Response submitted will not be considered.

Submission Format

Although a pdf copy of the Response is being submitted electronically, the Qualifications Package and Project Approach Package must be prepared in the following format to allow for hard copy print.

The Response shall be prepared in the English language and shall contain the elements described in this Solicitation. The Response should consist of sections organized in one (1) binder with the identity of the Respondent on the front cover. The maximum thickness of each binder shall be one-half (1/2) inch. Also, Respondent shall identify on the cover of each binder the package type as "Qualifications" or "Project Approach."

There is no page limit imposed for the Response. However, Respondents are expected to use good judgment in not overwhelming the Selection Committee with extraneous or trivial information. During the evaluation process, consideration for conciseness will be made. Except for charts, schedules, exhibits, drawings and other illustrative and graphical information, all information shall be prepared on 8.5" x 11" white paper. All printing, except for the front cover of the Response and any appendices, must be a font of not less than 11-point.

Response Checklist

A Response Checklist is attached to this Design/Build Solicitation to facilitate final review of Response format and content. The checklist is provided for the convenience of the Respondent and is not required to be returned with the Response.

Submission of Proprietary Information

Respondent shall mark any pages of the Response it considers proprietary or confidential accordingly. Such information will be treated as such by the District; provided, however, that the District cannot ensure that this information would not be subject to release pursuant to a formal public disclosure request per Chapter 119 of the Florida Statutes concerning public records. If a request for such information is received, the District will promptly notify the Respondent of such request and it shall be the Respondent's sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the party requesting the public records.

Submission Content

The content requirements set forth in this Solicitation represent the minimum content requirements for the Response. It is the Respondent's responsibility to include information in its Response to present all relevant qualifications and other materials. The Response, however, should not contain standard marketing or other general materials. It is the Respondent's responsibility to modify such materials so that only directly relevant information is included in the Response.

The Response must include the following information in the order listed and contained within each respective Response package:

A. Qualifications Package

- Transmittal Letter
- Part 1 – Respondent's Profile
- Part 2 – Project Team
- Part 3 – Experience
- Part 4 – Safety Record
- Part 5 – Small Business Enterprise "SBE" Utilization Plan
- Part 6 – Location Consideration
- Appendix A – Forms for Affirmation of Compliance
- Appendix B – Resumes

- B. Project Approach Package
- Part 7 – Project Approach

Responses should be organized in the order listed above, with each Part and Appendix separated using tabbed sections.

Transmittal Letter

Respondents must submit a transmittal letter on the Respondent's letterhead. It must be signed by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the obligations contained in the Response. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent Contact, and must specify the authorized individual who will execute the Contract. If Respondent is a general partnership, joint venture, or consortium, all partners/members of the general partnership, joint venture, or consortium shall sign the letter. If Respondent is a corporation or a limited liability company, an authorized officer shall sign his/her name and indicate his/her title beneath the full corporate name. The Transmittal Letter may include any information deemed relevant by the Respondent but must include:

1. An identification of Respondent's Point of Contact;
2. A declaration of Respondent's intent, if selected, to enter into a contract with the District for the Project in accordance with the terms of this Solicitation;
3. An identification of the Lead Constructor and Lead Designer, as defined in Attachment A (Definitions) of the Solicitation.
4. An affirmation that all professional and business licenses required for the Project have been obtained and identify the license numbers, including but not limited to the license numbers for the members of Project Team that are the Lead Designer, Project Architect and Lead Constructor;
5. A statement of Respondent's intent to provide Performance and Payment Bonds on the date required by the Contract;
6. A statement of Respondent's intent to provide all insurance required under the Contract by the date of Contract Award;
7. If Respondent is a general partnership, joint venture or consortium, state that each partner/member of the general partnership, joint venture or consortium will have joint and several liabilities if awarded the Contract; and
8. Reference to Response Appendix A (Forms for Affirmation of Compliance), based on the forms in Solicitation Attachment F (Forms for Affirmation of Compliance).

Part 1 – Respondent's Profile

A detailed and complete description of the Respondent shall be provided in Part 1 of the Response. Information concerning Key Personnel and other firms that are included on the Project Team, such as subconsultants and subcontractors, should be provided in Part 2 of the Response. This description shall include the following information:

- **Compliance Disclosure Form**

Respondent shall complete the Compliance Disclosure Form in Response Appendix A (Forms for Affirmation of Compliance), based on the form provided in Solicitation Attachment F (Forms for Affirmation of Compliance). If the Compliance Disclosure Form is not submitted as part of the Respondent's Response, is altered in any manner, or is not fully completed, the Respondent shall be deemed non-responsive to the solicitation requirements.

The Compliance Disclosure Form includes representations and certifications, including a Non-Collusion certification, that shall be executed by an individual authorized to bind the Respondent.

- **General**

Provide general information about the Respondent, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.

- **Legal Structure**

Identify whether the Respondent is organized as a corporation, limited liability company (LLC), general partnership, joint venture, or consortium. If Respondent is a general partnership, joint venture, or consortium: (a) identify which entity will obtain the bond that will be used and specifically identify the partners/members of the entities who will be jointly and severally liable under the Contract. ; and (b) provide in Appendix A (Forms for Affirmation of Compliance) a copy of the agreement that was filed with the State of Florida, in compliance with Florida Administrative Code (Respondent must comply with Florida Statutes, as well as Florida Administrative Code prior to Response submission).

- **Office Location**

Identify the location of the Respondent's office. In the case of general partnership, joint venture, or consortium, identify the office location for each partner member.

- **Bonding Capacity**

In Response Appendix A (Forms for Affirmation of Compliance), Respondent shall provide a copy of its bond certificate verifying the Respondent's current total bonding capacity. The Respondent shall also enclose a letter from its Surety stating its name, address and telephone number or that of its authorized agent. The letter shall include the Respondent's maximum authorized bond amount, amount thereof now encumbered, the Respondent's bond company's T rating and their A.M. Best Rating. The Respondents Surety must have an A.M. Best Rating of at least "Excellent". The Respondent must list the bond company's rating as it appears in the U.S. Department of Treasury Circular 570, Companies Holding Certificates of Authority as Reinsurance Companies. The total amount bonded shall not exceed the Surety's underwriting limitation as defined in the Circular. The Bond Company must be licensed to write bonds in the State of Florida.

- **Insurance**

In Response Appendix A (Forms for Affirmation of Compliance), based on the form provided in Solicitation Attachment F (Forms for Affirmation of Compliance), Respondent shall provide evidence of the ability to obtain appropriate insurance coverage. Respondents may fulfill this requirement by having their insurance agent either 1) complete and sign an insurance certificate which meets the insurance requirements attached to this solicitation, or 2) issue a letter on the insurance agency's stationery stating that the Respondent qualifies for the required insurance coverage levels and that an insurance certificate meeting the District's requirements will be submitted before final execution or issuance of a contract. All insurers must be qualified to lawfully conduct business in the State of Florida. Failure of the District to notify the Respondent that the certificate of insurance provided does not meet the contract requirements shall not constitute a waiver of the Respondent's obligation to meet the stated requirements. In addition, receipt and acceptance of the certificate of insurance by the District shall not constitute approval of the amounts or types of coverage listed on the certificate.

If the Respondent is a self-insured entity, the Respondent may contact the District's Point of Contact to request the District's self-insurance package. Misrepresentation of any material fact, whether intentional or not, regarding the Respondent's insurance coverage, policies or capabilities, shall be grounds for rejection of the Response and rescission of any ensuing contract. If awarded a contract or purchase order as a result of a second solicitation, the Respondent(s) shall maintain insurance coverage reflecting, at a minimum, the amounts and conditions as specified in the insurance requirements attached to this solicitation.

- **Corporations and Partnerships Good Standing with the Florida Secretary of State**

The District will review each Respondent's corporate status and good standing with the Florida Secretary of State based on the information provided in the Compliance Disclosure Form to be provided in Response Appendix A (Forms for Affirmation of Compliance), based on the forms in Solicitation Attachment F (Forms for Affirmation of Compliance). If the Respondent is an out-of-state corporation, the Respondent must obtain authority to conduct

business in the State of Florida. All entities that are not in good standing at the time of Response submission shall be deemed non-responsible by the District for this solicitation.

If successful in obtaining a contract award resulting from this solicitation, the corporation or partnership must remain in good standing throughout the contractual period of performance.

- **Convicted Vendor List, Discriminatory Vendor List, Scrutinized List of Prohibited Companies and District's Suspension List**

The District will review the following to determine whether the Respondent, or any of its suppliers, subcontractors or subconsultants, has been placed on: State of Florida's Convicted Vendor List in accordance with Section 287.133, Florida Statutes; State of Florida's Discriminatory Vendor List in accordance with Section 287.134, Florida Statutes; State of Florida's Scrutinized List of Prohibited Companies; and/or District's Suspension List for material breach of a District contract in accordance with Rule 40E-7, Part II, F.A.C. The District shall find non-responsible any Respondent, or any of their suppliers, subcontractors, or subconsultants who are currently debarred or suspended, or whose name appears in any of the lists above.

- **Statement of No Suspension Form**

Respondent shall complete the Statement of No Suspension Form in Response Appendix A (Forms for Affirmation of Compliance), based on the form provided in Solicitation Attachment F (Forms for Affirmation of Compliance). If the Statement of No Suspension Form is not submitted as part of the Respondent's Response, is altered in any manner, or is not fully completed, the Respondent shall be deemed non-responsive to the solicitation requirements.

The Statement of No Suspension Form includes representations and certifications that shall be executed by an individual authorized to bind the Respondent.

- **License Requirements**

Respondents must submit a copy of current valid State of Florida Certified General Contractor license for the Lead Constructor and a Florida Professional Engineer license and/or Florida Professional Architect license for the Lead Designer. Failure to provide copies of such licenses may result in the Respondent being deemed non-responsible.

Part 2 – Project Team

The composition, organization, and management of the Project Team must be described per the requirements described below. If District has reasonable objection to any proposed Superintendent, Subcontractor, other person or organization, it may, before contract execution, request an acceptable substitute.

Key Personnel

Identify the Respondent's Key Personnel (and their firm affiliations), as defined in Attachment A (Definition of Terms), which Key Personnel are limited to the Project Manager, Engineering Design Manager, Project Architect, Permitting Manager, Construction Manager, and Project On-Site Superintendent. Provide the names and phone numbers of all such members. The Project On-Site Superintendent shall be an employee of the Lead Constructor.

- The District expects Key Personnel to remain on the Project Team for the duration of the Design/Build Contract. The Respondent shall provide the following statement in their Response:
“_____ (Name of Respondent) confirms that all Key Personnel as represented in our Response will remain as part of the Project team for the duration of the Project”.
- The commitment of the Key Personnel to their designated responsibilities on the Project should be indicated in this section of the Solicitation in terms of an estimated percentage of their time for the Project.

- Provide resumes for each of the Key Personnel in Response Appendix B (Resumes). Resumes shall be limited to two (2), single-sided pages for each individual and shall include a narrative that describes each individual's:
 - Academic and professional qualifications.
 - Professional registration (as applicable).
 - Experience as it relates to the Project and to the individual's specified role.

The Key Personnel section is intended to allow the Respondent to describe its major team members/Key Personnel with specific and extended experience applicable to the Project requirements; demonstrate how major team members/Key Personnel will benefit the Project; and demonstrate how major team members/Key Personnel were able to successfully deliver the similar projects.

Respondent's Project Organization

Provide sufficient information to enable the District to understand and evaluate the Respondent's Project organizational structure.

- Provide an organizational chart(s) (may be 11- x 17-inch trifold format) that identifies the Lead Constructor and Lead Designer, other primary team members (including other firms such as subcontractors and subconsultants), and Key Personnel for design, permitting, construction, and project management showing the lines of authority identifying the Key Personnel and individual primary team members (with firms they represent), who are responsible for major functions to be performed and their reporting relationships in managing, designing, and constructing the Project. Identify each Key Personnel's anticipated percent commitment of time for each project phase.
- The organizational chart(s) should include design subconsultants, specialty subconsultants, and major subcontractors. If the Respondent intends to use a specific subconsultant or major subcontractor, then it may identify such entity by name in the organizational chart. Any specific subcontractor or subconsultant identified in the organizational chart shall be considered part of the Project Team and subject to the requirements to remain as part of the Project Team as defined in Section 9 of this Solicitation.
- Describe the scope of the services and responsibilities to be performed by the Project Team members during Phase One and Phase Two of the Project with specific emphasis on: (a) the role of the Lead Designer during Phase One; and (b) the role of the Lead Constructor during Phase Two.

The Respondent's Project Organization section is intended to allow the Respondent to demonstrate their proposed organizational structure that best supports the efficient execution of the Project; explain the Project role of major team members/Key Personnel and how the team members will interface between themselves as well as the District; demonstrate an organization that places Key Personnel in roles of authority to make appropriate decisions; and identify the percentage commitment for participation in Phase One and Phase Two for each of the Key Personnel.

Part 3 – Experience

The District is interested in understanding the performance history and experience of the Respondent and its members on projects that include technical elements similar to the Project as shown in the Attachment E (Project Design Criteria) Section 4 (Technical Requirements). Responses will be evaluated partly based upon the experience of the individual members on similar projects, the prior experience of the members working together (including number and types of projects completed together), and prior design/build experience of the Lead Constructor and Lead Designer.

Representative Projects

The District must verify a minimum of three (3) reference projects. The Respondent may submit descriptions for up to five (5) reference projects completed with the past 10 years to demonstrate relevant experience in design, construction, or design/build or CMAR. Each description shall contain at least the following information:

- Name of project Owner;
- Project Owner reference and contact information (multiple contact references for each Project allowed);
- Role of Respondent;
- Contract value;
- Month and year started, and month and year completed;
- Describe whether original schedule and budget were achieved; reasons for schedule and/or budget not being achieved;
- Description of the project showing relevance to this Project; and
- Names of firms and Key Personnel that participated in project and are included in this Response, along with a clear description of the roles and responsibilities of each.

A Project Reference Form (see Attachment F – Forms for Affirmation of Compliance) shall be completed for each Project. Additional project information may be included in Part 3 of Response, in addition to what is provided in the completed Project Reference Form (s). A one-page summary table should be provided to cross-reference the Project Team (firms and Key Personnel) with participation in the reference projects.

The Experience Section is intended to allow the Respondent to demonstrate that their team identified as the Respondent has the design and construction capabilities/roles as evidenced by the completion of prior projects that are applicable to the Project and demonstrate their ability to complete the Project effectively; demonstrate a past working relationship between major team members/Key Personnel based upon the number of projects the team members have completed together and generally their historical working relationship; demonstrate a past working relationship between team members/Key Personnel based upon the number of design/build projects that the team members have completed together; and provide representative project information that is similar and applicable to the Project requirements, and that have included the participation of Key Personnel.

District staff or consultants will contact references and obtain information on representative projects to confirm the information provided in the Project Reference Form (s). A Project Experience Verification Form (see Attachment G) will be completed by District staff or consultants to verify information for each project reference. A minimum of three (3) project references are required to be verifiable for the Respondent to be considered responsible and for comparative evaluation. District will contact each reference by phone, up to three (3) times only. No international project reference and contact information will be accepted.

Part 4 – Safety Record

The Response must provide information concerning the Respondent's safety record, including safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five (5) years. The following safety records must be provided for the Lead Constructor for the past five (5) years:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau (the EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod). The EMR is calculated by comparing a company's actual workers' compensation loss data against average loss data for other employers in the same state who share the same industry classification code. The Respondent must submit written evidence from an insurance underwriter having a financial rating from A.M. Best & Co. rating of at least A:VII or written evidence from the Florida Division of Worker's Compensation, confirming the Respondent's current EMR.
- The completed Occupations Safety and Health Administration (OSHA) Form 300A, Summary of Work-Related Injuries and Illnesses.

Part 5 – Small Business Enterprise (“SBE”) Utilization

Respondent shall identify all SBE firms that will be utilized as subcontractors during Phase One of the Project. The listing of SBEs in the SBE Subcontractor Utilization Plan shall constitute the Respondent's representation to the District that the SBE firms are technically and financially qualified and available to perform the assigned work. **Failure to provide complete and accurate information shall result in the Response being deemed non-responsive.**

The SBE Subcontractor Utilization Plan consist of the following documentation, which must be included with the Response:

1. *The Statement of Intent to Perform as an SBE Subcontractor form*, which confirms: (a) the intent of the Respondent to establish a business relationship with each SBE subcontractor; and (b) the SBE participation percent. **One form must be completed and signed by each proposed SBE subcontractor.** The form Respondent must use to fulfill this requirement is provided in Attachment F (Forms for Affirmation of Compliance) of Solicitation. Only percentages need to be inserted to indicate the level of participation, not the dollar amounts.
2. *The SBE Subcontractor Participation Schedule form*, which identifies all SBE firms which will be utilized as subcontractors, delineates the specific elements of work each SBE firm will be responsible for performing, and identifies the dollar value of the SBE work as a percentage of the total Phase One services value. The form Respondent must use to fulfill this requirement is provided in Attachment F (Forms for Affirmation of Compliance) of Solicitation. Only percentages need to be inserted to indicate the level of participation, not the dollar amounts.

Although level of participation provided in the Respondent's Response is determined based upon only Phase One of the Project, the Respondent shall commit to the same level of SBE participation (i.e., participation percentages) submitted in the Response for the entire scope of the Project. (i.e., Phase One and Phase Two), albeit the specific subcontractors utilized during Phase One may be different that those utilized in Phase Two.

Part 6 – Location Considerations

Respondent shall be scored based upon the location of the Respondent's office, as set forth in Section 6.4.3 below. The District will determine proximity of the Respondent's office location based upon current District service area maps.

Part 7 - Volume of Previous District Work

Respondent shall be scored based upon the total dollar amount of work previously paid to Respondent for contracts (including Purchase Orders and Work Orders) with the District during the previous three (3) years. The District will determine the volume of Previous District work based upon the District accounting records. For Respondents that are a general partnership, joint venture, or consortium, the total of previous work performed by all general partnership, joint venture, or consortium members will be used to determine the Respondent's score as described in Section 6.4.2 below.

Part 8 - Project Approach

Provide a conceptual description of the Respondent's approach to managing and performing its services during Phase One and Phase Two of the Project including land acquisition, operation and maintenance, deliverables and transfer of the project to the District. The following items should be addressed:

- Discuss how a collaborative relationship with the District would be established and Site Analysis performed during Phase One design development, scheduling and cost estimating. Describe how the Respondent intends to control and coordinate the flow of information between design and construction teams (including how constructability issues will be addressed), and how the Respondent plans to interface with the Owner including activities relative to design development and value engineering.

- Describe how you intend to acquire the land for the project, design, construct, operate and maintain the project and subsequently transfer the land and project to the District. Respondent must be fee title holder with legal authority to convey the property to the District prior to entering into a contract with the District.
- Describe Respondent's permitting approach, including regulatory permits, local agency permits, municipal permits, construction permits, and achieving Final Acceptance and Operational permit.
- Describe Respondent's design process, including procedures for equipment selection, constructability reviews, obtaining District input, and designer involvement in oversight of construction.
- Describe Respondent's construction approach including safety, quality assurance, risk factors and mitigation, division of work, use of subcontractors, means and methods, mobilization, phasing, logistics, schedule and cost control, and other key construction activities.
- Identify the work components critical to the Project's success and how these components would be successfully completed.
- Describe the process for developing the stipulated price proposal (including the approach for development of the amount of cost contingency).
- Discuss how key risk factors will be identified and mitigated.
- Submit a summary description of the corporate safety program that has been established by the Lead Constructor. Provide a description of safety programs or procedures that would be applicable to the Project.
- Describe the Respondent's quality control and management methods, policies and procedures during design and construction.
- Describe the Respondent's concepts for managing the Project and how the Respondent intends to control budget and schedule.
- Provide a high-level project workflow schedule.
- Describe Respondent's proposed approach to self-performance, including those portions of the work that the Respondent would expect to self-perform.
- Describe approach to competitively procuring elements of the work that will not be self-performed by the Respondent.
- Describe approach to Operation and Maintenance.

6 RESPONSE EVALUATION AND SELECTION

General

The District will appoint a committee ("Selection Committee") that includes staff from multiple Bureaus, as deemed necessary. Copies of Responses will be distributed to the Selection Committee members who will rely on the contents for scoring purposes. The Selection Committee will evaluate each Response, with such evaluation being based upon the factors and weights set forth in this Section 6.

The District shall be the sole judge of its Project requirements, as set forth in this Response, and of the evaluation of all Responses. The District's decision(s) shall be final. Respondents who have met the Responsiveness and Responsibility requirements will be evaluated in accordance with the criteria detailed herein. Each Selection Committee member will independently score the written Responses based on the merits of each Response, as determined by the individual, to meet the requirements stated in the Solicitation. Likewise, each Selection Committee member will independently score the interviews. The total number of points scored by each individual will be based on the maximum points available for each of the factors and, if applicable, sub-factors, detailed in this Section 6.

In general, the selection process will consist of the following:

- Step 1 – District Procurement Department will open the Qualifications Package while the Project Approach Package will remain sealed.
- Step 2 – District Procurement Department will review the Qualifications Package to determine if Responsiveness and Responsibility Requirements are met.
- Step 3 – District staff or consultants will contact references and verify information for a minimum of three (3) representative projects. District staff will contact each reference by phone, up to three (3) times only. No international project reference and contact information will be accepted.
- Step 4 – For those Qualification Packages that meet the Responsiveness and Responsibility Requirements, the Qualifications Package criteria will be scored (60 total points possible). The District Procurement Department will determine each Respondent's score for the Safety Record, Location Consideration and Volume of Previous District Work criteria. The Selection Committee will review the Qualifications Package, and independently score the Project Team and Experience criteria.
- Step 5 – Responses and corresponding Respondents will be ranked based upon the Qualifications Package scores.
- Step 6 – After the Respondents raw scores have been ranked, the District will select a shortlist of Respondents (Shortlisted Respondents). The Project Approach Package of the Shortlisted Respondents (20 total points possible) will then be opened and reviewed. The District will post an Authorization to Proceed with the Evaluation of Shortlisted Respondents.
- Step 7 – Interviews will be conducted by the Selection Committee with all Shortlisted Respondents. Interviews and responses to the Project Approach criterion will be independently scored by Selection Committee members (20 points possible). Scores previously determined for the Qualifications Package will be combined with the scores determined for the Project Approach Package for a total Response score (100 total points possible).
- Step 8 – Shortlisted Respondents will be allowed to suggest and submit modifications to the draft Contract including the Design/Build Contract contained in Attachment C. The District in its sole discretion may make changes to the draft contract as part of the final negotiation prior to contract award.
- Step 9 – A final ranking report that includes the combined scores of the Qualifications Package and the Project Approach Package will be provided to the District Governing Board. The District Governing Board will then rank the Shortlisted Respondents for the District to begin contract negotiations, beginning with the highest-ranked Shortlisted Respondent. A Not-To-Exceed contract amount for Phase One services (i.e., Design/Builder's Preliminary (Phase One) Services), will be presented to the District Governing Board in association with the selected Shortlisted Respondent. Additional details on the selection process are included within this Solicitation.

List of Shortlisted Respondents

In compliance with Chapter 120 of the Florida Statutes, the official List of Respondents Authorized to Proceed as a Shortlisted Respondent, as determined by the Selection Committee member, will be posted on the District's web site (www.SFWMD.gov/procurement). The District will also post the results at the Procurement Bureau in the District's B-1 Building, 2nd Floor West, 3301 Gun Club Road, West Palm Beach, Florida. This notice will remain posted for a period of seventy-two (72) hours (excluding weekends and District observed holidays).

If a Respondent intends to protest the District's official notice, the Respondent shall file Notice of Intent to Protest in writing within seventy-two (72) hours after posting of the List of Respondents Authorized to Proceed to Short-List and shall file a formal written protest within ten (10) days after filing the notice of intent to protest. Any Respondent who files a Formal Written Protest pursuant to Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes shall post with the District at the time of filing the formal written protest, a bond pursuant to Section 287.042(2)(c), Florida Statutes. Failure to file a notice of intent to protest or failure to file a formal written protest within the time prescribed in Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, or failure to post the bond or other

security required by law within the time allowed for filing a bond, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

Notices of Intent to Protest and Formal Written Protests along with bond or other security shall be timely filed with the Clerk of the South Florida Water Management District at 3301 Gun Club Road, West Palm Beach, FL 33406. The District will not accept receipt of any Notices of Intent to Protest or Formal Written Protests filed at any location other than the District Clerk's Office. Notices of Intent to Protest and Formal Written Protests may be filed by hand delivery, U.S. Mail, or electronic transmission (email) with the Clerk's Office at clerk@sfwmd.gov. Filings by facsimile will not be accepted. A Respondent who files a document by email is responsible for any delay, disruption, or interruption of the electronic signals and accepts the risk that the document may not be properly filed with the District Clerk as a result. The filing date for Notices of Intent to Protest and Formal Written Protests transmitted by email is the date the District Clerk receives the complete document. Filings will be accepted between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday which are the normal hours of operation. Any document received after 5:00 p.m. will be deemed filed as of 8:00 a.m. the next business day.

Rejection of Responses

Pursuant to Rule 40E-7.301, Florida Administrative Code, the District reserves the right to reject any and all Responses for reasons including, but not limited to, the following: (1) when such rejection is in the interests of the District; (2) if such Response is deemed non-responsive or does not meet responsibility requirements; or (3) if the Response contains any material irregularities. The District may waive minor irregularities contained in a Response. If Respondent misrepresents any material fact, whether intentional or not, the District may reject the Response and may terminate any ensuing contract. In the event of such termination, the District shall not be liable for any work or materials furnished by Respondent.

Responsive Conditions

Each Response will be reviewed to determine whether it meets the Responsiveness Requirements outlined in this subsection. Failure to comply with the requirements of this Solicitation may result in rejection of the Response as non-responsive. Each Response shall be reviewed for responsiveness in accordance with the following conditions.

1. Timely submission (refer to Solicitation cover sheet for Deadline for Response Submission).
2. Compliance with submittal requirements in accordance with Section 5 of Response.

If a Respondent fails to satisfy these conditions, the Response shall be deemed non-responsive by the District and not considered for further review.

Responsibility Requirements

Each responsive Response will be reviewed to determine whether it meets the Responsibility Requirements outlined in this subsection. At its sole discretion, the selection committee may request clarification or additional information to address any questions that may arise regarding a Respondent meeting the responsibility requirements. Any Response that does not satisfy all of the following responsibility requirements may be deemed non-responsible.

- **Bonding Capacity.** Ability of the Respondent to provide a design/build performance bond in the amount of \$300 Million, as demonstrated by evidence provided as part of Response.
- **Insurance Requirements.** Ability of the Respondent to provide insurance to meet Project requirements.
- **Licensing and Registration.** The Respondent and each Subconsultant and subcontractor must be licensed in Florida for the type of work to be performed. The Lead Designer must include in responsible charge an engineer and/or architect registered in Florida, and the Lead Constructor must be licensed in Florida.

- **Convicted Vendor List, Discriminatory List, Scrutinized List of Prohibited Companies and District's Suspension List.** The Respondent, or any of their suppliers, subcontractors, or subconsultants must not be currently debarred or suspended, or their name appearing in any of these lists.
- **Corporations and Partnerships Good Standing with the Florida Secretary of State.** All corporations or partnerships must be in good standing at the time of Response Submission Due Date.
- **Representative Projects/References.** For the Respondent to meet the Responsibility requirements, a minimum of three (3) representative projects are required to be verifiable, such that information provided in the Project Experience Forms can be confirmed as being substantively accurate by the District (determined by contacting the project owner reference provided by Respondent).
- **Past Performance Records.** The District will review past performance records for District projects on file. The District will consider the number of contracts involved and/or the extent of deficient performance in each contract for Respondents when making a determination of responsibility.
- **Safety.** The District will review the EMR worksheet provided by the State rating bureau or a letter provided by the insurance company written on their letterhead indicating the EMR rating.

Comparative Evaluation Criteria

The selection committee will evaluate and rank the responsive Responses that satisfy the responsibility requirements by applying the weighted comparative evaluation criteria set forth below. The total number of points that will be used in evaluating all the factors for this Response is 100, allocated as illustrated in the following table.

Criteria	Maximum Score Possible	Weight Assigned	Maximum Points Possible
<i>Qualifications Package</i>			
Project Team			
• Key Personnel	5	3	15
• Respondent's Project Organization	5	1	5
Experience			
• Representative Projects	5	3	15
Safety Record	10	N/A	10
Location Consideration	10	N/A	10
Volume of Previous District Work	5	N/A	5
SUBTOTAL POSSIBLE POINTS (QUALIFICATIONS PACKAGE)			60
<i>Project Approach Package</i>			
Project Approach	5	4	20
Interview	5	4	20
SUBTOTAL POSSIBLE POINTS (PROJECT APPROACH PACKAGE)			40
TOTAL POSSIBLE POINTS			100

Evaluation of Technical Criteria

Technical Criteria include Project Team, Experience, Project Approach, and the Interview. Selection Committee individuals will independently score the Responses based on the merit of each response, as determined by the individual, to meet the requirements stated in the solicitation. The total number of points scored by each individual will be based on the maximum points available for each of the sub factors detailed under the Technical Criteria category. The District shall

be the sole judge of its Project requirements, as set forth in this solicitation, and of the evaluation of all Responses submitted in response to this solicitation. The District's decision(s) shall be final.

The following numerical ratings and descriptions will be used by each individual to determine the numerical score (0 to 5) that will be placed before the weight (1, 2, 3, or 4) that has been assigned for each evaluation factor. The numbers will be multiplied to reach the actual weighted score for each item evaluated. Evaluation standards are set forth as follows.

<u>TECHNICAL CRITERIA EVALUATION TABLE</u>	
Numerical Score	Level that Response Demonstrates Ability of Respondent to Meet or Exceed the Performance and Technical Requirements of Project
5	Excellent
4	Very Good
3	Good
2	Satisfactory
1	Marginal
0	Unsatisfactory

Evaluation of Volume of Previous District Work

The District's Procurement Department will determine the Volume of Previous District Work scores based upon the Respondent's volume of previous work for the District and the Volume of Previous District Work Evaluation Point Table shown below. For Respondents that are a general partnership, joint venture, or consortium, the total of previous work performed by all general partnership, joint venture, or consortium members will be used to determine the Respondent's score (see example below).

<u>VOLUME OF PREVIOUS DISTRICT WORK EVALUATION POINT TABLE</u>	
Total Dollar Amount Paid under Previous Contracts (including Purchase Orders and Work Orders) During the Past 3 Years	Numerical Score
\$0 – \$5,000,000	5
\$5,000,001 – \$10,000,000	4
\$10,000,001 – \$15,000,000	3
\$15,000,001 – \$20,000,000	2
\$20,000,001 – \$25,000,000	1
Over \$25,000,000	0

Example calculation:

Respondent Joint Venture Team Member #1:
Previous District Work during last 3 years: \$10,000,500

Respondent Joint Venture Member #2:
Previous District Work during last 3 years: \$3,750,000

Total Previous District Work of Respondent = \$10,000,500 + \$3,750,000 = \$13,750,500

Total Score (from Table): 3

Evaluation of Location Consideration

The District's Procurement Department will determine the Location Consideration scores based upon the location of the Respondent's office(s) and the Location Consideration Point Table shown below.

<u>LOCATION CONSIDERATION POINT TABLE</u>	
Location	Numerical Score
Office(s) within Glades, Highlands or Okeechobee County	10
Office(s) within District Service Area	7
Office(s) within State of Florida	4
Office(s) outside the State of Florida	0

Evaluation of Safety Record

The District's Procurement Department will determine the Safety Record scores based upon the documentation provided by Respondent and the Safety Record Point Table shown below.

<u>SAFETY RECORD POINT TABLE</u>	
EMR	Numerical Score
< 0.50	10
0.50 < and < 0.80	8
0.80 < and < 1.10	6
1.10 < and < 1.40	4
1.40 < and < 1.70	2
> 1.7	0

An average of the Experience Modification Ratio (EMR) values from the Lead Constructor for the past five (5) years will be calculated by the District's Procurement Department based upon the information provided by the Respondent; the average EMR will be used to assign the numerical score for safety record (see example calculation below).

Example calculation:

Lead Constructor's Reported EMR Values: EMR (2014) = 0.70; EMR (2015) = 0.75; EMR (2016) = 1.00; EMR (2017) = 0.81; EMR (2018) = 0.70

Average EMR (calculated) = 0.79 (rounded to nearest two decimals)

Score (from table): 8 points

Interviews

The District will conduct an interview/oral presentation with Shortlisted Respondents as described in Section 6 of this Solicitation. Key members of the Respondent's team will be expected to attend, including but not limited to the Project Manager, Onsite Superintendent, Engineering Design Manager, Project Architect, Construction Manager, and other key members of Lead Constructor. The interviews with each respective Shortlisted Respondent will be scheduled for **forty-five (45) minutes**; and will consist of an oral presentation by the Shortlisted Respondent and a questions and answers portion administered by the District. An agenda for the interview/oral presentation will be sent to all Shortlisted Respondents to be interviewed prior to the interview.

The purpose of the interview is to enable the Shortlisted Respondents to: (a) demonstrate clarity of expression and thoroughness; (b) demonstrate a strong understanding of project issues; (c) demonstrate the ability to clearly communicate; (d) articulate its thoughts and ideas in a logical and factual manner; (e) demonstrate team chemistry between members and impressions of ability to work cohesively; and (f) provide answers to questions with thoroughness and insight in providing direct and clear responses. The District will consider the above factors when completing its evaluation of the interviews.

Award of Contract

The District will report the results of the Selection Committee's deliberations via the *Authorization to Proceed with the Ranking of Selected Firm(s) and to Enter into Contract Negotiations*. The results will be forwarded to the Governing Board for final approval.

If the Governing Board identifies issues that are inconsistent with policy objectives, the District will post an official "Reject All Proposals" notice in lieu of recommended ranking. If the results are acceptable to the Governing Board, the District will post the official results on the Friday following Thursday's regular Governing Board monthly meeting. In the event that negotiations are unsuccessful with the top-ranked Respondent, the District will proceed with negotiations in ranked order until a contract has been successfully negotiated.

Following Governing Board acceptance of the final results and in compliance with Chapter 120 of the Florida Statutes, the official Authorization to Proceed with the Ranking of Selected Firm(s) and to Enter into Contract Negotiations will be posted on the District's web site (www.SFWMD.gov/Procurement, Official Awards). The District also will post the results at the Procurement Bureau in the District's B-1 Building, 2nd Floor West, 3301 Gun Club Road, West Palm Beach, Florida to communicate intended award decisions. This notice will remain posted for a period of seventy-two (72) hours (excluding weekends and District observed holidays).

Prior to Contract Award, the successful Respondent shall submit documentation reflecting any required insurance coverage and bond certificates. The Contract number shall be included on the insurance documentation submitted to the District at the time of award execution and for all subsequent updates to the insurance coverage throughout the contract period. Failure to execute the Contract and/or to provide evidence of any required insurance coverage shall be just cause for the termination of the award.

If the successful Respondent fails to execute the Contract within seven (7) working days from notice by District to do so, there shall be just cause for the annulment of the award. Successful Respondent shall be liable to the District for all damages resulting there from including reasonable attorneys' fees and costs, and attorneys' fees and cost on appeal. Award may then be made to the next highest-ranked Respondent, or the Work may be re-advertised at the District's sole discretion.

7 RIGHTS AND RESERVATIONS OF DISTRICT

Conflicts of Interest and Ineligible Firms

Any company, or any individual employee of a company, that has materially participated in activities related to the Project while under contract to the District, or otherwise has an impermissible conflict of interest, is not allowed to participate in the procurement for the Project. This prohibition includes, but is not limited to, Owner's Advisor (Parsons Environment & Infrastructure Group, Inc.) and its respective subconsultants.

A company and individual employee are presumed to have an impermissible conflict of interest and an unfair competitive advantage in this procurement if the company or individual employee: (a) materially assisted in drafting or establishing the requirements, restrictions, specifications, prerequisites, obligations, constraints, options or conditions of the procurement for the Project; or (b) prior to the due date for the submission of the Response, gained confidential or other material information regarding any material part of the procurement for the Project that was not available to others.

If Respondent has any doubt as to whether a company or individual has an impermissible conflict of interest or potential unfair competitive advantage, it shall notify the District's Point of Contact in writing and submit pertinent information to enable the District to evaluate this situation. The District, in its sole discretion, will make a determination relative to the potential conflict of interest or competitive advantage and have the ability to mitigate such situation, which determination shall be final. General knowledge and experience gained from the performance of a contract with the District, which merely enhances a Shortlisted Proposer's qualifications, or reputation shall not be deemed to constitute such a conflict or competitive advantage.

Rights of the District

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under applicable law, including but not limited to Rule 40E-7.301, Florida Administrative Code, as well as the following rights. The following rights are without limitation, and can be exercised with or without cause and with or without notice:

1. The right to cancel, withdraw, postpone, or extend this Solicitation in whole or in part at any time prior to the execution by the District of a Contract, without incurring any obligations or liabilities.
2. The right to issue a new Solicitation or re-advertise and/or re-solicit the requirements set forth in this Solicitation at any time.
3. The right to reject any and all submittals, responses, and proposals received at any time.
4. The right to modify all dates set or projected in this Solicitation, including but not limited to the Response Submission Due Date.
5. The right to terminate evaluations of responses received at any time.
6. The right to suspend and terminate the procurement process for this Project at any time.
7. The right to revise and modify, at any time prior to the submission of the Response, the Response Submission Due Date, and the factors and evaluation methodology it will use in evaluating the Response.
8. The right to issue addenda, supplements, and modifications to this Solicitation, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.
9. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Responses.
10. The right to permit Respondents to add or delete members of a Respondent's team and/or Key Personnel.
11. The right to add or delete the anticipated scope of the Design/Builder's work described in this Solicitation.
12. The right to appoint and change appointees of any evaluation panel.
13. The right to use the assistance of technical and legal experts and consultants in the administration of this Solicitation and the evaluation of the Responses.
14. The right to notify a Respondent, and seek clarifications from a Respondent, of deficiencies, informalities and irregularities in a Response, and to allow a Respondent time for appropriate corrective action relative to any deficiency, informality or irregularity.
15. The right to waive deficiencies, informalities and irregularities in a Response, and accept and evaluate a Response with deficiencies, informalities or irregularities.
16. The right to disqualify any Respondent that changes its submittal without the District's approval.
17. The right to respond to all, some, or none of the inquiries, questions and/or requests for clarification received relative to this Solicitation.
18. The right to use all or part of the Responses submitted by any Respondent.
19. The right to disqualify any Respondent from further participation in the Solicitation process if information learned subsequent to the issuance of this Solicitation would, in the opinion of the District, affect the Respondent's ability to be deemed responsible.
20. Any other right the District deems to be in the best interests of the procurement of the Contract.

Notwithstanding any reservation of rights, the District is under no obligation to exercise such rights.

No Assumption of Liability

Respondent understands that this Solicitation and the submission of a Response shall not constitute a contract with the District. No contract is binding or official until the Responses are reviewed and accepted by appointed District staff,

approved by the appropriate level of authority within the District, and an official contract is duly executed by the District and the Design/Builder.

The District assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this Solicitation. All such costs shall be borne solely by each Respondent and its team members.

District Right to Use Responses

Notwithstanding anything to the contrary in this Solicitation, Respondent agrees that, in consideration for being allowed to participate in this procurement and the District's review and evaluation of its Response, the District shall have the right to use all or any parts of the Response for this Project or any other project without compensation to or further permission of Respondent. Unsuccessful Respondents shall have no liability for the District's use of its Response. The Design/Builder's rights and obligations shall be defined by the Contract.

PROTESTS

This Section 8 sets forth the exclusive protest remedies available with respect to this Solicitation.

General

Notices of Intent to Protest and Formal Written Protests along with bond or other security shall be timely filed with the Clerk of the South Florida Water Management District at 3301 Gun Club Road, West Palm Beach, FL 33406. The District will not accept receipt of any Notices of Intent to Protest or Formal Written Protests filed at any location other than the District Clerk's Office. Notices of Intent to Protest and Formal Written Protests may be filed by hand delivery, U.S. Mail, or electronic transmission (email) with the Clerk's Office at clerk@sfwmd.gov. Filings by facsimile will not be accepted. A Respondent who files a document by email is responsible for any delay, disruption, or interruption of the electronic signals and accepts the risk that the document may not be properly filed with the District Clerk as a result. The filing date for Notices of Intent to Protest and Formal Written Protests transmitted by email is the date the District Clerk receives the complete document. Filings will be accepted between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, which are the normal hours of operation. Any document received after 5:00 p.m. will be deemed filed as of 8:00 a.m. the next business day.

Protests Prior to Submission of a Response

If a potential Respondent protests any provisions of the Solicitation documents, a notice of intent to protest shall be filed with the District in writing within seventy-two (72) hours (excluding weekends and District observed holidays) after the posting of the Request for Proposals and/or posting of any written addenda on the District's web site (www.SFWMD.gov/Procurement), then select Current Solicitations/ Contract Opportunities Calendar).

The formal written protest shall be filed within ten (10) days after the date that the notice of intent to protest is filed. Any Respondent who files a formal written protest pursuant to Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, shall post with the District at the time of filing the formal written protest, a bond pursuant to Section 287.042(2)(c), Florida Statutes. Failure to file a notice of intent protest or failure to file a formal written protest within the time prescribed in Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

Protests Regarding the Decision to Award the Contract

If a Respondent intends to protest the District's official notice of the results of the selection process, as set forth in Section 6 of this Solicitation, the Respondent shall file Notice of Intent to Protest in writing within seventy-two (72) hours after the posting of the Authorization to Proceed with the Ranking of Selected Firm(s) and to Enter into Contract Negotiations, and shall file a formal written protest within ten (10) days after filing the notice of intent to protest. Any Respondent who files a Formal Written Protest pursuant to Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes shall post with the District at the time of filing the formal written protest, a bond pursuant to Section 287.042(2)(c), Florida Statutes. Failure to file a notice of intent to protest or failure to file a formal written protest within the time prescribed in Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

8 MISCELLANEOUS

Requirement to Keep Project Team Intact

The team proposed by Respondent, including but not limited to the contractors and subcontractors, the designers, and Key Personnel and other firms and individuals shall remain on Project Team for the duration of the procurement process and, if the Respondent is awarded the Contract, the duration of its responsibilities for the Contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to District's Point of Contact, who, at his sole discretion, will determine whether to authorize a change. Absent separation of employment, unauthorized changes to the Respondent's team at any time during the procurement process may result in the elimination of the Respondent from further consideration.

Lobbying

Respondents or its agents may only contact the Contract Specialist identified on the cover page of this Solicitation regarding any issues arising out of this Solicitation, including but not limited to the selection process, negotiation, and award. The Respondent or its agents must not contact any other District employee, board member, or agent. This provision applies from the release of the Solicitation through the end of the 72-hour period following the District posting of the notice of intended award. If a Respondent or its agents violate this provision the District may reject their response.

Public Entity Crimes/Discriminatory Vendor List

Any Respondent, or any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the District, shall not be a convicted vendor or included on the discriminatory vendor list. If the Respondent or any affiliate of the Respondent has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months must have passed since that person was placed on the convicted vendor or discriminatory vendor list. The Respondent further understands and accepts that any contract issued as a result of this Solicitation shall be either voidable or subject to immediate termination by the District, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The District, in the event of such termination, shall not incur any liability to the Respondent for any work or materials furnished.

Suspension of Contractors for Material Breach of District Contracts

Pursuant to Rule 40E-7.218 F.A.C., the District's Governing Board, upon recommendation by the Procurement Bureau Chief, may temporarily or permanently suspend contractors from doing business with the District whenever a contractor materially breaches its contract with the District. Any Response submitted by a Respondent, its proposed subcontractors or subconsultants who are included on the District's Suspension List shall not be considered for review.

In addition, the principals of any Respondent or its proposed subcontractors or subconsultants shall not attempt to do business with the District under a different name or form a new legal entity in order to do business with the District while the principals of the Respondent or its proposed subcontractors or subconsultants remain on the Suspension List. In the event, there is any intentional misrepresentation, the Respondent further understands and accepts that any contract issued as a result of this Solicitation shall be subject to immediate termination for default and suspension procedures by the District. The District, in the event of such termination, shall not incur any liability to the Respondent for any work or materials furnished.

No Discrimination

The District recognizes fair and open competition as a basic tenet of public procurement. Respondents doing business with the District are prohibited from discriminating on the basis of race, color, creed, national origin, handicap, age, or sex. The District supports diversity in its contracting opportunities and requests that all Respondents and any subcontracting opportunities afforded by this solicitation embrace diversity enthusiastically.

No Assignment of Proposals

Respondents may not transfer or assign its Response to a third-party following submission of a Response to the District.

Public Records and Exemptions

Upon receipt, Responses become “public records” and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Respondents shall invoke the exemptions to disclosure provided by law, in the response to the solicitation, by providing the specific statutory authority for the claimed exemption, identifying the data or other materials to be protected (refer to Compliance Disclosure Form), and stating the reasons why such exclusion from public disclosure is necessary. However, if a request is made of the District, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property of the Respondent, the District shall advise the Respondent of such request and it shall be the Respondent’s sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the party requesting the public records.

Responses will be made available for public inspection at the time the District posts notice of its decision or intended decision concerning contract awards, or thirty (30) days after the opening of the Project Approach Package of the Response, whichever is earlier. In the event the District rejects all Responses and concurrently notices its intent to reissue the solicitation, Responses will be made available after the District posts notice of its decision or intended decision concerning awards for the reissued solicitation, or until the District withdraws the reissued solicitation. Responses cannot remain exempt for longer than 12 months after the initial notice rejecting all Responses.

In accordance with Chapter 286, Florida Statutes, meetings exempt from the “Sunshine” law include those conducted for oral presentations, those at which vendors answer questions, or those at which team members discuss negotiation strategies as part of the competitive process. The District shall record any portion of an exempt meeting. The recordings and any records from any portion of an exempt meeting shall remain exempt until the District provides notice of a decision or an intended decision or if the District rejects all Responses and concurrently provides notice of its intent to reissue a competitive solicitation. In that event, the recordings and any records presented at the exempt meetings remain exempt from public records, until such time as the District provides notice of a decision, an intended decision concerning the reissued solicitation, or until the District withdraws the reissued competitive solicitation. Exempt records cannot remain exempt for longer than 12 months after the initial agency notice rejecting Responses.

Tax Exempt Status

The District is exempt from Florida Sales and Federal Excise taxes on direct purchase of tangible property.

Consultants' Competitive Negotiations Act ("CCNA")

This Solicitation is issued in accordance with the Consultants' Competitive Negotiation Act (CCNA) Section 287.055, Florida Statutes. Respondents are requested to submit a comprehensive qualifications and technical response to the requirements set forth herein.

ATTACHMENT “A” DEFINITION OF TERMS

The definitions of some of the capitalized terms used in this Solicitation are presented below:

Design/Builder – The entity that will enter into the Contract with the District and that will be the single point of accountability to the District for delivery of the services and the Project.

Design/Build Contract – The contract, including the agreement and all of its attachments, presented as Solicitation Attachment C (Design/Build Contract).

Joint Venture - An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

Key Personnel – The individuals, employed by Design/Builder or other firm included on the Project Team, who would fill certain key roles in delivery of the Project and related services by the Design/Builder, including the following positions: Project Manager, Engineering Design Manager, Project Architect, Permitting Manager, Construction Manager, and On-site Superintendent.

Lead Contractor – The member of the Project Team having primary responsibility for building/installation services for the Project.

Lead Designer – The member of the Project Team having primary responsibility for design services for the Project.

Phase One – First phase of a two-phase delivery method in which the project’s design, cost-estimating, construction schedule, and final pricing are developed for the project. This is also defined by SFWMD as Preliminary Design.

Phase Two – Second phase of a two-phase delivery method that assumes the Design/Builder and SFWMD agreed to schedule, contract terms, and final price, the remaining project design, procurement, construction, and commissioning will be completed. This is also defined by SFWMD as Final Design and Construction Services.

Responsibility Requirements – The requirements set forth in Subsection 6.3 of this Solicitation that, at a minimum, must be satisfied (or waived by the District) for the Response to be evaluated and ranked according to the comparative evaluation criteria.

Responsiveness Requirements – The requirements set forth in Subsection 6.2 of this Solicitation that, at a minimum, must be satisfied (or waived by the District) in order for the Response to be evaluated and ranked according to the comparative evaluation criteria

District – The South Florida Water Management District.

Project – Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

Project Team – The Design/Builder, Key Personnel and any additional firms (such as subcontractors and subconsultants) included in the Response.

Respondent – The entity responding to this Solicitation by submitting the Response; and that, if selected by the District, will enter into the Design/Build Contract with the District for delivery of the services and the Project.

Stipulated Price – A fixed price contract or lump sum contract.

**ATTACHMENT “B”
DESIGN/BUILDER’S PRELIMINARY (PHASE ONE) SERVICES
EXHIBIT 1.1.1**

**TO AGREEMENT BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
(DESIGN/BUILDER)**

**FOR
DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT
DESIGN/BUILDER’S PRELIMINARY (PHASE ONE) SERVICES**

ARTICLE A1 – PRELIMINARY (PHASE ONE) SERVICES

A1.01 Preliminary (Phase One) Services Initiation

A. The Design/Builder shall:

1. Prepare a draft Project Work Plan summarizing the Preliminary (Phase One) Services' project goals; land acquisition, project approach; project organization defining resources/staffing plan, responsibilities, contacts, and communication plan; quality assurance/quality control (QA/QC) plan; project budget, schedule and work breakdown structure; financial tracking procedures; scope change management process and operation and maintenance. Submit ten (10) copies and one (1) electronic copy in Adobe PDF format and native files of the Project Work Plan to Owner within 45 calendar days following written authorization to proceed.
2. In accordance with Paragraph 2.05 of the General Conditions, schedule and facilitate a Project Kickoff Meeting and Initial Conference with Owner to review, among other topics, the contents of the proposed Project Work Plan and to discuss Project goals, objectives, and critical success factors. Prepare agenda and submit to Owner no later than three (3) calendar days before meeting.
3. Update the draft Project Work Plan based on comments received from Owner and submit ten (10) copies and one (1) electronic copy in Adobe PDF format and native files of the final Project Work Plan to Owner within 30 calendar days after receipt of Owner's comments.

A1.02 Project Coordination and Management

- A. Monthly Progress Reports.** Design/Builder will prepare and submit monthly progress reports with invoices for the work completed in the last monthly period and compare earned value to actual expenditures for the month and project duration. Invoices shall be in accordance with Exhibit 4.1 of the Agreement (Compensation for Preliminary (Phase One) Services). Progress reports will include an updated schedule, as appropriate, and trend register and will be reviewed by the Owner during monthly progress meetings. The status reports will also identify or forecast proposed modifications to the project scope. Key issues requiring Owner action or direction will also be included. Monthly progress reports will be submitted to the Owner on or before the 15th of each month. Monthly meetings to review the progress report will be conducted for the duration of Phase One.
- B. Change Management.** Design/Builder will document scope and schedule changes associated with completion of Design/Builder's work by using a Decision Log, which describes the major issues that arise during the Preliminary (Phase One) Services phase of work, and provide a status of each item for Owner review during monthly progress meetings.
- C. Quality Management.** Design/Builder will perform in-progress quality management reviews to ensure that the project objectives are realized. Design/Builder shall assign a Quality Assurance/Quality Control (QA/QC) officer to the Preliminary (Phase One) Services phase of the work that will be responsible for implementation of the QA/QC plan, and documentation of QA/QC activities. The Design/Builder shall appoint an engineer or equally qualified specialist as the QA/QC Manager who has at least five (5) years of total experience, or experience on at least five (5) separate projects of similar magnitude and complexity as the Project. The QA/QC Manager proposed by the Design/Builder is subject to Owner approval.
- D. The Design/Builder shall provide Project Coordination and Management for the activities performed during the Preliminary (Phase One) Services phase of the work.** The Design/Builder shall monitor labor utilization, project schedule, and project budget on a regular basis. It shall be the ongoing responsibility of the Design/Builder's Project Manager to ensure that task budgets are being strictly adhered to and that deliverables are submitted to the Owner on time. The Design/Builder's Project Manager shall be fully responsible for the performance of the Design/Builder's design team, including sub-consultants, during the Preliminary (Phase One) Services phase of the work.
- E. All Project communications shall be directed through the Owner's Project Manager or their designee.**

- F. The Design/Builder shall be required to perform site visits to verify existing features. The Design/Builder is responsible for obtaining all the required permissions to enter any property with appropriate assistance and direction from the Owner.

A1.03 Study and Report Phase

A. The Design/Builder shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project including Owner's budgetary limitations, Project Design Criteria and Reference Documents.
2. The Design/Builder shall obtain from the Owner any and all documents relating to investigations and analyses from previous work efforts performed by others for the Owner or otherwise, such as surveys, as-builts, topographic surveys, geotechnical, investigations, design plans and construction specifications.
3. Identify, consult with, and analyze requirements of governmental agencies and authorities having jurisdiction to approve the portions of the Project.
4. Evaluate the Project Design Criteria, and, after consultation with Owner, recommend to Owner any modifications to such documents that in Design/Builder's judgment would benefit the Project.
5. Design/Builder shall prepare a Design Documentation Report that will, as appropriate, contain site investigations; design criteria development; project layout and evaluation of options; project feature design development; engineering analyses to support designs, including information technology (IT) and communication designs; identification of regulatory/permit requirements; and quality management reviews/quality certification of compliance (as described in paragraph A1.05). This Design Documentation Report shall include descriptions of any proposed deviations from the Project Design Criteria. The Design Documentation Report shall contain all applicable submittal requirements for a Design Documentation Report (DDR) as described in South Florida Water Management District Engineering Submittal Requirements, Engineering and Construction Bureau (latest version).
6. The Design Documentation Report will be accompanied by Design/Builder's estimate of Design/Build Cost, serving as the initial cost model. Cost model will be based on a detailed labor and material type cost estimate for the Design/Build Cost, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by CSI division listing all materials, equipment, and systems necessary to construct the facilities.
7. The Design Documentation Report will be accompanied by an estimated construction schedule.
8. The Design/Builder shall provide necessary field surveys and topographic and utility mapping for the purpose of preparing the Design Documentation Report. Utility mapping will be based upon information obtained by the Design/Builder from utility owners and as-builts. The Design/Builder shall provide necessary geotechnical analysis and reporting for the purpose of preparing the Design Documentation Report.
9. Furnish ten (10) review copies and one (1) electronic copy in Adobe PDF format and native files of the Design Documentation Report (and any other deliverables) to Owner within 60 calendar days of written approval of proposed site features, and review it with Owner.
10. Schedule and facilitate a one-day review meeting (Critical Criteria Meeting) with Owner to present and summarize Design Documentation Report, present overview of initial cost model, and present overview of life cycle costs and construction schedule.
11. Owner will perform formal review of Design Documentation Report utilizing DrChecks, an online technical review tool used for comment submission and resolution. Owner will provide Design/Builder access and training of DrChecks system. The Owner will provide formal review of the Design Documentation Report including an

evaluation of the level of completion for the respective submittal. The Design/Builder shall account for an Owner comments review period and designer response of 70 calendar days for each design submittal.

12. Revise the Design Documentation Report (and any other deliverables) in response to Owner's comments, as appropriate, and furnish ten (10) hardcopies and one (1) electronic copy in Adobe PDF format and native files of the revised Design Documentation Report (and any other deliverables) to the Owner within 14 calendar days of Owners' notice of DrChecks review closeout.

- B. The Design/Builder's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Design Documentation Report (and any other deliverables) have been delivered to and accepted by Owner.

A1.04 Technical Exhibit Phase

- A. After acceptance by Owner of the Design Documentation Report, and upon written authorization from Owner, the Design/Builder shall:

1. Advise Owner if additional reports, data or other information or services are necessary and assist Owner in obtaining such reports, data or other information and services.

2. On the basis of the Design Documentation Report, prepare the following Technical Exhibits:

- a. Drawings.
- b. Specifications.
- c. Procurement documents as described in paragraph A1.08B.1.a-e.
- d. Supplemental reports, such as geotechnical, required for execution of the Project.

3. The Technical Exhibits will show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder, and shall be consistent with the Design Documentation Report, as such report may be modified throughout the development of the design. Design/Builder shall provide in writing to Owner descriptions of any deviations in the Technical Exhibits from the Design Documentation Report.

4. The Technical Exhibits will first be taken to preliminary design of the final design. The preliminary design, will, as appropriate, contain supplemental site investigations; determination of the number and sequencing of construction packages; project layout and features; preliminary design of project features; design calculations; a draft Project Operations Manual; preparation of documents to support permitting; preparation of preliminary plans and specification outline; and quality management reviews/quality certification of compliance (as described in paragraph A1.05). This preliminary design shall include descriptions of any deviations from the Design Documentation Report. The preliminary design shall contain all applicable submittal requirements for a Preliminary Design Submittal as described in South Florida Water Management District Engineering Submittal Requirements, Engineering and Construction Bureau (latest version).

5. Concurrent with the submission of each Technical Exhibits submittal (i.e., preliminary and intermediate design), Design/Builder shall submit an updated cost model consistent with Task A1.03.A.7. Design/Builder shall also submit to Owner: (a) a list of any categories or proposed categories of subcontractors or suppliers that Design/Builder expects to procure during its Proposal development process; and (b) an updated letter from its surety or sureties verifying that Design/Builder has bonding capacity available for this Project.

6. Furnish to Owner ten (10) copies and one (1) electronic copy in Adobe PDF format and native files of each draft Technical Exhibits submittal. On or about the time of the scheduled submissions of the above-referenced Technical Exhibits, 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 Design Documentation Report. 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 comment on such submissions, providing any comments and/or concerns about such submittals within 21 calendar days of receipt from the Design/Builder. Design/Builder shall revise the Technical Exhibits (and any

other deliverables) in response to Owner's comments and incorporate said responses into the subsequent Technical Exhibit Submittal (i.e., intermediate design).

During preparation of the preliminary design submittal, Owner's project staff may spend 1 to 3 days per week in the offices of the Design/Builder to expedite decision-making and facilitate communication. Design/Builder will prepare a schedule of design review meeting topics for Owner review to support Owner's decision regarding meeting attendance.

7. Owner will perform formal review of Technical Exhibits utilizing Dr. Checks, an online technical review tool used for comment submission and resolution. Owner will provide Design/Builder access and training on DrChecks system. The Owner will provide formal review of each Technical Exhibits submittal including an evaluation of the level of completion for the respective submittal. Design/Builder shall allow 70 days for each review.

8. The Design/Builder shall take the Technical Exhibits to a point of preliminary design and intermediate design of the final design. At each such point in the design development, Design/Builder will provide: (a) an update to its previous labor and material type cost model consistent with Task A1.03.A.7; (b) a confirmation or revision of which, if any categories of subcontractors or suppliers it intends to procure during its Proposal development process; and (c) an updated surety letter verifying Design/Builder's ability to provide bonds as set forth in paragraph 1.04.A.5 above. The process for meeting, conferring and approving such submissions shall proceed in the same manner as set forth in paragraph 1.04.A.6 above. Technical Exhibits at the preliminary design and intermediate design levels will, as appropriate, contain final site investigations; final project layout and features; detailed design of project features; detailed drawings and specifications; design calculations (civil, electrical, mechanical, structural); and quality management reviews/quality certification of compliance (as described in paragraph A1.05). The preliminary design and intermediate design shall contain all applicable submittal requirements for an Intermediate Plans and Specifications Submittal as described in South Florida Water Management District Engineering Submittal Requirements, Engineering and Construction Bureau (latest version).

During preparation of the preliminary design and intermediate design submittals, Owner's project staff may spend approximately 1 day per week in the offices of the Design/Builder to expedite decision-making and facilitate communication. Design/Builder will prepare a schedule of design review meeting topics for Owner review to support Owner's decision regarding meeting attendance.

9. Any subsequent modifications or development of the final design beyond the intermediate design will be determined by Owner. If Owner directs the Design/Builder to modify/advance the final design beyond the intermediate design, Design/Builder shall be compensated for such modification/ advancement as an additional service. Design/Builder will update its estimate, categories and surety letter in accordance with paragraph 1.04.A.5 above.

10. The Design/Builder shall provide necessary field surveys and topographic and utility mapping for the purpose of preparing Technical Exhibits. Utility mapping will be based upon information obtained by the Design/Builder from utility owners. The Design/Builder shall provide necessary geotechnical analysis and reporting for the purpose of preparing Technical Exhibits.

11. The Design/Builder shall furnish to Owner ten (10) final hardcopies and one (1) electronic copy and native files of the intermediate design Technical Exhibits within one hundred and ninety (190) calendar days after authorization to proceed with Preliminary (Phase One) Services and review them with Owner.

12. Technical exhibit documents will be developed by Design/Builder in 2D format. The 2D drawings will be prepared in accordance with the Owner's following Computer Aided Design and Drafting (CADD) Requirements (or latest version): *ENGINEERING DESIGN STANDARDS FOR WATER RESOURCE FACILITIES, CAD DRAFTING STANDARDS, latest version*. A complete set of 2D drawings will contain, as a minimum, the following information:

- a. Building architectural and structural plans, elevations, cross-sections and other related sections and details, as appropriate to adequately describe the work.
- b. Plan views, cross-sections and other related sections, and details of mechanical equipment.
- c. Mechanical, electrical and I&C drawings that accurately depict required building systems.
- d. Power distribution and inter-connection wiring diagrams related to the programmable logic controllers (PLCs) and any proposed remote input/output (RIO) racks being installed.

13. Project Specifications will be prepared using Design/Builder's standard technical specifications in CSI 16 or 17-Division format.

14. Document Management. Design/ Builder will maintain and coordinate all pertinent electronic design files and documents including all CADD-related files related to the Project. Electronic files submitted during each design phase shall use a naming convention approved by Owner.

- B. The Design/Builder's services under the Technical Exhibit Phase will be considered complete, subject to the provisions of A1.04.9, on the date when final copies of the intermediate design documents and associated Technical Exhibits (and any other deliverables) have been delivered and approved by Owner, and Owner has provided written authorization to Design/Builder to submit a Proposal.

A1.05 Quality Assurance/Control

- A. The Design/Builder shall follow the Design/Builder's Quality Assurance/ Quality Control Plan (QA/QC) for the Project. The Consultant's Quality Assurance/Quality Control (QA/QC) officer shall be charged with responsibility for implementation of the QA/QC Plan and documentation of QA/QC activities. All work performed by the Design/Builder's design team members, including sub-consultants, shall be in accordance with the QA/QC Plan.
- B. All architectural/engineering submittals, including memoranda, reports and studies, shall undergo quality management reviews in accordance with the Design/Builder's documented QA/QC Plan. The purpose of the QC review is to verify that the resulting work meets acceptable practice and that the documents have been properly coordinated to the satisfaction of the Owner. The QC reviewer shall inform the Project team of any exception or proposed improvement that may be noted. The QC reviews shall be conducted prior to submittal to allow time for incorporation of any recommended revisions
- C. A signed Quality Certificate of Compliance (Owner's Form 1292) shall be submitted for each deliverable that confirms that the Design/Builder has performed all internal QA/QC activities in accordance with their documented QA/QC Plan and that the contents of the submittal are complete and meet the requirements. The Design/Builder shall complete the Certificate with the required information specific to the deliverable being submitted. Where any components of a particular submittal are not complete, an explanation and schedule for submitting the missing components shall be provided. Where technical comments have been received by the Design/Builder on a previous submittal, a copy of the Design/Builder's responses that address the comments shall be provided as part of the subsequent submittal to the Owner.

A1.06 Value Engineering Review

Design/Builder and Owner will conduct a value engineering (VE) review of the preliminary design Technical Exhibits submittal. The value engineering review will include the following subtasks. The Owner (and/or designated representative) will lead and facilitate the VE proceedings as described herein.

- A. Provide Members of the VE Team. The Design/Builder will nominate three (3) members within their organization(s) that are not directly involved with project execution. The Owner will select the VE team from this list of candidates and name members of its own staff to participate.
- B. Attend Initial and Final VE Sessions. The Design/Builder will attend one half-day session at the commencement of the VE workshop intended to present the current design concepts to the VE team. The initial session will be attended by the Design/Builder's project manager, design manager, construction manager, and other key members

as deemed necessary. The Design/Builder's project team will be available for consultation throughout the workshop. Design/Builder will attend one half-day session at the conclusion of the VE workshop intended to present the findings of the VE team to the Design/Build team. The conclusion session will be attended by the same individuals identified for the initial session.

- C. VE Workshop. The Design/Builder's VE team members will meet for a formal one full-day VE workshop during which value-engineering items will be identified and alternatives investigated.
- D. Assist in VE Alternatives Analysis and Report Preparation. The results of the VE analysis will be presented in a VE report prepared by the VE team. The Design/Builder, along with the Owner, will review the report and assist in evaluation of and response to each item raised by the VE team. The analysis will be discussed with the Owner in a follow-up workshop. Following the workshop, the final disposition of value engineering recommendations and associated cost savings will be documented by the Design/Builder for incorporation into the design accordingly.

A1.07 Permitting Assistance

A. The Design/Builder shall:

1. Consult with Owner relative to applicable project permits.
2. Develop a Design/Builder Permitting Plan. The Design/Builder will hold many of the permits and shall develop permit applications and supporting documentation in accordance with the applicable regulations. The Design/Builder Permitting Plan shall provide a list of necessary Design/Builder-held permits that are Design/Builder-led, in which the Design/Builder will obtain the permit from the respective permitting agency. The Permitting Plan shall cover activities occurring within both technical and proposal phases, including a schedule for permit development, submittal, and anticipated approval. The Design/Builder Permitting Plan shall also identify Owner-held permits and designate if the permits are Owner-led or Design/Builder-led. Permits that are influential to critical path elements for the delivery of the design or construction should be identified.
3. Have primary responsibility for the preparation, coordination, agency approval, compliance with permit requirements, renewals, transfers and/or closeout of the Design/Builder-held, Design/Builder-led permits: as documented in Exhibit 7.1.4 - Project Design Criteria. Additional permits should be identified and documented within the Design/Builder Permitting Plan.
4. If required during the Preliminary (Phase One) Services phase of the work, the Design/Builder shall pay all agency permitting fees for the Design/Builder-held permits identified in A1.07A.3. including application, review, inspections, renewals, bonding and insurance, transfers and closeout.
5. Submit ten (10) copies and one (1) electronic copy in Adobe PDF format and native files of the Design/Builder Permitting Plan to Owner within 30 calendar days following authorization to proceed.
6. Schedule and facilitate a half-day review meeting with Owner to present and summarize the draft Permitting Plan to discuss permitting coordination between the Design/Builder and Owner.
7. Update the draft Design/Builder Permitting Plan based on comments received from Owner and submit ten (10) copies and one (1) electronic copy in Adobe PDF format and native files of the final Design/Builder Permitting Plan to Owner within 14 calendar days after receipt of Owner's comments.

A1.08 Proposal Phase

- A. Upon written notice from Owner to proceed, Design/Builder shall submit Proposal(s) for the completion of the Work, or portions of the Work, to Owner in accordance with Article 8 of the Agreement.
- B. During the Technical Exhibit Phase Design/Builder may initiate discussions with Subcontractors and Suppliers for those categories agreed upon by Owner during the Technical Exhibit Phase.
 - 1. Design/Builder shall conduct any Supplier proposal process on an “open book” basis, and shall allow Owner to participate in the receipt and analysis of all proposals, including but not limited to the following:
 - a. Conduct Supplier procurement processes so as to obtain competitive pricing for cost components of the Project construction including equipment and materials to be incorporated into the construction, and equipment and temporary facilities used in performing the construction.
 - b. Solicit competitive bids from all major Suppliers. The determination of what is a major Supplier will be as defined and agreed upon between the Owner and Design/Builder.
 - c. Submit draft procurement documents including procurement contract language, technical specifications, and drawings as required to solicit procurement proposals to Owner for Owner’s review and comment. Owner’s comments will be discussed and incorporated into documents as agreed by the parties.
 - d. Distribute request for proposals (RFP) for the equipment to be procured to respective Suppliers, respond to Supplier’s questions, and prepare addendums as necessary. Copies of all RFPs, addendums and other relevant correspondence shall be provided to Owner.
 - e. Meet with Owner to receive Owner’s recommendations for award of procurement contracts. Discuss Owner’s preferences and reach agreement between Owner and Design/Builder on the final Supplier selections on the basis of best value, after considering price and other factors.
 - 2. Design/Builder shall conduct any Subcontractor proposal process on an “open book” basis and shall allow Owner to participate in the receipt and analysis of all proposals. Design/Builder shall endeavor to invite at least three (3) Subcontractor proposers, if practical, for all major subcontracts, unless otherwise authorized by Owner. The determination of what is a major subcontract will be as defined and agreed upon between the Owner and Design/Builder. Design/Builder shall furnish copies of quotations to Owner for review prior to award. Design/Builder, upon reaching agreement with Owner, shall have the right to select on the basis of best value, after considering price and other factors. Copies of all subcontracts, including all modifications and/or revisions will be furnished to Owner within five (5) business days from issuance.
 - 3. Design/Builder may select certain Subcontractors without going through the proposal process as required above if it first obtains Owner’s written consent, which may be withheld in Owner’s discretion.
 - 4. For selecting subcontractors, a prequalification process shall be utilized by the Design/Builder by first identifying potential subcontractors and then evaluating subcontractors based upon a prequalification questionnaire. The prequalification questionnaire shall address evaluation criteria agreed upon by the Design/Builder and Owner. Prequalification of subcontractors is important for obtaining a cost competitive and competent subcontractor for Design/Build construction.
 - 5. Design/Builder shall not employ any Subcontractor or Supplier against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any work against whom Design/Builder has reasonable objection.

A1.09 Supplemental Preliminary (Phase One) Services

- A. If authorized in writing by Owner, Design/Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.
1. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Owner or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design/Builder's control.
 3. Perform services required as a result of Owner's providing incomplete or incorrect Reference Documents.
 4. Provide renderings or models for Owner's use.
 5. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, and appraisals; evaluate processes available for licensing, and assist Owner in obtaining licensing, audits, or inventories required in connection with construction performed by Owner.
 6. Perform services requiring out-of-town travel by Design/Builder, other than for visits to the Site or Owner's office.
 7. Except as set forth in Articles A1.02-A1.08, prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Exhibits or other Proposal Documents as a result of such review processes.
 8. Design/Builder may be required to conduct presentations to governmental boards, adjacent residential associations, and other entities.

**ATTACHMENT “C”
DESIGN/BUILD CONTRACT
SECTION 00520
AGREEMENT**

This **AGREEMENT** (“Agreement”) is entered into this ____ day of _____, 20__ (“Effective Date of the Agreement”) by and between the South Florida Water Management District (“Owner”) and _____ (“Design/Builder”).

WHEREAS, Owner intends to design and construct a project known as Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project (“Project”), the Project shall be designed and constructed in two phases as follows:

- Phase One: Prepare design and necessary permits to the levels established in Attachment B (Scope of Design/Builder Preliminary Services) and develop a stipulated price proposal for the Phase Two services.
- Phase Two: If the District accepts the stipulated price proposal, complete design, permitting, construction and post- construction tasks, including performance testing, commissioning, and training and support.

WHEREAS, Owner anticipates that the Project will be completed no later than (date); and

WHEREAS, Owner determined that its goals for the Project would be best-served by using a process whereby Owner and Design/Builder will implement the Project through two sequential phases: (a) Preliminary (Phase One) Services Phase, during which Design/Builder will perform programmatic, design and preconstruction services to help Owner determine the scope, price and schedule of the Project; and (b) Final Design and Construction Phase, during which Design/Builder will complete the design and construction of the Project as defined by the Preliminary (Phase One) Services Phase; and

WHEREAS, as part of the Preliminary (Phase One) Services Phase, Design/Builder will, in accordance with Article 8 below, prepare and submit to Owner a Stipulated Price Proposal, which will define, among other things, the commercial terms associated with the Final Design and Construction Phase and which, if accepted by Owner, will be incorporated into this Agreement by amendment; and

WHEREAS, after conducting a single-phase design/build procurement process, Owner awarded this Agreement to Design/Builder.

In consideration of the mutual covenants and obligations contained herein, Owner and Design/Builder hereby agree as follows:

**Article 1
The Work**

1.1 The Work will be performed under two phases, and shall consist of the following:

1.1.1 Preliminary (Phase One) Services. Design/Builder will perform the Preliminary (Phase One) Services set forth in Exhibit 1.1.1. For the avoidance of doubt:

(a) No Construction at the Site is included as part of the Preliminary (Phase One) Services.

(b) As set forth more fully in Article 8, the Preliminary (Phase One) Services includes Design/Builder providing Owner with a Proposal that will establish the commercial terms for the Final Design and Construction Phase (Phase Two) Services, including but not limited to the Stipulated Price and Scheduled Substantial Completion Date. Design/Builder acknowledges that Owner is under no obligation to accept such Proposal, and that Owner shall have, among other things, the right to terminate this Agreement in accordance with Article 8.

1.1.2 Final Design and Construction (Phase Two) Services. Design/Builder will perform the Final Design and Construction Phase in accordance with the General Conditions.

Article 2 **The Project**

2.1 The project is generally referred to as the Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

Article 3 **Contract Time**

3.1 Date of Commencement

3.1.1 Design/Builder shall commence the Preliminary (Phase One) Services upon Design/Builder's receipt of Owner's Notice to Proceed ("NTP with Preliminary (Phase One) Services"). Owner will issue an NTP within seven (7) days after the Effective Date of the Agreement, unless the Parties mutually agree otherwise in writing.

3.1.2 Design/Builder shall commence the Final Design and Construction (Phase Two) Services upon Design/Builder's receipt of Owner's Notice to Proceed ("NTP with Final Design and Construction (Phase Two) Services"). Owner will issue an NTP within seven (7) days after the Effective Date of the Stipulated Price Amendment, unless the Parties mutually agree otherwise in writing.

3.2 Schedule for Performance of Preliminary (Phase One) Services.

3.2.1 Design/Builder shall perform the Preliminary (Phase One) Services in accordance with the time periods set forth in Exhibit 3.2.1, "Preliminary (Phase One) Services Milestones."

3.2.2 Within fourteen (14) days from the NTP with Preliminary (Phase One) Services, Design/Builder shall submit to Owner, for its review and approval, a proposed Preliminary (Phase One) Services Schedule that includes, among other things: (a) the order in which Design/Builder proposes to carry out the Preliminary (Phase One) Services; and (b) the times when submissions and approvals or consents by Owner are required (provided, however, that such times shall be no less than the Owner's minimum review durations identified in the Contract Documents. The proposed Preliminary (Phase One) Services Schedule shall be derived from the Initial 60-Day Schedule. Upon approval of the Preliminary (Phase One) Services Schedule, Design/Builder shall provide monthly updates that show the actual progress of its performance of the Preliminary (Phase One) Services as compared to the projected progress of the work.

3.2.3 The Initial 60-Day Schedule shall be the basis for monitoring Design/Builder's performance of the Preliminary (Phase One) Services until such time as the Preliminary (Phase One) Services Schedule has been approved by Owner. Until the approval of the Preliminary (Phase One) Services Schedule, Design/Builder shall provide monthly updates of the Initial 60-Day Schedule that shows the actual progress of its performance of the Preliminary (Phase One) Services as compared to the projected progress of the work.

3.3 Contract Time for Final Design and Construction (Phase Two) Services.

3.3.1 Scheduled Substantial Completion Date. Design/Builder shall substantially complete the Work no later than the date set forth in the Stipulated Price Amendment ("Scheduled Substantial Completion Date"), subject to adjustment in accordance with the General Conditions.

3.3.2 Scheduled Final Acceptance Date. Design/Builder shall achieve Final Acceptance no later than sixty (60) days from Substantial Completion ("Scheduled Final Acceptance Date"), subject to adjustment in accordance with the General Conditions.

3.4 Time of the Essence. The time limits for Substantial Completion and Final Acceptance are of the essence of the Contract.

3.5 Delay Liquidated Damages.

3.5.1 Calculation of Delay Liquidated Damages. If Design/Builder does not meet the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. To compensate Owner for those damages, if Substantial Completion has not occurred on or before the Scheduled Substantial Completion Date, then Design/Builder shall pay to Owner liquidated damages for each day until Substantial Completion is achieved, with the daily rate to be established in the Stipulated Price Amendment.

3.5.2 Owner's Rights to Offset. Owner shall have the right to deduct the Delay Liquidated Damages from any monies unpaid, otherwise due, or to become due, to Design/Builder, to demand and receive payment from Design/Builder of such liquidated damages, and to initiate applicable dispute resolution procedures under Article 15 of the General Conditions to recover such liquidated damages. The deductions of such damages from any monies unpaid, otherwise due, or to become due shall be in addition to retainage under the Contract Documents. Owner has the discretion to allow Delay Liquidated Damages to accrue without collecting and by doing so does not waive any rights to collect them at a later time.

3.5.3 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

- (a) because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design/Builder's failure to achieve Substantial Completion on or before the Scheduled Substantial Completion Date; and
- (b) any sums which would be payable as Delay Liquidated Damages are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by Design/Builder to achieve Substantial Completion on or before the Scheduled Substantial Completion Date; and
- (c) that, in recognition of the acknowledgments above, Design/Builder is expressly estopped from arguing, and waives any rights it may have to argue, that the Delay Liquidated Damages are a penalty and that they are not enforceable; and
- (d) that the provisions for Delay Liquidated Damages are not intended to excuse Design/Builder from liability for any other breach of its obligations under the Contract Documents or affect any other remedy Owner has under the Contract or as a matter of law.

Article 4
Compensation and Contract Price

4.1 Compensation for Preliminary (Phase One) Services. Owner shall pay Design/Builder for the Preliminary (Phase One) Services on the basis set forth in Exhibit 4.1.

4.2 Contract Price.

4.2.1 Owner shall pay Design/Builder in accordance with the General Terms & Conditions a contract price ("Contract Price") equal to the amount set forth in the Stipulated Price Amendment. The Contract Price is subject to adjustments made in accordance with Article 9 of the General Conditions.

4.2.2 The Contract Price is deemed to include all sales, consumer, use, employment- related and other taxes mandated by applicable Laws and Regulations or that result from the performance of the Work.

4.3 Allowance Payment Items and Allowance Payment Values

4.3.1 General. Any and all Allowance Payment Items, as well as their corresponding Allowance Payment Values, will be set forth in the Stipulated Price Amendment, and will be included in the Contract Price.

4.3.2 Contingency Allowance. The Contingency Allowance will be used by Owner to fund: (a) overruns in Allowance Payment Items other than the Contingency Allowance; and (b) Change Orders for which Design/Builder is entitled, under Article 9 of the General Conditions, to an increase in the Contract Price. If the Contingency Allowance is totally depleted, Owner will fund (a) and (b) above by increasing the Contract Price in accordance with Article 11 of the General Conditions. Neither Owner nor Design/Builder's rights or obligations under the Contract Documents shall be affected by the Contingency Allowance.

4.3.3 Performance of Work on Allowance Payment Items. No work shall be performed on any Allowance Payment Item without Design/Builder first obtaining in writing advanced authorization to proceed from Owner. In addition, for all items set forth in Section 4.3.2(c) above, Design/Builder shall be obligated to comply with all of the requirements set forth in Articles 9, 10, and 11 of the General Conditions, as well as any other requirements that are set forth in the General Conditions (including but not limited to those contained in Paragraphs 4.02 and 4.04 of the General Conditions) with respect to the item that forms the basis for the Change Order.

4.3.4 Reconciliation of Allowance Payment Values. If the actual costs for an Allowance Payment Item differ from the stated Allowance Payment Value, the Contract Price shall ultimately be adjusted accordingly by Change Order. If the actual costs for an Allowance Payment Item (other than the Contingency Allowance) are greater than the corresponding Allowance Payment Value, Owner will fund such overrun in accordance with Section 4.3.2 above. If, at the time the Final Application for Payment, the actual costs for any Allowance Payment Value are less than the corresponding Allowance Payment Value, such difference shall be reflected in a Change Order that reduces the Contract Price by such difference.

Article 5 **Payment Procedures**

5.1 Submittal and Processing of Payments.

5.1.1 Design/Builder shall submit, and Owner will process, Applications for Payment in accordance with Article 13 of the General Conditions.

5.1.2 All Applications for Payment shall reference Owner's contract number and shall follow the same format as shown on the Application for Payment provided in the Contract Documents.

5.1.3 Failure of Design/Builder to follow the instructions set forth in the Contract Documents regarding a proper Application for Payment and acceptable services may result in an unavoidable delay in payment by Owner.

5.1.4 Any early payment discount offered by Design/Builder shall be clearly indicated on the Application for Payment, including the percentage of the discount and the time period for which the discount is valid. Owner reserves the option to accept such early payment discounts.

5.1.5 Each Application for Payment shall be accompanied by Owner's SBE utilization report included in the Contract Documents.

5.2 Progress Payments

5.2.1 Payments for the Preliminary (Phase One) Services. Owner shall make progress payments for the Preliminary (Phase One) Services within the time set forth in Section 5.4 below after Owner's receipt of each properly submitted and accurate Application for Payment submitted in accordance with Paragraph 13.02 of the General Conditions. All such payments will be measured by Exhibit 4.1 (Compensation for Preliminary (Phase

One) Services), pursuant to Paragraph 13.01 of the General Terms & Conditions and shall reflect the total of payments previously made and amounts properly withheld under Paragraph 13.03 of the General Conditions.

5.2.2 Payments for Work Performed after the Effective Date of the Stipulated Price Amendment. For Work performed after the Effective Date of the Stipulated Price Amendment, Owner shall make progress payments within the time set forth in Section 5.4 below after Owner's receipt of each properly submitted and accurate Application for Payment submitted in accordance with Paragraph 13.02 of the General Conditions. All such payments will be measured by the Schedule of Values, pursuant to Paragraph 13.01 of the General Conditions, and shall reflect the total of payments previously made and amounts properly withheld as retainage, as set forth below, and under the Paragraph 13.03 of the General Terms & Conditions.

Progress payments will be in an amount equal to 95% of the Work completed in place, and at the option of the DISTRICT, the DISTRICT may pay an amount equal to 95% of materials and equipment not incorporated in the Work in place but delivered and suitably stored on site, less in each case the aggregate of payments previously made. In no event shall payments for materials and equipment stored exceed 95% of the value of the related cost for the specific item of work in place shown in the Cost-Loaded Construction Schedule regardless of the stated value of the materials or equipment. DISTRICT may, at its sole option, pay an amount equal to 95% of materials and equipment not incorporated in the Work stored offsite if stored in a manner acceptable to DISTRICT, as stated above for on-site stored materials. When payment to CONTRACTOR is made for stored materials and equipment, CONTRACTOR shall submit invoices marked paid by the supplier with the next month's request for payment to document that CONTRACTOR has paid for said materials and equipment or the previously paid amount for stored materials shall be deducted from any remaining payment(s) or retainage for any stored materials not so properly documented.

5.3 Final Payment. Upon Final Acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 13.08.

5.4 Date of Payment. It is the policy of Owner that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, section 218.70, Florida prompt payment act, a "proper" invoice (i.e., Application for Payment) is defined as an invoice (i.e., Application for Payment) that conforms to all statutory requirements and all Owner requirements as specified in the contract for invoice (i.e., Application for Payment) submission. The time at which payment shall be due from Owner shall be twenty (20) business days (or twenty-five [25] business days if Owner agent approval is required) from receipt of a proper invoice (i.e., Application for Payment) and acceptance of services, based on compliance with the statutory requirements set forth in Florida Statutes, section 218.70, and upon satisfaction of the conditions as detailed in the contract.

Article 6

Design/Builder's Representations

6.1 Representations. Design/Builder shall be deemed to have made the following representations with its submission of the Stipulated Price Proposal and the execution of the Stipulated Price Amendment:

6.1.1 Design/Builder has examined, carefully studied, and thoroughly understands the Contract Documents and the Reference Documents associated with the Work covered by a Stipulated Price Proposal and Stipulated Price Amendment.

6.1.2 Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work covered by the Stipulated Price Proposal and Stipulated Price Amendment.

6.1.3 Design/Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work covered by the Stipulated Price Proposal and Stipulated Price Amendment.

6.1.4 Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

6.1.5 Design/Builder has correlated the Contract Documents with the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data.

6.1.6 Design/Builder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Design/Builder has discovered in the Contract Documents before submitting a Stipulated Price Proposal and the written resolution thereof by Owner is acceptable to Design/Builder.

6.1.7 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work covered by the Stipulated Price Proposal and Stipulated Price Amendment.

6.1.8 Design/Builder shall be bound by and shall perform its obligations in full compliance with the Contract Documents.

Article 7

Contract Documents

7.1 **Contract Documents.** The Contract Documents consist of the following:

1. This Agreement (Section 00520), including all the Exhibits;
2. The General Terms & Conditions (Section 00700)
3. The Supplementary General Conditions (Section 00800);
4. Project Design Criteria, as set forth in Exhibit 7.1.4;
5. The following, which shall be designated, completed, delivered, prepared, or issued after the Effective Date of the Agreement and are not attached hereto:
 - (i) Any and all written amendments (other than the Stipulated Price Amendment), Change Orders, Work Change Directives, and Field Orders amending, modifying, or supplementing the Contract Documents.
 - (ii) The Stipulated Price Amendment executed in accordance with Section 8.4 below;
 - (iii) The Final Drawings and Specifications, which shall be developed, submitted and acted upon pursuant to Paragraph 6.17 of the General Terms & Conditions.

7.2 **Amending the Contract Documents.** The Contract Documents may only be amended, modified, or supplemented as provided in Article 8 hereof with respect to the Stipulated Price Amendment, and as provided in Paragraph 3.04.A of the General Conditions for any other amendment, modification or supplementation.

7.3 **Order of Precedence of the Contract Documents.** The following order of precedence shall apply in the case of direct, irresolvable conflicts between or among Contract Documents:

1. Written amendments signed by the Parties (other than the Stipulated Price Amendment) with those of a later date taking precedence;
2. Work Change Directives, Change Orders, and Field Orders with those of a later date taking precedence;
3. The Stipulated Price Amendment;

4. This Agreement, including all Exhibits;
5. The General Conditions;
6. The Supplemental Conditions;
7. The Final Drawings and Specifications; and
8. The Project Design Criteria.

Article 8

Stipulated Price Proposal and Stipulated Price Amendment Process

8.1 **Submission of Stipulated Price Proposal.** Upon written authorization by Owner, Design/Builder shall submit to Owner a proposal for the Final Design and Construction (Phase Two) Services. The format of the Stipulated Price Proposal, including the format of supporting documentation and line items of the Work, shall be initially developed by Design/Builder and provided to Owner for its review and approval. At a minimum, the support documentation will include a complete line item cost estimate indicating the itemized costs that comprise the total proposal amount. The format of the Stipulated Price Proposal shall be agreed upon at least sixty (60) days prior to the submittal of such proposal.

8.2 **Contents of Stipulated Price Proposal.** Design/Builder's Proposal shall include the following, unless the parties mutually agree otherwise:

1. A proposed Stipulated Price;
2. A complete list of the Stipulated Price Proposal Documents. At a minimum, the documentation described in Article 8.2 Items 3. thru 19. shall be provided by Design/Builder.
3. A list of the assumptions and clarifications made by Design/Builder in the preparation of the proposal, which list is intended to supplement the information contained in the Stipulated Price Proposal Documents;
4. The following schedules:
 - (a) A progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including the Scheduled Substantial Completion Date upon which the proposal and progress schedule is based.
The Design/Builder shall use the latest version of Oracle/Primavera P6 Professional Project Management (P6) for creating and updating all progress schedules and reports.
 - (b) A schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
 - (c) A Schedule of Values for all the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
 - (d) A cash flow projection estimating that portion of the Contract Price to be due during each month of performance.
5. If applicable, a list of Allowance Payment Items, Allowance Payment Values, and a complete description of their basis;
6. If applicable, a schedule of alternate prices;
7. If applicable, a schedule of unit prices;

8. If applicable, a statement of Additional Services which may be performed but which are not included in the Stipulated Price and which, if performed, shall be the basis for an increase in the Stipulated Price and/or Scheduled Substantial Completion Date;
9. A list of Subcontractors and Suppliers whose proposals have been accepted by Owner;
10. An updated letter from its surety or sureties verifying that Design/Builder has bonding capacity in the amount of the Stipulated Price;
11. The time limit for acceptance of the proposal, which shall include an adequate number of days for approval of the Stipulated Price Amendment by the Owner's Governing Board;
12. All bid documentation received from Subcontractors and Suppliers that are used as the basis for the Design/Builder's price proposal;
13. The risk and escalation contingency contained within the Design/Builder's price proposal and the basis for the level of contingency;
14. The Design/Builder's proposed fee for performing the Work;
15. A line item cost estimate for all General Conditions costs, including all labor and materials cost elements;
16. A line item cost estimate for all direct construction costs, including all labor, materials, subcontractor, and supplier cost elements;
17. A description of the scope of services, and a breakdown of the corresponding fee, for start-up, training and commissioning services to be provided by the Design/Builder; and
18. A description of the scope of services, and a breakdown of the corresponding fee, for professional services to be provided by the Design/Builder, including but not limited to final design, engineering services during construction, and materials testing/quality control.
19. A Small Business Utilization Plan that includes a minimum of 25% SBE Utilization.

8.3 Review and Action upon Owner's Receipt of Proposal. After submission of a Proposal, Design/Builder and Owner shall meet to discuss and review the Proposal, negotiate in good faith, and attempt to reach agreement on the terms of the Proposal. Design/Builder shall provide such information as Owner may reasonably request relative to the Proposal, with the understanding that all information that formed the basis for the Stipulated Price shall be available to Owner on an "open book" basis.

8.4 Acceptance of Stipulated Price Proposal. If Owner accepts the Stipulated Price Proposal, as may be amended by Design/Builder based on discussions with Owner, the Stipulated Price Proposal shall be incorporated into the Contract Documents by the Stipulated Price Amendment, approved by the Owner's Governing Board and duly executed by both Parties.

8.5 Owner's Rights If Parties Fail to Reach Agreement on Proposal. If the Parties are unable to reach an agreement on the Stipulated Price Proposal within the time limit for acceptance specified in the proposal, as may be extended by the mutual agreement of the Parties, the 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:

1. Owner may suggest modifications to the proposal, whereupon, if such modifications are accepted in writing by Design/Builder, the Stipulated Price Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 8.4 above;

2. Owner may authorize Design/Builder to continue to advance the final design of the Project under this Agreement or as an Additional Service, as applicable; or
3. Owner may terminate this Agreement for convenience in accordance with Paragraph 14.03.C of the General Conditions of Contract, having the right, among other things, to exercise its available options to perform the final design and construction with parties other than Design/Builder. The Design/Builder acknowledge that the Owner's ability to successfully complete the Project may be significantly impacted if Owner elects to terminate Design/Builder's services at the end of the Preliminary (Phase One) Services phase, rather than proceeding to the Final Design and Construction phase, and certain design subconsultants are not available to continue working on the Project. Consequently, Design/Builder hereby agrees that if Owner terminates Design/Builder for any reason, Owner shall have the right to contract directly with such design subconsultants for design-related services on this Project, and Design/Builder shall take such steps as are reasonably necessary to enable Owner to implement such relationship.

8.6 Design/ Builder's Rights if Owner Fails to Act. If Owner fails to exercise either of its options under Paragraphs (1) or (2) of Section 8.5 in a reasonable period of time, Design/Builder may give written notice to Owner that it intends to suspend performance of the Work in accordance with Paragraph 14.04.B of the General Conditions of Contract.

8.7 Completion of Preliminary (Phase One) Services. Design/Builder shall be deemed to have completed its obligations to perform the Preliminary (Phase One) Services under this Agreement upon the earlier to occur of: (1) execution by Owner and Design/Builder of a Stipulated Price Amendment for the completion of the Work; or (2) Owner's exercise of its options under Section 8.5 above.

Article 9

Miscellaneous

9.1 Defined Terms. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.2 Exhibits. The following exhibits ("Exhibits") are specifically made part of, and incorporated by reference into, this Agreement:

Exhibit 1.1.1	Design/Builder's Preliminary (Phase One) Services
Exhibit 1.1.1(a)	List of Reference Documents
Exhibit 3.2.1	Preliminary (Phase One) Services Milestones
Exhibit 4.1	Compensation for Preliminary (Phase One) Services
Exhibit 7.1.4	Project Design Criteria
Exhibit 9.2(b)	Small Business Enterprise Subcontractor Participation Schedule (Form No. 0956)
Exhibit 9.2(c)	Statement of Intent to Perform as a Small Business Enterprise Subcontractor (Form No. 0957)
Exhibit 9.2(d)	Contract Administration and Related Forms

Exhibit 9.2(d) contains forms that will be used after the Effective Date of the Agreement, during the administration of the Contract.

IN WITNESS WHEREOF, This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, electronic or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

OWNER:

South Florida Water Management District

DESIGN/BUILDER:

(Name of Design/Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

SFWMD Procurement Approved

By: _____ Date: _____

SFWMD Office of Counsel Approved

By: _____ Date: _____

**SECTION 00700
GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
OWNER AND DESIGN/BUILDER
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.
 2. *Agreement*: The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.
 3. *Application for Payment*: The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bonds*: Performance and payment bonds and other instruments of security.
 6. *Change Order*: A written order which, when signed by Owner, authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time(s), issued on or after the Effective Date of the Agreement.
 7. *Construction*: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
 8. *Construction Manager*: An individual or entity with whom Owner may contract to furnish services to Owner with respect to the Project.
 9. *Construction Subagreement*: A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.
 10. *Contract*: The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 11. *Contract Documents*: Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.
 12. *Contract Price*: The moneys payable by Owner to Design/Builder for completion of the Work in accordance with Article 4 of the Agreement.
 13. *Contract Time(s)*: The Scheduled Substantial Completion Date and Scheduled Final Acceptance Date.

14. *DB-Related Entity: Design/Builder, Design Subconsultants, Subcontractors, Suppliers, and anyone for whose acts any of them may be legally or contractually responsible.*
15. *Delay Liquidated Damages: Those liquidated damages set forth in Section 3.5 of the Agreement.*
16. *Design/Builder: The individual or entity with whom Owner has entered into the Agreement.*
17. *Design Professional Services: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals as part of the Work.*
18. *Design Subagreement: A written agreement between Design/Builder and a Design Subconsultant for provision of Design Professional Services.*
19. *Design Subconsultant: A qualified, licensed design professional, eligible to provide professional engineering, architectural and/or land surveying services in Florida, who is not an employee of Design/Builder, but is retained by Design/Builder to furnish design services on the Project through a Design Subagreement.*
20. *Drawings: Those Submittals prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.*
21. *Effective Date of the Agreement: The date that the Contract is executed by both Owner and Design/Builder.*
22. *Effective Date of the Stipulated Price Amendment: The date that the Stipulated Price Amendment is executed by both Owner and Design/Builder.*
23. *Field Order: A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time(s).*
24. *Final Acceptance: The written notice from Owner to Design/Builder pursuant to Paragraph 13.08 that Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled.*
25. *Final Drawings and Specifications: Those Drawings and Specifications that will be approved by Owner and will become Contract Documents.*
26. *General Conditions: These General Conditions of the Contract between Owner and Design/Builder.*
27. *Hazardous Environmental Condition: The presence at the Site of Hazardous Materials in such quantities or circumstances that may present an imminent or substantial danger to persons or property exposed thereto on connection with the Work.*
28. *Hazardous Materials: Collectively, Asbestos, Hazardous Waste, PCB's, Petroleum Products, Radioactive Materials and other materials, waste, substances and chemicals deemed to be hazardous under applicable Laws or Regulations.*
29. *Hazardous Waste: The term Hazardous Waste shall have the meaning provided in Section 1004 of the*

Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

30. *Laws and/or Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
31. *Liens:* Charges, security interests or encumbrances upon real property or personal property.
32. *Milestone:* Completion date(s), if any, specified as “Milestones” in Article 3 of the Agreement and relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
33. *Notice to Proceed (“NTP”):* A written notice given by Owner to Design/Builder, which notice is the date on which the Contract Time(s) will commence to run and is the date on which Design/Builder shall start to perform the Work.
34. *Owner:* South Florida Water Management District.
35. *Owner's Advisor:* Parsons Environment & Infrastructure
36. *Owner Indemnatee(s):* Owner and all of its representatives, appointed and elected officials, officers, employees, authorized agents, consultants (including Owner’s Advisor and Construction Manager), and other duly authorized representatives.
37. *Partial Utilization:* Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
38. *PCBs:* Polychlorinated biphenyls.
39. *Petroleum:* Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
40. *Project:* Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project
41. *Radioactive Material:* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
42. *Schedule of Values:* A schedule contained in the Stipulated Price Amendment prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.
43. *Scheduled Final Acceptance Date:* The date set forth in Article 3 of the Agreement by which Final Acceptance shall be achieved.
44. *Scheduled Substantial Completion Date:* The date set forth in the Stipulated Price Amendment by which the Work shall be substantially complete.
45. *Site:* Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.

46. *Specifications*: Those Submittals prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
47. *Stipulated Price Amendment*: The Amendment referred to in Section 8.4 of the Agreement.
48. *Stipulated Price Proposal*: The documents submitted by Design/Builder under Section 8.2 of the Agreement setting forth, among other things, the design concepts, proposed prices, and other conditions for the Work to be performed thereunder.
49. *Stipulated Price Proposal Documents*: Those Drawings and Specifications generated and/or developed by Design/Builder during the Preliminary (Phase One) Services phase of this Agreement and referenced as Stipulated Price Proposal Documents in the Stipulated Price Amendment, which documents are intended to be the baseline for the design to be performed as part of the Final Design and Construction (Phase Two) Services Phase.
50. *Subcontractor*: An individual or entity other than a Design Subconsultant or Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
51. *Submittal*: A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Except for the Stipulated Price Proposal Documents and the Final Drawings and Specifications, Submittals are not Contract Documents.
52. *Substantial Completion*: The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
53. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
54. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.
55. *Unit Price Work*: Work to be paid for on the basis of unit prices.
56. *Work*: All Design Professional Services, Construction, and other obligations to be performed by Design/Builder under the Contract Documents, including without limitation project management, supervision, training, testing, commissioning, and all other services and deliverables required by Contractor to achieve Final Acceptance of the Project in accordance with the Contract Documents.
57. *Work Change Directive*: A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Time(s), but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations

by the parties as to its effect, if any, on the Contract Price or Contract Time(s).

58. *Work Product:* All Drawings, Specifications, Submittals, and other documents and data identified in the Contract Documents as being prepared or furnished by Design/Builder and submitted to Owner.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives:*
1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
 2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Final Acceptance (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
 3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
 5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.
 7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds, Insurance Certificates and Insurance Declaration Page(s)*

- A. When Design/Builder delivers the executed Agreement to Owner, Design/Builder shall also deliver to Owner:
(a) an updated letter from Design/Builder's surety or sureties verifying that Design/Builder has bonding capacity of \$300 million available for this Project; (b) certificates of insurance and the insurance declaration page(s) for the insurance requirements and policies set forth herein which Design/Builder is required to purchase and maintain in accordance with Paragraphs 5.04 and 5.06; and (c) evidence that Design/Builder is enrolled in the e-verify system required by Paragraph 6.03 below.

2.02 *Commencement of Work; Notice to Proceed*

- A. Design/Builder shall commence the Work in accordance with Article 3 of the Agreement.

2.03 *Intent of the Contract Documents*

- A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all.
- B. All Work that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Design/Builder with no change in the Contract Price or Contract Time. Additionally:
 - 1. Arrangement and titles of drawings and organization of the specifications into divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by any trade. Design/Builder may arrange and delegate the Work in conformance with trade practices, but Design/Builder shall be responsible for completion of all Work in accordance with the Contract Documents.
 - 2. Before undertaking the Work, Design/Builder shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

2.04 *Submission of Schedules*

- A. The schedules set forth below shall be included in the Stipulated Price Amendment:
 - 1. A progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including the Scheduled Substantial Completion Date upon which the proposal and progress schedule is based;
 - 2. A schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
 - 3. A Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work.

Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Kick-Off Meeting and Initial Conference*

- A. The parties will have a Project kick-off meeting within seven (7) days of the NTP with Preliminary (Phase One) Services to discuss issues affecting the administration of the Work and ability of the parties to perform their obligations under the Contract Documents. Design/Builder will be expected to provide a general overview of its Project management plan and discuss significant issues that might impact scheduling and planning. At the kick-off meeting, Owner and Design/Builder shall designate, if they have not done so previously, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.06 *Applicable Owner Policies*

- A. Design/Builder hereby agrees to be bound by all applicable Owner policies and standards of conduct. It is Design/Builder's responsibility to advise its employees, Design Subconsultants, Subcontractors, Suppliers, or hired workers of the nature of the Project, as described in the Contract Documents. Upon request, Design/Builder shall, at its sole expense, conduct background checks for any Design/Builder employee or hired worker providing services on the Project.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent of the Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents, including but not limited to the Final Drawings and Specifications, to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Design/Builder will furnish or perform all labor, documentation, services, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for, at no additional cost to Owner.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws or Regulations.
 1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean (except as may be otherwise specifically stated in the Contract Documents) the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date of the Agreement.
 2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Resolving Discrepancies*

- A. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - 1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - 2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
- B. Section 7.3 of the Agreement establishes the order of precedence shall apply in the case of direct, unresolvable conflicts between or among Contract Documents.
- C. For the avoidance of doubt, in the event of a discrepancy between the Stipulated Price Proposal Documents on the one hand and the Drawings and Specifications on the other hand, the Stipulated Price Proposal Documents will control, except when Owner has accepted a Submittal pursuant to Paragraph 6.17.B.

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 1. A Work Change Directive;
 - 2. A Change Order;
 - 3. A Field Order.
 - 4. A written amendment executed by the Parties.
 - 5. Owner's acceptance of required Submittals pursuant to Paragraph 6.17.B.

3.05 *Ownership and Use of Work Product*

- A. Design/Builder hereby assigns to Owner all right, title and interest, including but not limited to any intellectual property rights, copyrights and/or patents, in all Work Product. All Work Product shall become the property of Owner upon the earlier of: (a) Owner's payment to Design/Builder of monies due in accordance with this Agreement; (b) the date any Work Product is delivered to Owner; or (c) upon termination of the Agreement pursuant to Article 14 below.
- B. The Work Product is not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder. Design/Builder will be entitled to further compensation at rates to be agreed upon by Owner and Design/Builder if it is asked by Owner to verify or adapt the Work Product for extensions of the Project or any other project.
- C. Design/Builder may make and retain copies of the Work Product for information, reference, and use on this Project by Design/Builder and all other DB-Related Entities.

- D. Owner acknowledges and agrees that in the performance of the services under this Agreement, Design/Builder will use its proprietary algorithms, software, hardware, databases and other background technology that Design/Builder or any other DB-Related Entity developed or licensed from third parties prior to the Effective Date of the Agreement ("Pre-Existing Technology"). Pre- Existing Technology used by a DB-Related Entity in connection with the Project shall remain the property of such DB-Related Entity, but Design/Builder shall cause such DB-Related Entity to grant a non-exclusive, irrevocable, royalty-free license to Owner to use, copy or modify such Pre-Existing Technology solely with respect to this Project.
- E. With respect to any intellectual property rights in software vested in any third party that are supplied to Owner by Design/Builder as part of the Work, but not prepared, developed or modified under or in connection with this Project, Design/Builder shall use all reasonable efforts to obtain from such third party such permission, waiver, or license as may be necessary to enable the software to be used, copied, or modified by Owner solely in connection with this Project.

3.06 *Electronic Data*

- A. Copies of data furnished by Owner to Design/Builder or by Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored on electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in electronic format agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60- day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 *Availability of Lands*

- A. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Time(s) as a result of any delay in Owner's furnishing the Site, Design/Builder may make a claim therefor as provided in Article 9.
- B. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- C. Owner is a governmental entity. Accordingly, the provisions of Chapter 713, Florida Statutes concerning construction liens, do not apply to lands owned by Owner.
- D. In the event that the Owner provides the Design/Builder with an identification badge to access any Owner office,

structure or Right-of-Ways through its badge access system, Design/Builder will use its best efforts to safeguard the identification badge throughout the period of performance of this contract/purchase order. Design/Builder shall be required to return the identification badge to the Owner's Security Office immediately upon completion of work or termination of its contract/purchase order with the Owner. Should the Design/Builder lose the identification badge provided by the Owner, Design/Builder shall immediately report the loss to the Owner. Owner will determine, at that time, if a replacement identification badge may be reissued. The Design/Builder will place the above language in any contract that it has with its subcontractor and is responsible for its enforcement. Repeated loss of identification badge or failure to return identification badge upon completion of work or termination of its contract/purchase order with the Owner, shall result in Design/Builder breach of its contract/purchase order and/or may be used as a basis for deeming the Design/Builder as non-responsible in conjunction with bid or proposal submissions. This paragraph shall survive the expiration or termination of this contract.

4.02 Differing Site Conditions

- A. Design/Builder shall promptly, but in no event later than ten (10) days, after discovery, and before the conditions are further disturbed, give a written notice to Owner of: (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents; or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.
- C. No request by Design/Builder for an equitable adjustment under Paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in Paragraph 15.02 for giving written notice may be extended by Owner.
- D. The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.
- E. Design/Builder shall not be entitled to any adjustment in the Contract Price or Contract Time(s) if: (a) Design/Builder knew of the existence of such conditions as of the Effective Date of the Stipulated Price Amendment; or (b) the existence of such condition could reasonably have been discovered or revealed as a result of the examinations, investigations, explorations, tests or studies of the Site during Design/Builder's performance of the Preliminary (Phase One) Services.

4.03 Reference Points

- A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to Paragraph 8.01.A.4.e. and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Conditions at Site

- A. Owner represents to the best of its knowledge that a Hazardous Environmental Condition does not exist and it has disclosed to Design/Builder the existence of all known Hazardous Materials located at the Site, including type, quantity, and location.

- B. If Design/Builder encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with applicable Laws and Regulations, to protect the interests of any affected party. Design/Builder shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify Owner and, if required by Laws and Regulations, assist Owner in providing notifications to all governmental authorities having jurisdiction over the Project or Site.
- C. Design/Builder, working with Owner, shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Laws and Regulations. Design/Builder shall, as may be directed by Owner and prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain on Owner's behalf all applicable approvals of governmental authorities having jurisdiction over the Project or Site to implement such plans. During the period of any investigation and remediation efforts, Design/Builder shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work and shall continue the Work to the maximum extent possible on unaffected parts of the Work.
- D. Except for those Hazardous Environmental Conditions and Hazardous Materials set forth in Paragraph 4.04.E below, Design/Builder will be entitled to submit a request for an adjustment to the Contract Price and/or Contract Time, in accordance with the requirements of these General Conditions, to the extent Design/Builder's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions.
- E. Notwithstanding anything to the contrary in this Paragraph 4.04, Design/Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site, that were brought or caused to be brought on the Site by any act or omission of any DB-Related Entity; and (b) the creation or exacerbation of any Hazardous Environmental Condition due to the negligence, recklessness or willful misconduct of any DB-Related Entity. To the fullest extent permitted by Laws and Regulations, Design/Builder shall indemnify, defend and hold harmless the Owner Indemnitees from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Items (a) and/or (b) above.
- F. Nothing contained in this Paragraph 4.04 is intended to identify Design/Builder as the generator of any pre-existing Hazardous Materials, except as set forth in applicable Legal Requirements.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment and Other Bonds*

- A. On or before the Effective Date of the Stipulated Price Amendment, Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for the Work, including but not limited to all Design Professional and Construction Services. The Performance Bond shall remain in effect at least until one (1) year after Final Acceptance, except as provided otherwise by Laws or Regulations. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.
- B. All Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Bureau of the Fiscal Service, Surety Bond Branch, U.S. Department of the Treasury. Additionally, the surety shall:

1. hold a certificate of authority authorizing it to write surety bonds in Florida;
2. have twice the minimum surplus and capital required by the Florida insurance code at the time of the Effective Date of the Stipulated Price Amendment;
3. be in compliance with the provisions of the Florida insurance code;
4. hold a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. Sections 9304 to 9308; and
5. provide an affidavit executed by an officer of the surety bond insurer as evidence that the surety company is in compliance with the foregoing requirements.

All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any Bond furnished by Design/Builder is declared a bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements of Paragraphs 5.01.B and 5.02, Design/Builder shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Design/Builder shall be obtained from surety or insurance companies that are duly licensed or authorized to conduct business in the state of Florida. In addition, such sureties and insurance companies shall have an A.M. Best company rating of A- or better.

5.03 *Certificates of Insurance*

- A. Design/Builder shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured or loss payee) which Design/Builder is required to purchase and maintain.
- B. Failure of Owner to demand such certificates or other evidence of Design/Builder's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Design/Builder's obligation to maintain such insurance.
- C. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design/Builder.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Design/Builder's liability under the indemnities granted to Owner and others in the Contract Documents.

5.04 *Design/Builder's Insurance*

- A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder or any other DB-Related Entity:
1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
 2. Claims based on the provision of professional services, including but not limited to the Design Professional Services to be performed by Design/Builder, to be insured under a professional liability insurance policy or endorsement;
 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;
 4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;
 5. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;
 6. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 7. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by Paragraph 5.04.A shall:
1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis and include as additional insureds, on a primary and non-contributory basis, Owner and Owner Indemnitees (subject to any customary exclusion in respect of professional liability), all of whom shall be listed as additional insureds (through a blanket endorsement or otherwise) and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. The endorsement for such additional insured status shall specifically include completed operations coverage for Owner and Owner Indemnitees;
 2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. Include contractual liability insurance covering Design/Builder's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. Contain a provision or endorsement that the coverage afforded will not be canceled, renewal refused, or reduced in coverage or limits, until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by Design/Builder pursuant to Paragraph 5.03 will so provide);

5. Remain in effect at least until Final Acceptance and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with Paragraphs 12.06 and 12.07; and
 6. Include completed operations coverage:
 - a. Such insurance shall remain in effect for five (5) years after Final Acceptance.
 - b. Design/Builder shall furnish Owner and each other additional insured to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at Final Acceptance and five (5) years thereafter.
- C. Each Subcontractor performing any Work on the Project Site shall provide insurance that complies with the insurance requirements set forth in Paragraphs 5.04.A, 5.04.B.1 and 5.04.B.2.
- D. Design/Builder shall have ninety (90) days after the Effective Date of the Agreement to produce the required Insurance Declaration Page of Policy for the insurance requirements of this Article 5.

5.05 Owner is Self-Insured

- A. In addition to the insurance required to be provided by Design/Builder under Paragraph 5.04, Owner is self-insured to protect itself against claims which may arise from operations under the Contract Documents. Owner's liability is limited by sovereign immunity.

5.06 Property Insurance

- A. Design/Builder will purchase and maintain property insurance upon Construction at the Site. Such insurance is in the amount of the full replacement cost. Such insurance shall:
1. include the interests of Owner, Design/Builder, and any other persons or entities identified as a loss payee in the Supplementary Conditions, each of whom is deemed to have an insurable interest to the extent of their actual loss.
 2. be written on a Builder's Risk "all risk" policy that shall at least include insurance for physical loss or damage to the Work, including any real or personal property delivered to the site and shall insure against at least the perils of fire, lightning, extended coverage, theft, vandalism and malicious mischief, flood, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. include expenses incurred in the repair or replacement of any Owner's property (including but not limited to fees and charges of Owner's Advisor and Construction Manager);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Owner;
 5. includes the hazards usually contained in a boiler and machinery policy, and any additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations;
 6. remain in effect and not be excluded by a "force majeure clause," whether in these General Conditions or otherwise; and

7. be maintained in effect until Final Acceptance unless otherwise agreed to in writing by Owner and Design/Builder with thirty days written notice to each other person or entity that is identified as a loss payee in the Supplementary Conditions.
- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Design/Builder in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled, renewal refused, or reduced in coverage or limits, until at least 30 days' prior written notice has been given to Owner and to each other loss payee identified in the Supplementary Conditions, and will contain waiver provisions in accordance with Paragraph 5.07.
 - C. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of any DB-Related Entity to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Design/Builder or the DB-Related Entity suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
 - D. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

- A. Owner and Design/Builder intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Owner's Advisor, Construction Manager, Design/Builder, and all DB-Related Entities, and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Construction Manager, and DB-Related Entities. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design/Builder and all other DB-Related Entities and the officers, directors, members, employees and agents of any of them for:
 1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and
 2. Loss or damage to the completed Project or any part thereof caused by, arising out of or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project after Final Acceptance pursuant to Paragraph 13.08.

5.08 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Design/Builder and made payable to Design/Builder and Owner as joint loss payees and fiduciaries for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of

Paragraph 5.08.B. Design/Builder shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

- B. Design/Builder as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Design/Builder's exercise of this power. If such objection be made, Design/Builder as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Design/Builder as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Design/Builder as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. If Owner has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by Design/Builder in accordance with Article 5 on the basis of their not complying with the Contract Documents, Owner shall notify Design/Builder in writing within ten days after receipt of the certificates and insurance declaration page(s) required by Paragraph 2.01. Design/Builder shall provide to Owner such additional information in respect of insurance provided as Owner may reasonably request. If Design/Builder does not maintain all of the Bonds and insurance required by the Contract Documents, and without prejudice to any other right or remedy, Owner shall have the right to terminate Design/Builder for cause under Paragraph 14.02.

5.10 Partial Utilization, Acknowledgment of Property Insurance

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. General

1. The standard of care for all Design Professional Services performed or furnished by Design/Builder under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar conditions at the same time and in the same locality. Notwithstanding the preceding sentence, if the Stipulated Price Proposal Documents contain specific performance standards, the services shall be performed to achieve such standards.
2. Design/Builder shall comply with all Florida laws with respect to the practice of land surveying and professional engineering.
3. Design/Builder assumes full responsibility for any portion or element of the Contract Documents that is incorporated into the Drawings and Specifications. For the avoidance of doubt, Design/Builder shall be responsible hereunder for any errors in the Work Product developed through Preliminary (Phase One) Services Agreement, including but not limited to the Stipulated Price Design Documents.
4. Owner shall have the right to review and comment upon all Design/Builder design documents,

whether in draft or final form, including all field-directed amendments to the design, in order to confirm the compliance and consistency of the design documents with the Contract Documents. Design/Builder shall give due consideration and provide written responses to any comments delivered by Owner as to Design/Builder's design Submittals. Neither compliance by Design/Builder with the Contract Documents, nor review of and comment by Owner on Design/Builder's design documents, nor any failure or delay by Owner in commenting on any design Submittals, shall in any way relieve Design/Builder of full responsibility for the design, construction, and performance of the Project in accordance with the Contract Documents.

5. Owner has made no representation or warranty to Design/Builder that the information provided to Design/Builder in the Contract Documents is correct, sufficient, complete or accurate. Design/Builder shall, as part of the Design Professional Services, evaluate and validate any design criteria, requirements or other data and information provided in the Contract Documents, and, if it believes that there are errors, omissions, contradictions or any other problems in the Contract Documents, it shall notify Owner accordingly. Design/Builder assumes responsibility for the sufficiency, completeness, and accuracy of all Contract Documents, notwithstanding the fact that Owner provided such information. Design/Builder shall have no right to claim or seek an adjustment to the Contract Price or Contract Time as the result of: (i) any incomplete, inaccurate, ambiguous, or inadequate information or requirements contained in or among any of the Contract Documents; or (ii) Owner's review or approval of any Contract Documents.

B. *Preliminary (Phase One) Services.* Design/Builder acknowledges that after the Effective Date of the Agreement it will be developing, among other things, the Stipulated Price Proposal that forms the basis for the Contract Price, Contract Time(s) and all of its other obligations under the Contract Documents. Accordingly, Design/Builder hereby acknowledges and agrees that:

1. The Stipulated Price Design Documents were prepared solely by Design/Builder and DB-Related Entities;
2. During its performance of the Preliminary (Phase One) Services, Design/Builder was capable of conducting and did conduct investigations to verify or supplement its understanding of the information provided by Owner, existing conditions at the Project Site, and anything else reasonably needed to commit to its obligations in the Contract Documents;
3. Owner has made no representation or warranty to Design/Builder that the information provided to Design/Builder in conjunction with the Preliminary (Phase One) Services is correct, sufficient, complete or accurate; and
4. Design/Builder shall have no right to claim or seek an adjustment to the Contract Price or Contract Time(s) as the result of: (i) any incomplete, inaccurate, ambiguous, or inadequate information or requirements contained in or among any of the Contract Documents; (ii) Owner's review or acceptance of any Contract Documents; or (iii) Owner's involvement during the performance of the Preliminary (Phase One) Services.

C. *Final Design Phase:* Design/Builder shall:

1. On the basis of the Stipulated Price Proposal Documents, prepare Final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Final Specifications (which will be prepared, where appropriate, in general conformance with the format recommended by the Construction Specifications Institute);
2. Provide technical criteria, written descriptions, and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in Paragraph 2.04; and
4. Identify any deviations from other Contract Documents in accordance with Paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

- A. Design/Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Work. Design/Builder shall be responsible to see that the completed Construction complies fully with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.
- B. At all times during the progress of Construction, Design/Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder. All communications given to or received from the superintendent shall be binding on Design/Builder. The superintendent shall be able to read, write, speak, and understand the English language.

6.03 Labor, Working Hours

- A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.
- B. Working Hours: Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not work on Saturday, Sunday, or any legal holiday without Owner's written consent and 48 hours' notice.
- C. Employee Authorization to Work: Design/Builder shall be responsible for verifying employee authorization to work in the U.S. and certifying that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the department of homeland security, U.S. citizenship and immigration services form I-9. In the event the amount of this contract exceeds \$150,000 and for all persons hired by Design/Builder to work in the state of Florida for a period that is equal to or exceeds 120 days, Design/Builder shall use the United States Department of Homeland Security's E-Verify System ("E-Verify") to verify employment eligibility. Design/Builder shall require all Design Subconsultants, Subcontractors and Suppliers having contracts valued in excess of \$3,000 to use e-verify to verify the employment eligibility of all persons hired by such entities to perform any such portion of the Work. Answers to questions regarding e-verify as well as instructions on enrollment may be found at the e-verify website: www.uscis.gov/e-verify. Written verification shall be kept by Design/Builder and made available for inspection on demand by Owner.
- D. Rate of Pay: The hourly rate of pay for each employee shall comply with state law and industry standards for similar work performed under the Contract. Design/Builder shall maintain records verifying the rate of pay for each employee working on this contract and make such records available for inspection on demand by Owner.
- E. Compliance: Failure to fully comply with Paragraphs B, C and D above shall be a material breach of the Contract and cause for termination of the Contract for cause.

6.04 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for the Work, including but not limited to all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner, or in the Drawings or Specifications, or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

- A. Design/Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04.A as it may be adjusted from time to time as provided below:
 - 1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Time(s) (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Time(s) (or Milestones) shall be submitted in accordance with the requirements of Paragraph 11.02. Such adjustments may only be made by a Change Order.
 - 3. If, in the opinion of Owner, Design/Builder falls behind the progress schedule due to an event that does not enable Design/Builder to extend the Contract Time(s), including but not limited to actions or neglect of any DB-Related Entity's failure to perform part or all of the Work or to supply any equipment or materials, Owner may direct Design/Builder, at Design/Builder's sole cost and expense, to take remedial steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of Work, and/or amount of construction equipment until such time as the Work is back on schedule. In such event, Design/Builder shall also submit for review not later than the time of submittal of the next request for partial payment, a supplementary schedule demonstrating the manner in which the acceptable rate and achievement of progress will be regained, all without additional cost to Owner.

6.06 Concerning DB-Related Entities

- A. Design/Builder shall not employ any DB-Related Entity or any individual against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Design Subconsultant or Subcontractor against whom Design/Builder has reasonable objection. Owner requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the Owner in advance of the Work for review by Owner. Owner's acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Design/Builder shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner to reject defective Work.

- B. Design/Builder shall be fully responsible to Owner for all acts and omissions of the DB-Related Entities just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such DB-Related Entity any contractual relationship between Owner and any such DB-Related Entity;
 2. shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any DB-Related Entity except as may otherwise be required by Laws or Regulations.
- C. Design/Builder shall be solely responsible for scheduling and coordinating all DB-Related Entities.
- D. Design/Builder shall require all DB-Related Entities to communicate with Owner through Design/Builder.
- E. All Work performed for Design/Builder by a DB-Related Entity will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the DB-Related Entities which specifically binds the DB-Related Entities to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a DB-Related Entity who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between Design/Builder and such DB-Related Entity will contain provisions whereby the DB-Related Entity waives all rights against Owner, Owner's Advisor, Construction Manager, Design/Builder, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any DB-Related Entity, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

- A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.
- B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless the Owner Indemnitees from and against 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 resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device. Notwithstanding the foregoing, Design/Builder shall not be liable to Owner for infringement claims: (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not objected to in writing by Design/Builder to Owner; (ii) arising from modifications to the Work by Owner after acceptance of the Work; or (iii) Owner's use or operation of the Work for purposes other than intended.

6.08 Permits

- A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. If any such permit, license or approval of governmental authorities is required to be formally issued in the name of Owner, Design/Builder shall undertake all efforts to obtain such permit, license or approval subject to Owner's reasonable cooperation with Design/Builder, including execution and delivery of appropriate applications and other documentation in forms approved by Owner.
- B. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work. Design/Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

- A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.
- B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder 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.
- C. Changes in Laws or Regulations not known on the Effective Date of the Stipulated Price Amendment having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Time(s). Notwithstanding the above, Design/Builder shall not be entitled to an adjustment in the Contract Price or Contract Time for, and assumes the risk of, any changes in Laws or Regulations related to Design/Builder's corporate existence or the maintenance of its business, including, but not limited to, gross receipt taxes, social security, Medicare, and other payroll-related taxes.

6.10 Taxes

- A. Design/Builder shall pay all sales, consumer, use, employment-related and other taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Owner is exempted from payment of Florida state sales and use taxes and federal excise tax. Design/Builder, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by Design/Builder to DB-Related Entities for taxes on materials used to fulfill its obligations under the Contract Documents.

6.11 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas.
 - 1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
 - 2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 - 3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless the Owner Indemnitees from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon the failure of any DB-Related Entity to perform the Construction in accordance with the Contract Documents.
 - 4. Design/Builder shall ensure that all employees performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on District property, or on any land adjoining the work site.

- B. *Removal of Debris:* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.
- C. *Cleaning:* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

- A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, Work Change Directives, approved Submittals, QA/QC records, and all other written interpretations and clarifications in good order and annotated to show all changes made during performance of the Work. Such copies shall constitute the "Record Documents" and will be available to Owner for reference.
- B. The Record Documents shall, as appropriate, be marked-up as the Work progresses to reflect current conditions and shall become the "as-built" plans. The revisions are to be indicated in a neat, well-organized manner and are to include the elevation and plan location of any utilities, structures, etc., encountered or installed. A "record" survey book will be kept and shall include the following items:
 - 1. The location and elevation of all existing utilities, structures, etc. encountered.
 - 2. The finished product location and elevation of all utilities and structures installed, including, but not limited to, fire hydrants, catch basin and manhole lids, inverts, pipes, and any and all underground structures.

The Record Documents shall comply with Paragraph 16.11 ("Records").

- C. All record notes shall be kept in book(s) designated "record" and no other survey notes will be kept in such books. Design/Builder will be required to review with Owner the status of the "as-built" plans and the "record" survey notes in connection with Owner's evaluation of an application for payment. Failure to maintain record documents current shall be just cause for Owner to withhold payments for Work performed.
- D. Upon Substantial Completion of the Work, the Record Documents will be delivered to Owner. Design/Builder shall deliver to Owner a reproducible set of updated contract plans. Design/Builder will transfer all its "as-built" information to these reproducibles and deliver the resultant "as-built" set of plans, together with the record survey book to Owner. Each completed set of "as-built" drawings must include on its face, a certified statement by Design/Builder that the set of "as-built" drawings accurately depicts the actual Work as constructed.

6.13 Safety and Protection

- A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Design/Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Design/Builder shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design/Builder shall inform Owner of the specific requirements of Design/Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by any DB-Related Entity shall be remedied by Design/Builder.
- F. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with Paragraph 13.08 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

- A. Design/Builder shall designate a competent safety representative at the Site who has the experience, duty and responsibility to take prompt actions to eliminate hazards, correct unsafe conditions, and enforce the implementation of Design/Builder's safety requirements.

6.15 Hazard Communication Programs

- A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury, or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. Design/Builder shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.
- B. Design/Builder shall be required to secure or remove from the site, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the Work, Owner's installations and/or public or private property. Site excavations shall be required to be secured and/or backfilled. No Design/Builder equipment may

be parked within 100 feet of any Owner facilities. In the event of the issuance of a storm warning, Owner will attempt to notify Design/Builder, however, Design/Builder is responsible for preparing for a storm event. Design/Builder shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

- C. Owner may, but is not required to, order the work be stopped if a condition of eminent danger exists. Nothing shall be construed to shift responsibility or risk of loss for injuries and /or damages, cost of stoppage or delay of work, from Design/Builder to Owner. Design/Builder shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at the Site.

6.17 Submittals

- A. Owner will review and respond to Submittals in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.04.A. Owner's review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not be for compliance with any engineering code, standard, or manual, or for confirmation of geometric accuracy. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. If a Submittal requires Owner's approval and if Owner finds the Submittal to conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, then Owner will approve the Submittal. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. All Submittals shall be in compliance with the Contract Documents and consistent with previous Submittals that have been reviewed and/or accepted by Owner. Design/Builder shall specifically highlight and identify, in a separate written communication at the time of submission specifically calling Owner's attention to any changes from previous Submittals to enable Owner to be aware and understand the implications of such changes. Owner's review and approval of Submittals, including but not limited to the Final Drawings and Specifications, shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has complied with its obligations in the preceding sentence and Owner has given written approval to the variation.
- C. If Design/Builder is interested in starting any Construction activity before Owner's approval of the Final Drawings and Specifications, Design/Builder shall give Owner written notice of such interest and full details of the activity, limits where such Work will be performed, and other information that Owner may reasonably require. If Owner does not object to Design/Builder starting such Work, then Design/Builder may commence the activities, provided, however, that Design/Builder: (1) is not in violation of any Laws or Regulations in starting such Construction; (2) shall have all risks associated with proceeding without approved Final Drawings and Specifications; and (3) any costs associated with remedying the Work will be at the sole risk of Design/Builder.

6.18 Continuing the Work

- A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as set forth in Paragraph 14.04 or as Design/Builder and Owner may otherwise agree in writing.

6.19 Design/Builder's General Warranty and Guarantee

- A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective.
- B. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification or improper maintenance or operation by persons other than a DB-Related Entity; or
 - 2. normal wear and tear under normal usage.
- C. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:
 - 1. Observations by Owner;
 - 2. The making of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Submittal;
 - 6. Any inspection, test, or approval by others; or
 - 7. Any correction of defective Work by Owner.

6.20 Indemnification

- A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall defend, indemnify and hold harmless the Owner Indemnitees from and against all claims, liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent such liabilities, damages, losses or expenses are caused by the negligence, recklessness, or intentionally wrongful conduct of a DB-Related Entity in the performance of the Work.
- B. Design/Builder's contracts with DB-Related Entities shall include a requirement that the DB-Related Entity shall be obligated to defend, indemnify and hold harmless the Owner Indemnitees from and against all claims, liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent such liabilities, damages, losses or expenses are caused by the negligence, recklessness, or intentionally wrongful conduct of such DB-Related Entity in the performance of the Work.
- C. In any and all claims against an Owner Indemnitee by any employee (or the survivor or personal representative of such employee) of a DB-Related Entity, the indemnification obligations under Paragraphs 6.20.A and 6.20.B shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for a DB-Related Entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

- A. Owner may perform work, or cause other work to be performed, related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or through other utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and
 - 2. If Owner and Design/Builder are unable to agree on entitlement to or on the extent, if any, of any adjustment in the Contract Price or Contract Time(s) that should be allowed as a result of such other work, Design/Builder may make a claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time.
- B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design/Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. The individual or entity that will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. The extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

7.03 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner for the reasonable direct delay and disruption costs incurred by Design/Builder as a result of the other contractor's wrongful actions or inactions.
- C. Design/Builder shall be liable to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Design/Builder's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:
 - 1. Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;
 - 2. Make payments to Design/Builder promptly when they are due as provided in Paragraphs 13.03 and 13.08;
 - 3. Furnish the Site as set forth in Paragraph 4.01.A;
 - 4. Furnish to Design/Builder, as required for performance of Design/Builder's Services, the following:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 - f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - h. Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
 - 5. Review Submittals subject to Owner review pursuant to Paragraph 6.17.A; and

6. Provide information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

- A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

- A. Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

8.04 Undisclosed Hazardous Materials and Hazardous Environmental Conditions

- A. Owner's responsibility in respect of undisclosed Hazardous Materials and Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 4.04.

8.05 Construction Manager

- A. Owner may furnish a Construction Manager to assist Owner in fulfilling some of its responsibilities on the Project relative to the performance of Design/Builder.

8.06 Owner's Advisor

- A. Owner's Advisor, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

8.07 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design/Builder's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

- A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Time(s) with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Construction as provided in Paragraph 12.04.

9.03 Claims

- A. If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Time(s) that should be allowed as a result of any order of Owner pursuant to Paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a claim may be made therefor in accordance with Article 15 below.

9.04 Execution of Change Orders

- A. Owner and Design/Builder shall execute appropriate change orders (or written amendments) covering:
 - 1. Changes in the Work which are:
 - a. ordered by Owner pursuant to Paragraph 9.01;
 - b. Required because of acceptance of defective work under Article 13 or Owner's correction of defective work under Article 12; or
 - c. Base claims agreed to by the parties.
 - 2. Changes in the Contract Price or Contract Time(s) which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a change order or amendment; and
 - 3. Unilateral changes in the Contract Price or Contract Time(s) which are issued by Owner, including any undisputed and/or disputed sum or amount of time for Work actually performed in accordance with a change order or amendment; and
 - 4. Changes in the Contract Price or Contract Time(s) which embody the substance of any written decision rendered by Owner pursuant to Paragraph 15.02; provided that, in lieu of executing any such change order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Design/Builder shall carry on the work and adhere to the progress schedule pursuant to, among other provisions of the Contract Documents, Paragraph 6.18.
 - 5. Design/Builder acknowledges that agreement on any change order shall constitute a final settlement and full accord and satisfaction of all matters relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the change order, including, but not limited to, all direct, indirect costs, and impact costs associated with such change, including inefficiencies or acceleration based claims, and any and all adjustments to the Contract Price and Contract Time(s), and schedule.
- B. There shall be no Design/Builder delay claim based upon Design/Builder's inability to perform change order work due to delay caused by Owner's approval process.

9.05 Notice to Sureties

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time(s)) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

- A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.
 - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.
 - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this Paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.
 3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to Paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.
 4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.
 5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
 6. Supplemental costs including the following items:
 - a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.
- c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.
- e. Deposits lost for causes other than negligence of a DB-Related Entity, and royalty payments and fees for permits and licenses.
- f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of a DB-Related Entity. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 10.01.A.1, all of which are to be considered administrative costs covered by Design/Builder's fee.
- 2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.
- 3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.
- 4. Costs due to the negligence of a DB-Related Entity, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.01.A.

- C. Design/Builder's Fee: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in Paragraph 11.01.C.
- D. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Allowance Payment Items

- A. The Agreement specifies the identification of all Allowance Payment Items and Allowance Payment Values.

10.03 Unit Prices

- A. Where the Stipulated Price Amendment provides that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.
- B. No unit price will have any Design/Builder's overhead or fee in such item.
- B. If the actual quantity of any item of Unit Price Work varies more than twenty-five percent (25%) above or below the estimated quantity, either party may request an adjustment in the Contract Price. Any such adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME(S)

11.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by Design/Builder to Owner promptly in accordance with Paragraph 15.02.
- B. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 10.03); or
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.01.C); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).

- C. Design/Builder's Fee on any Work covered by a Change Order or of any claim for an adjustment in the Contract Price shall be ten percent (10%) of the amount set forth in Paragraph 11.01.B above.
- D. Work covered by a Change Order or of any claim for an adjustment in the Contract Price that is being performed by Design Subconsultants, Subcontractors or Suppliers of any tier shall be limited to the following markups, which markup shall compensate Design Subconsultant, Subcontractor, Supplier for all indirect costs, field and home office overhead, and profit:
 - 1. A total markup of ten percent (10%) of the costs incurred by such Design Subconsultant, Subcontractor or Supplier under Paragraphs 10.01.A.1 and 10.01.A.2.
 - 2. Any higher tier Design Subconsultant, Subcontractor or Supplier will be paid a total markup of ten percent (10%) of the amount paid to the next lower tier Design Subconsultant, Subcontractor or Supplier.
- E. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost, plus a deduction in Design/Builder's fee by an amount of ten percent (10%) of such net decrease; and
- F. When both additions and credits are involved in any one change, Design/Builder's fee shall be computed on the basis of amount of the net increase or decrease in cost. If there is a net increase in cost, then the fee shall be as set forth in Paragraph 11.01.C, and if there is a net decrease, the fee deduction shall be as set forth in Paragraph 11.01.E.

11.02 Change of Contract Time(s)

- A. The Contract Time(s) (or Milestones) may only be changed by a Change Order. Any claim for an adjustment of the Contract Time(s) (or Milestones) shall be based on written notice pursuant to Paragraph 15.02. All adjustments for additional time must include a detailed critical path analysis of the Contract schedule.
- B. Any adjustment of the Contract Time(s) (or Milestones) covered by a change order or of any claim for an adjustment in the Contract Time(s) (or Milestones) will be determined in accordance with the provisions of this Paragraph 11.02.
- C. Design/Builder expressly agrees that in undertaking to complete the work within the time specified, it has made allowances for certain foreseeable hindrances and delays ordinarily encountered on projects of this type. The parties specifically anticipate and contemplate such hindrances and delays, including but not limited to, labor disputes; those reasonable delays caused by or arising from minor design conflicts and issues; schedule adjustments; the actions of DB- Related Entities; late or out-of-sequence Owner-furnished equipment, materials and facilities not affecting the critical path; reasonable turnaround or approval of Design/Builder's Submittals; normal unfavorable weather, wet grounds, or other similar unsuitable construction conditions likely to occur in south Florida; reasonable turnaround to Design/Builder's requests for information or direction; change order processing; and access and coordination by Owner that does not create any new critical paths in the schedule. Design/Builder agrees that such delays are included in the Contract Price and Contract Time(s) and that they shall not constitute the basis for a time extension or a claim for additional compensation of any type.
- D. *Delays Beyond Design/Builder's Control:* Where Design/Builder is prevented from completing any part of the Work within the Contract Time(s) (or Milestones) due to delay beyond the control of Design/Builder, the Contract Time(s) (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in Paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, changes of law pursuant

to Paragraph 6.09.C, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or other acts of God.

- E. If Design/Builder intends to seek an adjustment in the Contract Time for abnormal weather conditions, it shall, in addition to fulfilling all other requirements for a time extension, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration ("NOAA") for the time of year and locality of the Site.
- F. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Time(s), or both. Design/Builder's entitlement to an adjustment of the Contract Time(s) is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Time(s).
- G. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Time(s), if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Time(s). Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.G. Notwithstanding the preceding sentence:
 - 1. If such delays result in Owner suspending the Work in accordance with Paragraph 14.01, Design/Builder's remedy shall be as specified in that provision.
 - 2. If the total aggregate of such delays exceeds thirty (30) days, commencing on the Notice to Proceed, then Design/Builder shall be entitled to treat the days of delay that exceed such 30-day period in the same manner as set forth in Paragraph 11.02.F above.
- H. Owner, Owner's Advisor and Construction Manager shall not be liable to Design/Builder for any claims, costs, losses, or 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) sustained by Design/Builder on or in connection with any other project or anticipated project.
- I. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Time(s) for delays within the control of Design/Builder. Delays attributable to and within the control of a DB- Related Entity shall be deemed to be delays within the control of Design/Builder.
- J. Notwithstanding anything to the contrary in this Article 11 or in any other Contract Document, Owner shall not be liable, and Design/Builder shall not be entitled to recover, for any time-related or delay damages for: (1) loss of anticipated profit; (2) home office overhead; (3) consequential damages (including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency); and (4) legal fees, claims preparation expenses, or the cost of dispute resolution.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 Notice of Defects

- A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

- A. Owner, Owner's Advisor, Construction Manager, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

- A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.
- B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.
- C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, then Design/Builder shall, if requested by Owner, uncover such Construction for observation.
- D. Uncovering Construction as provided in Paragraph 12.04 shall be at Design/Builder's expense unless Design/Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

- A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.
- B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Time(s) (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

- A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Work

- A. Owner will have authority to disapprove or reject defective Work and will have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner, remove it from the Site and replace it with non-defective Work. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

- A. If within one year after the date of Final Acceptance or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Work, or, if it has been rejected by Owner, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance, the correction period for that item may start to run from an earlier date if so specifically provided in the Contract Documents.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Paragraph 12.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all 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) attributable to Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Work so accepted. If the acceptance occurs after Final Acceptance, an appropriate amount will be paid by Design/Builder to Owner.

12.09 Owner May Correct Defective Work

- A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Work or to remove and replace rejected Work as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Work in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Work, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Advisor, Construction Manager, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this Paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price.
- D. Design/Builder shall not be allowed an extension of the Contract Time(s) (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 Schedule of Values

- A. Exhibit 4.1 (Compensation for Preliminary (Phase One) Services) will serve as the basis for progress payments for the performance of Preliminary (Phase One) Services. The Schedule of Values established as provided in Paragraph 2.04.A will serve as the basis for progress payments for Work performed after the Effective Date of the Stipulated Price Amendment. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

- A. Design/Builder shall submit to Owner, on or about the last day of each month, an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents.
- B. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- C. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

- D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. For the avoidance of doubt, retainage will not be held on progress payments due for performance of the Preliminary (Phase One) Services.
- E. For Work performed after the Effective Date of the Stipulated Price Agreement, Design/Builder shall submit an updated cost-loaded progress schedule update as support documentation for payment applications. Each activity in the progress schedule update shall be assigned a dollar value in accordance with the physical value of that work in relationship to an Asset (Activity Codes)/Work Breakdown Structure (WBS) agreed upon by the Owner. The total value of all activities shall equal the Contract Price. The Design/Builder shall use the latest version of Oracle/Primavera P6 Professional Project Management (P6) for creating and updating all Construction Schedules (i.e. the accepted Baseline Schedule and all Schedule Updates) and reports. No other scheduling software programs will be accepted. The Owner will provide Design/Builder with Owner's requirements regarding progress Construction Schedule submittals during the Preliminary (Phase One) Services Phase of the Project.

13.03 Progress Payments

- A. Owner will, after receipt of each application for payment, either make payment or return the application to Design/Builder, indicating in writing Owner's reasons for refusing to make payment. In the latter case, Design/Builder may make the necessary corrections and resubmit the application.
- B. Owner may refuse to make the whole or any part of any payment if, in Owner's opinion, it would be incorrect to make such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in Owner's opinion to protect Owner from loss because:
 - 1. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - 2. The Contract Price has been reduced by written amendment or change orders;
 - 3. Owner has been required to correct defective Work or complete Work in accordance with Article 12;
or
 - 4. Owner has actual knowledge of the occurrence of any of the events enumerated in Article 15.
 - 5. Design/Builder fails to comply with the SBE requirements as stated in the Contract;
 - 6. Design/Builder fails to submit the required insurance policy declaration page as stated in the Contract;
 - 7. Design/Builder fails to comply with progress schedule updates in keeping with general requirements.
- C. *Reduction in Payment:* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:
 - 1. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or
 - 2. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - 3. There are other items entitling Owner to a set off against the amount for which application is made;
or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraph 14.02.A or if Design/Builder is otherwise in breach.
- D. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder remedies the reason for such action.

13.04 Design/Builder's Warranty of Title

- A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 Substantial Completion

- A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before Final Acceptance. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending Final Acceptance between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.
- B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

13.06 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:
 1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder and Owner will follow the procedures of Paragraph 13.05 for that part of the Construction.
 2. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving

the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

13.07 Final Inspection

- A. Upon written notice from Design/Builder that the entire Work is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 Final Acceptance

- A. The following conditions shall constitute the conditions for Final Acceptance:
 1. All permits required under applicable Laws and/or Regulations and the Contract Documents to be obtained by Design/Builder which are necessary for the continued routine operation of the Project shall be in full force and effect and certified copies of all such permits shall have been delivered to Owner.
- B. When Design/Builder determines that it has met the conditions for Final Acceptance, it shall furnish Owner with a certified statement (in a form acceptable to Owner) evidencing that Final Acceptance has been met. If Owner is satisfied that the conditions for Final Acceptance set forth in Paragraph 13.08.A above have been achieved, it will, within twenty-one (21) days after receipt of Design/Builder's certification, give written notice to Design/Builder that it agrees that Final Acceptance has been achieved. Otherwise, Owner will indicate to Design/Builder in writing the reasons that it disagrees that Final Acceptance has been achieved, in which case Design/Builder shall make the necessary corrections and resubmit the certification.

13.09 Final Payment

- A. Application for Payment.
 1. After Design/Builder has achieved Final Acceptance to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in Paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.
 2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B; (ii) original consent of the surety, if any, to final payment and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.
 3. In lieu of such releases or waivers of Liens specified in Paragraph 13.09.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an original contractor's affidavit and final release that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid, or otherwise satisfied. If any Design Subconsultant, Subcontractor or Supplier fails

to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. *Final Payment:* If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design/Builder that it is ready to process final payment. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.
- C. *Payment Becomes Due:* Thirty days after the presentation to Owner of the acceptable Application for Payment and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.10 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 - 1. A waiver of all claims by Owner against Design/Builder, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and
 - 2. A waiver of all claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Time(s), or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events justifies termination for cause:
 - 1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.04.A as adjusted from time to time pursuant to Paragraph 6.05).
 - 2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.
 - 3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of Paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of

all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (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) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

- C. Notwithstanding Paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.
- E. Notwithstanding the notice periods provided in this Paragraph 14.02, in the event of an emergency, Owner shall have the right to immediately, and without notice to Design/Builder, take over and protect the Site by whatever means it deems appropriate. Owner will endeavor to provide Design/Builder notice of such action within 24 hours after its occurrence.

14.03 Owner May Terminate for Convenience

- A. Owner may, without prejudice to any other right or remedy, terminate this Contract in whole or in part at any time for its convenience by giving Design/Builder seven (7) days written notice. Owner shall have the right, in that event, to take over any or all of Design/Builder's materials (whether stored on or off site), supplies, equipment, Design Subagreements, Construction Subagreements, and purchase orders, or other obligations to complete the Work and Design/Builder shall assign them to Owner upon Owner's request. Design/Builder shall proceed to complete any part of the Work, as directed by Owner, and shall settle all its claims and obligations under the Contract.
- B. In any such termination for the convenience of Owner, Design/Builder shall be paid for work completed in accordance with the Contract Documents prior to receipt of the notice of termination, and for termination settlement costs that in Owner's sole discretion relate to commitments which had become firm prior to the termination. Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Design/Builder shall justify its claims as requested by Owner with thorough, accurate records and data.
- C. Notwithstanding the provisions of Paragraphs 14.03.A and 14.04.B above, in the event that Owner elects to terminate this Contract under Section 8.5 of the Agreement as a result of the failure of the Parties to reach an agreement on the Stipulated Price Proposal, then the following shall apply:
 - 1. Owner's termination will be effective upon Design/Builder's receipt of notice from Owner, provided, however, that Owner may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Design/Builder to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.
 - 2. Design/Builder's sole and exclusive relief for such termination shall be limited to the monies due under Exhibit 4.1 to the Agreement for completed Preliminary Services, and Design/Builder shall not

be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

3. For the avoidance of doubt, upon terminating Design/Builder, Owner shall have the right to use the Work Product to complete the Project, on a design-build, design-bid-build or any other basis, with any entity of its choosing.

14.04 Design/Builder May Suspend or Terminate for Cause

- A. If Owner fails to pay undisputed amounts owed to Design/Builder within forty-five (45) days of the date such payment is due under the Agreement, Design/Builder's remedies shall be as follows:
 1. Design/Builder is entitled to suspend the Work within five (5) days of delivering a written notice to Owner that Design/Builder will suspend the Work as a result of Owner's failure to pay undisputed amounts due. If Design/Builder does suspend the Work and claims that the suspension has affected the cost or time of performance, it shall be entitled to proceed in accordance with the remedies set forth in Article 15.
 2. Design/Builder is entitled to terminate this Agreement if a suspension for Owner's nonpayment continues for more than one hundred eighty (180) consecutive days. The termination shall become effective if, after such 180-day period, Owner fails to cure the nonpayment within twenty (20) days of its receipt of a notice from Design/Builder that it intends to terminate the Agreement as a result of Owner's failure to pay undisputed amounts due. If Design/Builder does terminate the Agreement, such termination shall be treated as if Owner had terminated the whole of the Work in accordance with Paragraph 14.03.A above.
- B. If Design/Builder elects to suspend the Work as a result of Owner's failure to act under the circumstances described in Section 8.6 of the Agreement, Design/Builder shall provide Owner with ten (10) days advance written notice of its intent to suspend the Work. If Owner has not taken action under Section 8.5 of the Agreement within such 10-day period, and Design/Builder does suspend the Work and claims that the suspension has affected the cost or time of performance, it shall be entitled to proceed in accordance with the remedies set forth in Article 15.
- C. Other than as specifically set forth in Paragraphs 14.04.A and 14.04.B above, Design/Builder shall have no rights to suspend or terminate this Agreement for any reason and shall be obligated to continue performing in a diligent manner and without delay.

ARTICLE 15 – CLAIMS AND DISPUTE RESOLUTION

15.01 General

- A. Claims and disputes under the Contract include disagreements, claims, counterclaims, matters in question, and differences of opinion between Owner and Design/Builder, regarding the Work and modifications or changes to the Work. Disputes may involve interpretation of Contract Documents, acceptability of the Work, costs and/or time for performance.
- B. The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between Owner and Design/Builder arising out of or relating to this Contract. The Parties will participate in good faith in the procedures specified in this Article 15.
- C. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Article 15 are pending. The Parties will take such action, if any, required to effectuate such tolling.

- D. In the event any dispute occurs under this Contract which cannot be readily resolved, it shall be referred to the appropriate executives of Owner and Design/Builder for negotiation and resolution as described below.
- E. At all times during the course of any process under this Article 15, Design/Builder shall continue with the Work as directed, in a diligent manner and without delay, shall conform to Owner's decisions or orders.

15.02 Notice

- A. Notice: Written notice stating the general nature of each claim, dispute, or other matter shall be delivered by Design/Builder to Owner immediately, but in no event later than ten (10) days after the start of the event giving rise thereto. Notice of the amount or extent of the claim, dispute, or other matter with supporting data shall be delivered to Owner within thirty (30) days after the start of such event (unless Owner allows additional time for Design/Builder to submit additional or more accurate data in support of such claim, dispute, or other matter.) A claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.01. A claim for an adjustment in Contract Time(s) shall be prepared in accordance with the provisions of Paragraph 11.02. Each claim shall be accompanied by Design/Builder's written statement that the adjustment claimed is the entire adjustment to which Design/Builder believes it is entitled as a result of said event. In its claim Design/Builder must provide justification for each line item of Design/Builder's claim including but not limited to specifying the section of the terms and conditions which provides an entitlement to the claim.
- B. Owner's decision: Owner will render a formal decision in writing within sixty (60) days after receipt of the last submittal of Design/Builder, if any. Owner's written decision on such claim, dispute, or other matter will be final and binding upon Owner and Design/Builder unless an appeal from Owner's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in this Article 15. Owner may issue unilateral change orders as referenced in Paragraph 9.04.A.3.

15.03 Step Negotiations

- A. Either party must give the other party written notice of any dispute not resolved in the normal course of business.
 - 1. Step1: Executives of both parties at level one step above the project personnel who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
 - 2. Step 2: If the matter has not been resolved, then executives of both parties at levels one step above the personnel who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
 - 3. Step 3: If the matter has not been resolved by these persons within thirty (30) days from the referral of the dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either party may initiate mediation as provided hereinafter.

To the extent allowed by law, all negotiations, settlement agreements and/or other written documentation pursuant to this Paragraph 15.03 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the federal rules of evidence and Florida rules of evidence.

15.04 Mediation

- A. If the dispute has not been resolved by the negotiation as provided in Paragraph 15.03 above, the parties shall endeavor to settle the dispute by mediation. Either party may initiate a mediation proceeding by a request in writing to the other party, thereupon; both parties will be obligated to engage in mediation. The proceeding will be conducted at Owner's headquarters, 3301 Gun Club Road, West Palm Beach, Florida 33406:

1. Owner will provide a list of mediators from which Design/Builder shall choose; and
2. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator concludes and informs the parties in writing that further efforts would not be useful, or (c) the parties agree in writing that an impasse has been reached. Neither party may withdraw before the conclusion of the proceeding.

The parties regard the aforesaid obligation to mediate as an essential provision of this contract and one that is legally binding on them. In case of violation of such obligation by either party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction in Palm Beach County, Florida.

15.05 Litigation

- A. If the dispute has not been resolved by negotiation or mediation as provided in Paragraphs 15.03 and 15.04 respectively within sixty (60) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days written notice to the other party; provided, however, that if one party has requested the other to participate in a nonbinding procedure, as provided for under this Article 15, and the other has failed to participate, the requesting party may initiate litigation before expiration of the above period.
- B. The parties hereto agree that all actions or proceedings arising in connection with this agreement shall be tried and litigated exclusively in the state and federal courts of competent jurisdiction located in the state of Florida, Palm Beach County. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. Design/Builder agrees to waive any objections to venue or jurisdiction in Palm Beach County, Florida, for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement.
- C. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.

15.06 Auditing of Claims

- A. All claims filed by Design/Builder shall be subject to audit at any time following the filing of the claim whether or not such claim is the subject of litigation. The audit and review of records may be performed by Owner or its consultants. Such right of audit shall include the records of Design/Builder and its Design Subconsultants, Subcontractors and Suppliers. The audit may begin on 10 days' notice to Design/Builder, Design Subconsultants, Subcontractors, or Suppliers. Design/Builder, Design Subconsultants, Subcontractors and Suppliers shall be required to cooperate with the auditors and provide such information and records as are necessary for analysis of the claim.

15.07 Costs for Dispute Resolution

- A. Each party will bear its own costs, including but not limited to attorney's fees, incurred as a result of any claim process and dispute resolution process contained in this Article 15. Notwithstanding the above, Owner shall have the right to recover its costs, including attorney's fees, to the extent that these General Conditions provides Owner with such right.

ARTICLE 16 – MISCELLANEOUS

16.01 Giving Notice

- A. All notices, demands, or other communications to Design/Builder under this Contract shall be in writing and shall be deemed received if sent by certified mail, return receipt requested.
- B. All notices to Owner under this Contract shall be in writing and sent by certified mail.
- C. Design/Builder shall also provide a copy of all notices to Construction Manager. All notices required by this Contract shall be considered delivered upon receipt. Should either party change its address, written notice of such new address shall promptly be sent to the other party.
- D. All correspondence to Owner under this Contract shall reference Owner's Contract Number.

16.02 Computation of Times

- A. 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.

16.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
 - 1. Laws or Regulations; or
 - 2. any special warranty or guarantee; or
 - 3. other provisions of the Contract Documents.
- B. The provisions of Paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 Survival of Obligations

- A. 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 Acceptance, final payment, and termination or completion of the Contract.

16.05 Controlling Law

- A. The laws of the state of Florida shall govern all aspects of this Contract.

16.06 Truth-In-Negotiation

- A. Design/Builder warrants that all bid line items are true, complete and accurate and include all costs, overhead, profit and all other amounts associated with such items and may be relied upon by Owner when making additions or deductions to the Contract Price. Design/Builder further warrants that all cost and pricing data provided to Owner during the term of the contract shall be complete, accurate and current when provided. Should there be any changes in the cost and pricing data previously submitted, Design/Builder shall notify and

provide the new information to Owner immediately. Owner shall be entitled to issue an appropriate change order to adjust the Contract Price and Contract Time(s) based on correcting inaccurate or incomplete information provided by Design/Builder.

- B. Despite any provisions in the Contract Documents to the contrary, any amounts paid by Owner to Design/Builder in excess of that to which it is entitled under the Contract Documents shall be reimbursed by Design/Builder to Owner. The making of final payment to Design/Builder shall not be a waiver of Owner's right to reimbursement from Design/Builder nor shall it discharge Design/Builder's obligation to refund the overpayment. The terms of this Paragraph B shall survive Owner's making final payment.
- C. Design/Builder shall insert a provision containing all the requirements of this Paragraph 16.06 in all contracts between Design/Builder and all DB-Related Entities, altering the section only as necessary to identify properly the contracting parties.

16.07 Notice to Other Agencies

- A. Design/Builder shall notify all public and private entities or agencies in accordance with any and all ordinances, laws, agreements, licenses, and any other directions of construction activity, disruption of access or services. Owner shall not be responsible for any such notification.

16.08 No Conflict with Laws or Regulations

- A. The duties, obligations, criteria or procedure imposed by these General Conditions and the rights and remedies made available are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, except that in the event that a specific part or detailed requirement of a provision, criterion or procedure in these General Conditions and a specific part or detailed requirement of a provision, criterion or procedure imposed or available by Laws or Regulations are in conflict the specific part or detailed requirement of Laws and Regulations shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of the applicable Laws or Regulations and these General Conditions not in conflict shall remain in full force and effect and be read with the controlling specific part or detailed requirement.

16.09 Advertising

- A. No advertising shall be permitted upon any part of the Site or structures located on the Site. News or press releases pertaining to the services, work product(s), or performance of Design/Builder under this Contract or the Project to which it relates shall be at the sole discretion of Owner.

16.10 Non-Solicitation

- A. Design/Builder shall not directly or indirectly, or through any other person, agency, company or organization solicit employees of Owner to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this Contract and for a period of one (1) year thereafter (the "non-solicitation period"). Design/Builder acknowledges that actual or threatened violations of this Paragraph may give rise to irreparable injury to Owner, inadequately compensable in damages and, therefore, Owner may seek and obtain injunctive relief against the breach or threatened breach of Design/Builder's obligations and undertakings thereunder, in addition to any other legal remedies which may be available. This Paragraph 16.10 will survive the termination of this Agreement. Violation of this Paragraph 16.10 during the non-solicitation period will be deemed a material breach of contract.

16.11 Records

- A. Design/Builder shall maintain records and Owner shall have inspection and audit rights as follows:

1. Maintenance of Records: Design/Builder shall maintain all financial and non- financial records and reports directly or indirectly related to the negotiation or performance of this Contract including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this Contract.
2. Examination of Records: Owner or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Contract. Such examination may be made only within five (5) years from the date of final payment under this Contract and upon reasonable notice, time and place. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals or claims.
3. Cost and Pricing Data: Design/Builder, by executing this Contract, certifies to truth in negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. Design/Builder agrees that Owner may adjust the consideration for this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. Owner shall make any such adjustment within one (1) year following the termination of this Contract.
4. Applicability to Authorized Agents: In the event that any of the Work is delegated by Design/Builder, Design/Builder hereby agrees to include in any such Contract a provision requiring such counterparty to agree to the same requirement for records retention, inspection and audit rights as set forth in this Paragraph 16.11.
5. Pursuant to Florida Statutes any part of the Work which include building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, water treatment facility, or other structure, must be maintained in a confidential manner and secured by Design/Builder and parties associated with projects assigned under the Contract. Review by any unauthorized provider or outside/third party not performing work necessary for the assigned work order is prohibited. This Paragraph shall survive the expiration or termination of this Contract.
6. Design/Builder and parties associated with projects assigned under the Contract shall complete, comply with and furnish to Owner a signed copy of a plan and specification request form, prior to obtaining such documents for bidding purposes.

16.12 Public Access

- A. Compliance with Laws: The Design/Builder, its employees, subcontractors, and agents, shall comply with all applicable federal, state, and local laws, regulations, and requirements relating to the performance of this Contract including those pertaining to safety, labor and unemployment. The District undertakes no duty to ensure such compliance, but will attempt to advise the Contractor, upon request, as to any such laws of which it has present knowledge. The Contractor is responsible for the compliance of its subcontractors with this section.
- B. Recordkeeping and Public Access: Under Florida Statutes 119.0701(3)(a) [2016], a request to inspect or copy public records relating to a District contract for services must be made directly to the District. In addition, Contractor must: (1) keep and maintain public records required by the District in order to perform the service; (2) upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the District; and (4) transfer, at no cost, to the District, all public records in possession of the

Contractor or keep and maintain public records required by the District to perform the service. If the Contractor transfers all public records to the District upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the District upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District. At the conclusion of the Contract with the District, Contractor shall provide all applicable records associated with this Contract on electronic media (CD-ROM or USB flash drive).

- C. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER (561) 682-2729, EMAIL ADDRESS PUBLICRECORDS@SFWMD.GOV AND MAILING ADDRESS: 3301 GUN CLUB ROAD, WEST PALM BEACH, FL 33406.**

- D. Trade Secrets

Under Florida laws including Sections 119.071(1)(f) and 1004.22 Florida Statutes, trade secrets are exempt from disclosure as a public record. If a records request is made of the DISTRICT for public disclosure of trade secrets owned by or licensed to the CONTRACTOR and the CONTRACTOR has clearly marked the record as "Trade Secret – Exempt from Public Disclosure" the DISTRICT will advise the Contractor of such request. In the event a dispute arises regarding the records request, CONTRACTOR has the sole burden and responsibility to take all legal measures necessary to protect the record from disclosure. This Article shall survive the expiration or termination of this CONTRACT.

16.13 Suspension of Design/Builder for Material Breach of Owner Contracts

- A. Pursuant to rule 40E-7.2 F.A.C., Owner's governing board, upon recommendation by the director of procurement, may temporarily or permanently suspend contractors from doing business with Owner whenever a contractor materially breaches its contract with Owner. Consequently, any bid submitted by a bidder shall not be considered where either the bidder or its proposed subcontractors are included on Owner's suspension list.
- B. Prior to Final Acceptance, Design/Builder shall have an ongoing obligation to fully inform Owner by providing immediate written notice of any suspension or debarment proceedings that it, or any of its affiliates are presently involved with or were involved with, including any with federal, state or local agencies.
- C. Design/Builder shall have an ongoing obligation to fully inform Owner by providing immediate written notice of any prosecution, conviction, or finding of guilt of Design/Builder, any director, or officer of the contractor or any of its affiliates, by a federal, state or local tribunal or other public agency.

16.14 Small Business Enterprise (SBE) Utilization

- A. *SBE Utilization.* Owner has implemented a small business enterprise program as part of Owner's competitive solicitation and contracting activity in accordance with Owner Rule 40E-7.668-.678, F.A.C. ("SBE rule"). The purpose of the program is to spur economic development and support small businesses, including women-owned and minority-owned businesses, to successfully expand in the marketplace.
- B. As consideration for being awarded this Contract, Design/Builder shall maintain the level of SBE participation agreed upon and as indicated in the Agreement.

- C. Design/Builder shall take all necessary steps to achieve and maintain its SBE utilization commitment. At any time during the term of this Contract, Owner may request information on the SBE status of Design/Builder and/or any and all of its Design Subconsultants and Subcontractor(s). Design/Builder shall notify Owner immediately of any change in the status of Design/Builder or any of its Design Subconsultants or Subcontractor(s) that could affect Design/Builder's SBE status or Design/Builder's ability to comply with the SBE requirements of this Contract, including but not limited to gross revenue and licensing.
- D. *SBE Utilization Plan.* Design/Builder shall identify all SBEs which will be utilized as Design Subconsultants or Subcontractors. Design/Builder, as the prime, and each SBE shall be listed in the utilization plan and submitted to Owner. The listing of the SBE's in the utilization plan shall constitute Design/Builder's representation to Owner that the SBE is technically and financially qualified and available to perform the assigned Work.

The SBE Utilization Plan shall be submitted at each of the two phases of work, (1) Preliminary (Phase One) Services and (2) Final Design and Construction. The Utilization Plan shall consist of the following Owner forms and information as submitted by Design/Builder in its Proposal and included as Exhibit 9.2(b) and 9.2 (c) to the Agreement:

1. Small Business Enterprise Subcontractor Participation Schedule (Form 0956).
2. Statement of Intent to Perform as a Small Business Enterprise Subcontractor (Form 0957).

Items (1) through (2) above are hereinafter collectively referred to as the "SBE plan".

- E. *Substitution.* Design/Builder must notify the Owner's Small Business Enterprise staff prior to substituting or adding any SBE subcontractor for any reason, or otherwise modifying the SBE plan as defined above. Design/Builder must submit to Owner an amended version of the following:

1. Small Business Enterprise Subcontractor Revised Participation Schedule (Form No. 1373) attached hereto as Exhibit "E2" and made a part of this Contract.
2. Statement of Intent to Perform as a Small Business Enterprise Subcontractor (Form No. 0957) for **each** firm that is substituted or added.

- F. *Utilization Reporting.* In an effort to monitor the achievement of the SBE goal, Design/Builder agrees to submit a completed Small Business Enterprise Subcontractor Utilization Report form, attached to the Agreement as Exhibit 9.2(d). The timing of these reports must coincide with invoice submission. In addition to the utilization report form, Design/Builder shall also provide proof of payment made to each SBE which shall take the form of cancelled checks or check register photocopies, or any other valid form of documentation that serves to substantiate all payment amounts included in the utilization report. Design/Builder understands that each SBE utilized for the Contract must be certified by Owner. Design/Builder shall submit a completed Small Business Enterprise Final Subcontractor Utilization Report form, attached hereto and included with Exhibit 9(d) at the time a final invoice is submitted. These utilization reports must be submitted to Owner project manager at the location as indicated on the cover page of the contract.

- G. *Compliance.* Owner shall monitor and evaluate compliance with the provisions of the SBE Rule. During the term of the Contract, Design/Builder shall comply with the SBE Utilization Plan. Compliance shall include tasks and proportionate dollar amounts throughout the term of the contract, including amendments, change orders, and work orders. Design/Builder shall maintain the level of SBE utilization as established in Design/Builder's SBE Utilization Plan and as indicated in the Agreement. Failure to comply with the SBE requirements of this Contract will be considered a material breach of contract and may further result in suspension or debarment pursuant to Owner Rule 40E-7.218, F.A.C.

- H. To ensure that all SBE requirements under this Contract are met, Design/Builder's SBE efforts throughout the performance of the Contract shall be reviewed by Owner. Design/Builder shall advise Owner of any situation in which regularly scheduled payments are not made to any SBE.
- I. *Prohibition of Not-To-Compete Agreements.* Design/Builder is prohibited from entering into any agreements with an SBE in which the SBE has agreed not to provide subcontracting quotations to other respondents or potential respondents.

16.15 Standards of Compliance

- A. Design/Builder hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Contract. Design/Builder shall take all measures necessary to effectuate these assurances.
- B. Design/Builder warrants that it has not employed or retained any person, other than a bona fide employee working solely for Design/Builder, to solicit or secure this Contract. Further, Design/Builder warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for Design/Builder, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Contract. For breach of this provision, Owner may terminate this Contract without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- C. Design/Builder, by its execution of this Contract, acknowledges and attests that neither it, nor any DB-Related Entity is a convicted vendor or has been placed on the discriminatory vendor list. If Design/Builder or any affiliate of Design/Builder has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than thirty-six (36) months has passed since that person was placed on the convicted vendor or discriminatory vendor list. Design/Builder further understands and accepts that this Contract shall be either voidable by Owner or subject to immediate termination by Owner in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. Owner, in the event of such termination, shall not incur any liability to Design/Builder for any Work or materials furnished.
- D. Design/Builder, by its execution of this Contract, acknowledges and attests that neither it, nor any DB-Related Entity, is included on the list of specially designated nationals and blocked persons (SDN list) which is administered by the U.S. Department of Treasury, Office of Foreign Assets Control. Design/Builder further understands and accepts that this Contract shall be either void by Owner or subject to immediate termination by Owner in the event there is any misrepresentation. Owner, in the event of such termination, shall not incur any liability to Design/Builder for any Work or materials furnished.
- E. Pursuant to Section 216.347, F.S., Design/Builder is prohibited from the expenditure of any funds under this Contract to lobby the legislature, the judicial branch or another state agency.

16.16 Design/Builder is an Independent Contractor

- A. Design/Builder shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this Contract shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this Contract. Both parties are free to enter into contracts with other parties for similar services. Owner shall not pay Design/Builder staff any direct remuneration, expense reimbursement or compensation of any kind and Design/Builder's staff shall not be eligible for any benefit programs Owner offers to its employees. All benefits available to Design/Builder's staff shall be exclusively provided by Design/Builder. Design/Builder shall provide all billing, collection, payroll services and tax withholding, among other things, for all Design/Builder staff performing services under this Contract.

16.17 No Right to Assign

- A. Design/Builder shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of Owner. Any attempted assignment in violation of this Paragraph shall be null and void.

16.18 No Right to Pledge

- A. Design/Builder shall not pledge Owner's credit or make Owner a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

16.19 No Right to Employment Benefits

- A. Design/Builder expressly understands and agrees that Design/Builder, its officers, agents, and employees, are not entitled to any employment benefits from Owner. Design/Builder expressly and voluntarily waives and agrees not to make any claim to participate in any of Owner's employee benefits or benefit plans should Design/Builder or any of its officers, agents, or employees be adjudicated for any reason to be an employee of Owner.

16.20 Entire Agreement

- A. The Contract Documents states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. Design/Builder recognizes that any representations, statements or negotiations made by Owner staff or Owner consultants do not suffice to legally bind Owner in a contractual relationship unless they have been reduced to writing, approved, and signed by an authorized Owner representative. This Contract shall, as of the Effective Date of the Agreement, bind the parties, their assigns, and successors in interest.

16.21 Void or Unenforceable Provisions

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

END OF DOCUMENT

SECTION 00800 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the General Conditions of the Contract between Owner and Design/Builder and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions.

SC-5.04 Design/Builder's Liability Insurance

The insurance requirements stipulated in Paragraph 5.04 of the General Conditions are the minimum coverage and limits, greater where required by Laws and Regulations. Coverage requirements shall extend to all employees and subcontractors; Prime firm is responsible.

1. **Workers' Compensation and Employer's Liability Insurance.** Design/Builder shall maintain Workers' Compensation insurance as required per Florida Statute for all locations where the Work is to be performed. Limits shall be no less than \$100,000 per occurrence, \$500,000 general aggregate and \$100,000 disease, which shall cover all of Design/Builder's employees engaged in the Work.

2. **Commercial General Liability Comprehensive Coverage Insurance.** Design/Builder shall maintain Commercial General Liability insurance of at least \$2,000,000 per occurrence, \$3,000,000 general aggregate or CSL, and \$3,000,000 for Products-Completed Operations. Contractual Liability, Broad Form Property Damage and Personal Injury Liability, Premises/Operations, Independent Design/Builder Liability insurance must include Explosion, Collapse and Underground Hazards (XCU) Coverage, and Hostile Fire Liability coverage. Such insurance shall eliminate the Silica exclusion for all cement/concrete construction and pre-made cement/concrete materials used in the performance of the Work.

3. **Automobile Liability Insurance.** Design/Builder shall maintain Automobile Liability insurance providing coverage for claims of bodily injury and property damage arising from the ownership, maintenance or use of all owned/leased, non-owned and hired motor vehicles used in the performance of the

Work – "Any Auto" coverage. Such policy shall provide coverage of at least \$1,000,000 combined single limit of liability for bodily injury and property damage. If Design/Builder is self-performing waste hauling, coverage shall include pollution liability arising from pollutions that are, or that are contained in, any property that is being transported or towed by, handled, or handled for movement into, onto or from the covered auto or otherwise form auto overturn and collision. If Design/Builder is not self-performing waste hauling, the requirement for Transporter's Auto Pollution coverage shall be flowed down to the waste hauler/subcontractor. Further, automobile insurance must meet the requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 and include the standard MCS-90 endorsement.

4. **Umbrella or Excess Liability Insurance.** Design/Builder shall maintain Umbrella/Excess Liability Insurance covering claims in excess of the underlying insurance coverage and limits described herein, (but only as to the Employer's Liability coverage) General Liability and Automobile Liability in the amount of \$3,000,000 combined single limit. Terms should follow the underlying 5-year products completed operations hazard extension required of the Commercial General Liability Insurance.

5. **Environmental Impairment Liability.** Design/Builder shall maintain a Pollution Liability policy. Such policy shall provide coverage for not less than \$2,000,000 each claim, \$2,000,000, annual aggregate. If the policy is written on a claims-made basis, the policy retroactive date must be no later than the notice proceed date of this Contract and it shall be maintained in force for three (3) years following the date of Final Acceptance either by renewal of an annual policy or purchase of an extended reporting period.

6. **Architects/Engineers Professional Liability Insurance.** Design/Builder shall maintain Architects/Engineers Professional Liability insurance, providing for acts, errors, or omissions arising in connection with the Work. Such policy shall provide coverage for not less than \$2,000,000 each loss. If the policy is written on a claims-made basis, the policy retroactive date must be no later than the notice proceed date of this Contract and it shall be maintained in force for three (3) years following the date of Final Acceptance either by renewal of an annual policy or purchase of an extended reporting period. South Florida Water Management District must be named as an "Additional Insured" except for Workers' Compensation and Employer's Liability, Professional Liability and Inland Marine. Contractor must use the following ISO form(s),

or others approved by District Risk Management: Additional Insured Endorsement Form(s) CG2010, CG2037. Must use ISO Waiver of Subrogation Endorsement CG2404 except for Professional Liability and Inland Marine. Endorsements must be listed on the certificate.

SC-5.06 Property Insurance

The deductible amounts under the Property Insurance procured by Design/Builder under Paragraph 5.06 of the General Conditions of Contract shall be no greater than \$100,000 per loss. Additionally, equipment, installation floater or policy coverage for equipment, materials and installation is required in the amount of no less than \$500,000.

**EXHIBITS
TO AGREEMENT BETWEEN
OWNER AND DESIGN/BUILDER
FOR
DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT**

The Exhibits listed on this cover page shall be Exhibits to Agreement between the Owner and Design/Builder:

1. Exhibit 1.1.1 Design/Builder's Preliminary (Phase One) Services (Attachment B)
2. Exhibit 1.1.1(a) List of Reference Documents (Attachment D)
3. Exhibit 3.2.1 Preliminary (Phase One) Services Milestones
4. Exhibit 4.1 Compensation for Preliminary (Phase One) Services
5. Exhibit 7.1.4 Project Design Criteria (Attachment E)
6. Exhibit 9.2(d) Contract Administration and Related Forms

EXHIBIT 3.2.1
TO AGREEMENT BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
_____ **(DESIGN/BUILDER)**

FOR
DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT
PRELIMINARY (PHASE ONE) SERVICES MILESTONES

District Governing Board Approval	5/13/2021
Effective Date of the Agreement	
Notice to Proceed	
Kickoff Meeting and Initial Conference	
Submit Project Work Plan (Draft)	
Begin Preparation of Design Documentation Report ⁽¹⁾	
Submit Design Documentation Report and Cost Model (Draft)	
District Provides Comments on Design Documentation Report	
Complete Design Documentation Report and Cost Model	
Start Preliminary Design	
Submit Preliminary Design and Cost Model	
District Provides Comments on Preliminary Design and Cost Model	
Complete Value Engineering Review of Preliminary Design	
Start Intermediate Design	
Complete Intermediate Design and Cost Model	
District Provides Comments on Intermediate Design and Cost Model	
Final Intermediate Design Documents	
Design/Build Contract Notice to Proceed	

(1) Requires written approval of District to proceed.

Milestone dates will be determined following contract negotiations.

EXHIBIT 4.1
TO AGREEMENT BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
(DESIGN/BUILDER)

DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT
COMPENSATION FOR PRELIMINARY (PHASE ONE) SERVICES

In accordance with the deliverables required to be completed by the Design/Builder as described in Exhibit 1.1.1 – Design/Builder’s Preliminary (Phase One) Services, the Design/Builder shall be compensated on a fixed price basis in the fixed amounts for such Task 1 – 8 Deliverables. Payment shall be made by District to Design/Builder following receipt and acceptance of deliverable by the District in accordance with Article 5 of the Agreement.

For Deliverable 9 - Allowances, payment shall be made on a Time and Materials basis in accordance with Article 5 of the Agreement. The Design/Builder is authorized to bill on a monthly basis for allowable costs incurred during the previous month. Invoices shall include all labor hours and labor rates. All invoices shall be substantiated by adequate supporting documentation for hours and expenses incurred.

The schedule for deliverables to be completed by the Design/Builder is described in Exhibit 3.2.1 – Preliminary (Phase One) Services Milestones.

The suggested deliverables schedule may be modified in the Respondent’s Project Approach.

Task No.	DELIVERABLE	Total Not-To-Exceed Payment Amount
Task 1 – Preliminary (Phase One) Services Initiation (Fixed Price)		
1.1	Project Kickoff Meeting	
1.2	Project Work Plan	
Task 2 – Project Coordination and Management (Fixed Price)		
2.1	Monthly Progress Reports and Meetings	
2.2	Change Management (Decision Log)	
2.3	Quality Management	
2.4	Project Management	
Task 3 – Study and Report Phase (Fixed Price)		
3.1	Complete Design Documentation Report and Cost Model	
Task 4 – Technical Exhibit Phase (Fixed Price)		
4.1	Complete Preliminary Design and Cost Model	
4.2	Complete Intermediate Design and Cost Model	
Task 5 – Quality Assurance/Control (Fixed Price)		
5.1	Quality Management Reviews (Certificate of Compliance)	
Task 6 – Value Engineering Review (Fixed Price)		
6.1	Complete Value Engineering Review of Preliminary Design	
Task 7 – Permitting Assistance (Fixed Price)		
7.1	Design/Builder Permitting Plan	
7.2	Permit Applications Prepared during Preliminary (Phase One) Services	
Task 8 – Proposal Phase (Fixed Price)		
8.1	Cost Proposal	
Deliverable 9- Allowances (Time and Materials)		
A.1	Permit Fees	

ATTACHMENT “D”
LIST OF REFERENCE DOCUMENTS
EXHIBIT 1.1.1(a)

Any documents that may be provided by the District are only for the purpose of obtaining Responses for the Project and does not confer a license or grant for any other use.

Betts, A., P. Jones, S. Ollis, S. Olson, X. Pernet, S. Sculley, Z. Welch, and J. Zhang. 2020. Appendix 8A-1: Lake Okeechobee Watershed Protection Plan 2020 Update. In: *2020 South Florida Environmental Report – Volume I*, South Florida Water Management District, West Palm Beach, FL.

https://apps.sfwmd.gov/sfwmd/SFER/2020_sfer_final/v1/appendices/v1_app8a-1.pdf

FDEP. 2001. *Total Maximum Daily Load for Total Phosphorus, Lake Okeechobee, Florida*. Florida Department of Environmental Protection, Tallahassee, FL. August 2001.

https://floridadep.gov/sites/default/files/Lake_O_TMDL_Final.pdf

FDEP. 2020. *Lake Okeechobee Basin Management Action Plan*. Prepared by the Florida Department of Environmental Protection, Tallahassee, FL, with participation from the Lake Okeechobee Stakeholders. February 2020.

http://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf

SFWMD. 2016. *South Florida Water Management District, Engineering Submittal Requirements, Engineering and Construction Bureau*. Final version, updated on March 22, 2016. (attached hereto)

Welch, Z., J. Zhang, D. Taylor, and S. Olson. 2021. Chapter 8B: Lake Okeechobee Watershed Protection Plan Annual Progress Report. In: *2021 South Florida Environmental Report – Volume I*, South Florida Water Management District, West Palm Beach, FL. https://apps.sfwmd.gov/sfwmd/SFER/2021_sfer_final/v1/chapters/v1_ch8b.pdf

**ATTACHMENT “E”
EXHIBIT 7.1.4**

**TO AGREEMENT BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
(DESIGN/BUILDER)
FOR
DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT
PROJECT DESIGN CRITERIA**

1.0 INTRODUCTION AND PURPOSE

The Project consists of the design and construction of a new stormwater treatment facility in the S-154 Basin, S-154C Basin and/or S-133 Basin in the Taylor Creek/Nubbin Slough Subwatershed to maximize capturing stormwater runoff and reducing nutrient loading primarily from the S-154 and S-154C basins (and secondarily from the S-133 Basin). The Project scope, design criteria, and technical requirements for the new facility shall be in accordance with the Project Design Criteria listed herein. While the intent of this section is to provide general guidelines to the Design/Builder (D/B) for the design and construction of the Project facility, good judgment and collaboration with the District is required by the Design/Builder. The following design criteria shall be determined prior to contract award and include but not be limited to:

- Applicable Codes and Standards
- Technical Requirements
- Design Constraints
- Cost Model Structure
- Project Schedule
- Permitting Requirements

The D/B submittal requirements for this Project shall contain all the applicable submittal requirements as described in the *South Florida Water Management District Engineering Submittal Requirements, Engineering and Construction Bureau* (latest version).

2.0 PROJECT OVERVIEW

2.1 Project Drivers

Passed in 2000, the Lake Okeechobee Protection Act (LOPA) (Section 373.4595, Florida Statutes [F.S.]) established a restoration and protection program for the lake. A year later, the Florida Department of Environmental Protection (FDEP) established a total maximum daily load (TMDL) for total phosphorus (TP) for Lake Okeechobee (FDEP 2001). In 2007, the Florida Legislature amended LOPA—currently known as the Northern Everglades and Estuaries Protection Program (NEEPP)—to expand restoration efforts to include the Caloosahatchee and the St. Lucie rivers and estuaries (Figure 1). Overall, the NEEPP legislative intent is to protect and restore surface water resources and achieve and maintain compliance with water quality standards in these watersheds and downstream receiving waters, through a phased, comprehensive, and innovative protection program that includes long-term solutions based upon TMDLs established in accordance with Section 403.067, F.S.

The Lake Okeechobee BMAP was first adopted by FDEP in December 2014 to implement the TMDL for total phosphorus in the watershed. Section 373.4595, F.S., requires the NEEPP BMAPs to include milestones for implementation and water quality improvement, and associated water quality monitoring components sufficient to evaluate whether reasonable progress is being achieved over time. These statutory requirements and any additional recommendations are included in the 5-Year Reviews for the BMAPs (completed at 5-year increments determined by the month and year of initial BMAP adoption) and have been adopted into the updated BMAPs. The *5-Year Review for the Lake Okeechobee Basin Management Action Plan* was completed in December 2019. This 5-Year Review was incorporated into the Lake

Okeechobee BMAP update in 2020 (FDEP 2020) in accordance with Executive Order 19-12, Section 1-C, which required an update for each of the NEEPP BMAPs within one year of the executed order.

Pursuant to Section 373.4595, F.S., Watershed Protection Plans (WPPs) have been developed to protect and restore surface water resources of the Northern Everglades including Lake Okeechobee, the Caloosahatchee and St. Lucie estuaries, and their watersheds. In support of the BMAPs adopted by FDEP and as directed by NEEPP, SFWMD, in cooperation with FDEP and FDACS, developed WPPs for each of the watersheds. These plans contain an integrated management strategy that is based on implementation of nutrient source control programs, including BMPs at the parcel level, projects at the subbasin and regional levels, and other management measures necessary to improve water quality in the watersheds. In accordance with NEEPP, the five-year Lake Okeechobee Watershed Protection Plan (LOWPP) Update was published in the 2020 SFER – Volume I, Appendix 8A-1 (Betts et al. 2020) to ensure that it is consistent with the state’s adopted Lake Okeechobee BMAP. Most recently, in WY2020, SFWMD conducted an annual WPP review for the Lake Okeechobee Watershed to maintain transparency and accountability in the BMAP process and for assisting to progressively move towards the achievement of TMDLs, as presented in the 2021 SFER – Volume I, Chapter 8B (Welch et al. 2021).

To expeditiously carry out the objectives of NEEPP, the District is seeking to expand opportunities for implementing a regional watershed Project to reduce nutrient loads in stormwater runoff to the regional system, particularly in the Lower Kissimmee Basin, and ultimately discharging to and contributing to the impairment of the receiving water bodies including Lake Okeechobee. The Project is intended to complement the water management and nutrient load reductions achieved from existing or anticipated from future NEEPP watershed projects.

2.2 Project Location

The Project shall be situated in the S-154 Basin, S-154C Basin and/or S-133 Basin in the Taylor Creek/Nubbin Slough Subwatershed to maximize capturing stormwater runoff and reducing nutrient loading from the S-154 and S-154C basins. This area is located immediately north of Lake Okeechobee. Figure 2 shows the general location of the proposed Project area.

2.3 Project Objectives

The Project shall have a regional impact and shall address nutrient load reductions towards meeting the FDEP’s BMAP and TMDL goals for Lake Okeechobee (FDEP, 2020). The primary objective of the Project is to maximize nutrient (primarily TP) load reductions from the S-154 and S-154C basins (and secondarily from the S-133 Basin) which discharge into the northern portion of Lake Okeechobee. The S-154 Basin is considered a priority under the NEEPP statute because of the historically high TP loading from the basin and the S-154C Basin typically has high unit area TP loading compared to other basins in the Lake Okeechobee Watershed. As a secondary objective, the Project shall also include a water storage/treatment component to assist in retaining/treating surface water directly from the lake.

The Project types to be considered shall include (1) a Stormwater Treatment Area (STA) facility, or (2) a storage facility with water quality treatment features. Stand-alone innovative treatment technologies (such as chemical treatment) shall not be considered for this Project. However, an innovative treatment technology in conjunction with an STA or a storage facility (such as hybrid treatment component) may be considered as an enhanced water quality component. Project shall demonstrate that the proposed treatment facility will remain adequately hydrated (i.e., minimum 6-inch water depth) on a year-round basis once operational.

Specifically, the reduction targets for the Project are as follows:

- Provide a long-term average TP load reduction of 13.0 to 15.0 metric tons per year (t/yr) evaluated at the project discharge location.
- No specific total nitrogen (TN) reduction goals are identified but proposed TN reductions are desirable.
- No specific water storage goals are identified but are also desirable.

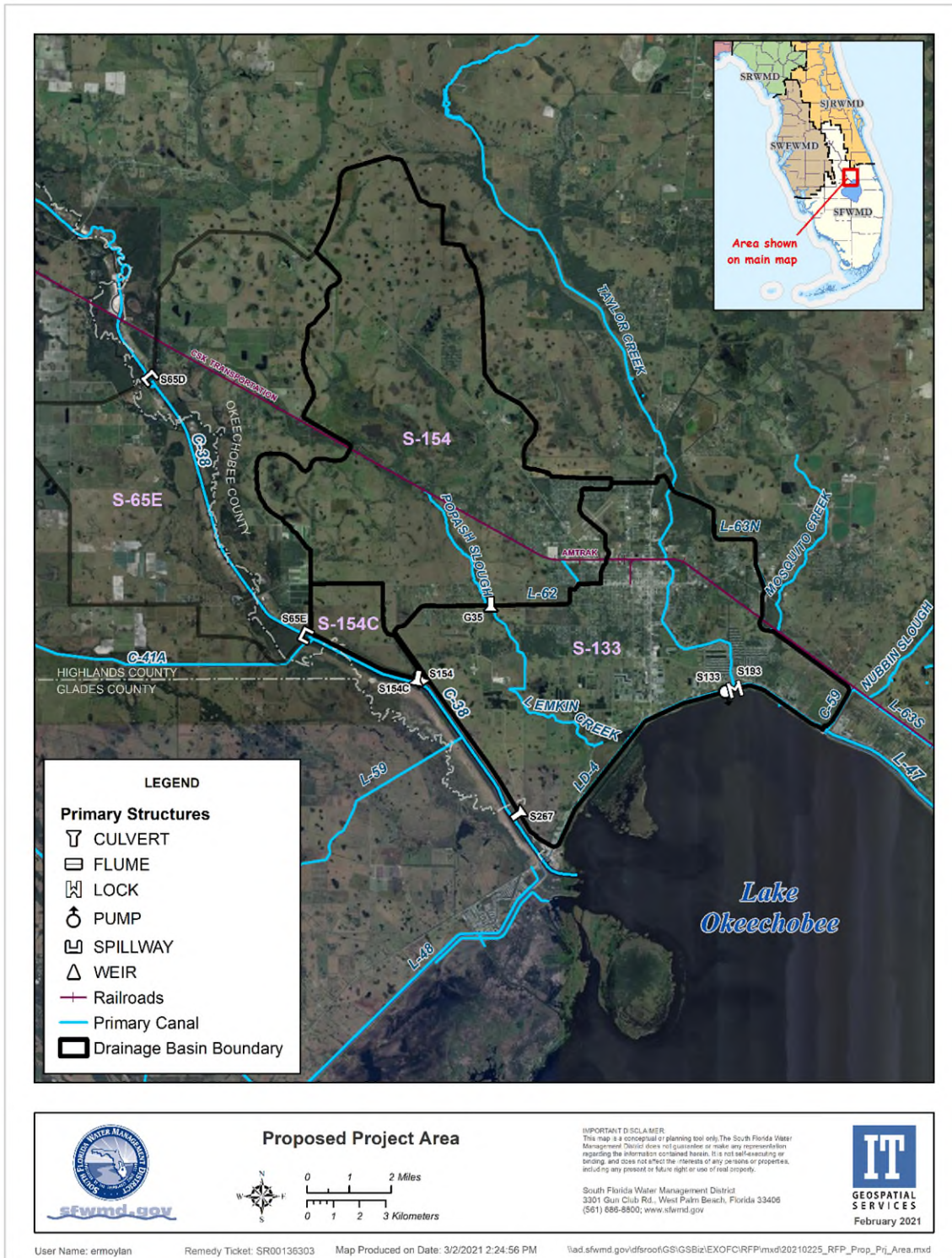


Figure 2. Proposed Project Location

ATTACHMENT “F”
FORMS FOR AFFIRMATION OF COMPLIANCE

Respondent must include Forms 1 – 6 below with its response in Package 1.

1. Compliance Disclosure Form
2. Statement of No Suspension Form
3. SBE Subcontractor Participation Schedule
4. Statement of Intent to Perform as a SBE Subcontractor
5. Insurance Requirements Checklist
6. Project Reference Form

Forms 7 – 11 shall be submitted prior to execution of the Phase II Stipulated Price Agreement.

7. Contractor’s Affidavit, Work Involving District Facilities or Equipment
8. Trench Safety Act Section 553.60, Florida Statute
9. Common Law Performance Bond
10. Statutory Payment Bond
11. Affidavit for Surety Company

COMPLIANCE DISCLOSURE FORM
SOLICITATION NO.: 6000001215
Page 3 of 3

The statements completed below are material representations of fact upon which reliance will be placed when making an award. If it is later determined that the Respondent knowingly rendered an erroneous statement, certification or representation in this document, the District may terminate the contract resulting from this solicitation for default and the District may suspend or debar the Respondent or pursue any other available remedies.

A. STATEMENT OF BUSINESS ORGANIZATION

The Respondent, by completing the information requested below, represents that it operates as follows:

Legal Business Name (Respondent):										
If applicable, different business name under which the Respondent is operating for this Response:										
If applicable, previous business names under which the Respondent has operated within the past three (3) years from Response submission:										
Mailing Address:										
Remittance Address:										
Type of Organization:	<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Not for Profit									
If a corporation, provide date/state of incorporation	Date:	State:								
If an out-of-state corporation, are you authorized to do business in the State of Florida?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Submitted registration documentation								
Telephone Number:	()	Fax # ()								
Email Address:										
F.E.I.D. #:										
Key Contact Name(s)/Telephone #(s):	Name(s): Telephone #(s): ()									
State, County or other Public Agencies in which your organization is qualified to perform work by some means of prequalification: <table style="width: 100%; border: none;"> <tr> <td style="width: 25%; border-bottom: 1px solid black;"><u>Agency</u></td> <td style="width: 25%; border-bottom: 1px solid black;"><u>Trade in which Qualified</u></td> <td style="width: 25%; border-bottom: 1px solid black;"><u>Expiration Date</u></td> <td style="width: 25%; border-bottom: 1px solid black;"><u>Approved</u></td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Amount</u></td> <td></td> <td></td> <td></td> </tr> </table>			<u>Agency</u>	<u>Trade in which Qualified</u>	<u>Expiration Date</u>	<u>Approved</u>	<u>Amount</u>			
<u>Agency</u>	<u>Trade in which Qualified</u>	<u>Expiration Date</u>	<u>Approved</u>							
<u>Amount</u>										

COMPLIANCE DISCLOSURE FORM
SOLICITATION NO.: 6000001215
Page 2 of 3

B. STATEMENTS OF MATERIAL REPRESENTATION

The Respondent, by signing below, hereby certifies to the South Florida Water Management District (District) that neither the Respondent, nor its agents, principals and proposed subconsultants or subcontractors:

1. Is temporarily or permanently on the District's Suspension List.
2. Is temporarily or permanently debarred from participating in public contract lettings in Florida or any other state.
3. Is now or in the past 36 months been on the State of Florida's Convicted Vendor List/Discriminatory Vendor List.
4. Is now on the U.S. Department of Treasury's Specially Designated Nationals and Blocked Persons (SDN List).
5. Has lobbied, either individually or collectively, the District's Governing Board members, District appointed individuals, or other District employees for any purpose in connection with this solicitation which may influence the outcome of the selection process.
6. Is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes.
7. Has employed or retained any person or company to solicit or obtain a contract resulting from this solicitation and has not paid or agreed to pay any person or company employed or retained to solicit or obtain a contract resulting from this solicitation any commission, percentage, brokerage or other fee contingent upon or resulting from contract award.
8. Respondent represents that proprietary information, if any, is identified on the following pages of this Application:

Page	Page	Page

C. NONCOLLUSION CERTIFICATION

The Respondent hereby represents and certifies that all statements of fact in the Response to the solicitation are true and that its Response to the solicitation was not made in the interest of or on behalf of any undisclosed person, partnership, company association, organization nor corporation. Respondent further certifies that the Response to the solicitation has been prepared independently without collusion, consultation, communication or written agreement with any undisclosed person, partnership, company, association, organization or corporation and has not colluded, conspired, connived or agreed, directly or indirectly, to commit a fraudulent, deceitful, unlawful or wrongful act, or any act which may result in an unfair competitive advantage for one or more Respondents to the solicitation over other Respondents to the solicitation. Respondent certifies that no more than one (1) Response to the solicitation as Prime Contractor for the Project described in this solicitation will be submitted from the Respondent under the same or a different name and that Respondent has no financial interest in another Respondent for the same Project. The District will prosecute any violation of this representation to the fullest extent of the law. Conviction for the commission of any fraud or act of collusion in connection with any sale, bid quotation, proposal or other act incidental to doing business with the South Florida Water Management District may result in suspension or permanent debarment if the Respondent is placed on the State's Convicted Vendor List. In addition to any other rights or remedies it may have, the District reserves the right to terminate any existing contracts that a Respondent has with the District based on the commission of any of the above wrongful acts. These rights may be exercised at any time whenever the commission of any of the above wrongful acts comes to the District's attention even if this occurs after award of a contract to the Respondent.

We authorize any public official, architect, engineer, surety company or agency, bank, material or equipment supplier or any person, firm or corporation to furnish any information in connection with this Compliance Disclosure form which may be requested by the District in order to verify the information that is presented in this Compliance Disclosure form or to attest to our professional standing and reputation.

COMPLIANCE DISCLOSURE FORM
SOLICITATION NO.: 6000001215
Page 3 of 3

Respondent acknowledges and understands that that all pages this Compliance Disclosure form must be complete, attached to the response and timely filed and signed by a representative with authority to bind the firm or the Respondent will be deemed non-responsive to the requirements of this solicitation.

Respondent further commits to the Small Business Enterprise goal of the contract.

Signed by and on behalf of _____ {insert firm name}

Authorized Representative Signature

Date

Statement of No Suspension

Solicitation No. 6000001215

The respondent signifies, by signing below, to the best of its knowledge and belief, that –

1. The respondent and/or any of its Principals:

(a) Are (), are not () presently temporarily suspended or declared ineligible for award of contracts by the South Florida Water Management District (District);

(b) Are (), are not () presently permanently suspended or declared ineligible for award of contracts by the District;

(c) Are (), are not () presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal agency; and

(d) Are (), are not () aware of any proposed team member (subcontractor or subconsultant) that is presently temporarily or permanently suspended or declared ineligible for award of contracts by the District.

2. “Principals” for the purposes of this statement, are defined as sole proprietor, partner, owner, officer or director of a contracting entity.

3. The respondent shall provide immediate written notification to the Procurement Bureau Chief if, at any time prior to contract award, the respondent learns that its statement was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. This statement is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the respondent knowingly rendered an erroneous statement, in addition to other remedies available to the District, the Procurement Bureau Chief may terminate the contract resulting from this solicitation for default.

Name of Respondent

Signature of Authorized Individual

Date

EXHIBIT 9.2 (b)

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SMALL BUSINESS ENTERPRISE SUBCONTRACTOR PARTICIPATION SCHEDULE

Contract/ Solicitation No.	6000001215	Date	
Project Name & Location	Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project	Project	
Bidder/Proposer			
Address			
Contact Person		Email Address	Telephone No.

ORGANIZATION STATUS

Business Association	Business Name	Business Address	Business Phone#	Work to be Performed		
				Describe Type of Work to be Performed	% of Work	Dollar Amount
Prime Bidder/Proposer						
Non SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
					100%	\$0.00
						\$0.00

The listing of a Small Business Enterprise (SBE) shall constitute a representation by the bidder/proposer to the District that the bidder/proposer believes such SBE to be technically and financially qualified and available to perform the work described. Bidders/Proposers are advised that the information contained herein may be verified.

Bidder/Proposer Signature

Title

Date

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

STATEMENT OF INTENT TO PERFORM AS A SMALL BUSINESS ENTERPRISE SUBCONTRACTOR

Solicitation No. or Contract No. **6000001215**

A signed "Statement of Intent to Perform as a SBE Subcontractor" must be completed by the owner or authorized principal of each SBE firm listed in the "SBE Subcontractor Participation Schedule" Form No. 0956.

_____ agrees to perform work on the above contract as (check one):
(Legal Business Name of SBE Subcontractor as it appears
on the Florida Division of Corporations Website, inclusive of dba)

☐ a partnership; ☐ a corporation; ☐ an individual; ☐ a joint venture

SBE Subcontractor FEIN: _____

SBE Subcontractor Certification Expiration Date: _____

SBE Subcontractor

The SBE Subcontractor will enter into a formal agreement, conditioned upon the Bidder/Proposer executing a contract with the

District for the work with _____ .
(Name of Bidder/Proposer)

Item No.	Type of Work	Agreed Price (For CCNA, Agreed Percentage)	% of Work
1		\$	%
2		\$	%
3		\$	%
Total Value of Work		\$	%

*Please include a copy of the District's SBE Certification Letter for the SBE Subcontractor.

SBE Subcontractor Signature

Title

Date

Incorporated by reference in subsections
40E-7.670(2)(a), F.A.C.

Form 0957 (08/29/2013)

 sfwmd.gov

EXHIBIT H
SFWMD INSURANCE REQUIREMENTS CHECKLIST

TYPE OF COVERAGE		MINIMUM COVERAGE LIMITS	
Must be Included if marked "X"	Commercial General Liability Comprehensive Coverage/ Other Coverage Endorsements	Bodily Injury & Property Damage <u>\$2,000,000. Per Occurrence</u> <u>\$3,000,000. General Aggregate or CSL</u> <u>\$3,000,000. Products – Comp/Op Aggregate</u>	
	(Please note special instructions →)	Special instructions: Silica exclusion must be eliminated from the policy IF THE PROJECT USES cement/ concrete construction or pre-made cement/ concrete materials in the performance of the contract. Prior to commencement of any activities or access to District property or equipment under this agreement, Contractor is required to provide District with an acceptable certificate of insurance, as well as an additional insured endorsement and a waiver of subrogation endorsement. Coverage and limits must be in accordance with these requirements, be no more restrictive than the most recent ISO forms and the District must be listed as a certificate holder. Coverage requirements shall extend to all employees and subcontractors; Prime firm is responsible.	
X	Occurrence Form		
X	Premises Operations		
X	Delete XCU Exclusion (if applied)		
X	Products Completed		
X	Contractual		
X	Independent Contractors		
X	Broad Form Property		
X	Personal Injury		
	Blasting		
	Demolition		
X	Watercraft – by exception for Non-Owned or Hull/ P&I (if used in project)		
X	Pollution extension, CPL or separate EIL for pollution losses		
Automobile Liability			
X	Any Auto Covered		
X	Workers' Compensation and Employer's Liability (if required by F.S. Chapter 440/ Federal Gov't.)		
X	Umbrella Liability		
X	Professional Liability/Errors and Omissions		
X	Environmental Impairment Liability, CPL or Pollution Liability		
	Installation Floater or Policy Coverage (for District materials, machinery, equipment or property that will become part of the project, if in Contractor's care, onsite or in transit)	Bodily Injury & Property Damage <u>\$1,000,000.</u> Combined Single Limit (Ea. accident) <u>\$10,000. PIP</u>	
	Builder's Risk	Statutory Limits <u>\$100,000. Occurrence</u> <u>\$500,000. Aggregate</u> <u>\$100,000. Disease</u>	
The District must be named as an "Additional Insured" except for Workers' Compensation and Employer's Liability, Professional Liability and Inland Marine. Contractor must use the following ISO form(s), or others approved by District Risk Management: Additional Insured Endorsement Form(s) CG2010, CG2037. Must use ISO Waiver of Subrogation Endorsement CG2404 except for Professional Liability and Inland Marine. Endorsements must be listed on the certificate or copies provided. Include specific project description.		<u>\$3,000,000.</u>	
		<u>\$2,000,000. Each Loss</u>	
		BI & PD \$1,000,000. Aggregate or CSL	
		District Owned Materials, Machinery, Equipment or Property Installation <u>\$1,000,000.</u>	
The Certificate holder shall be designated as: South Florida Water Management District 3301 Gun Club Road West Palm Beach, FL 33406		Property Under Construction @ 100% of Value	
		Insurance Requirements reviewed by: JAA/03/03/2021	

PROJECT REFERENCE FORM
Complete the following form for each representative project.

Project Name
Project Description
Contract Value
Period of Performance
Description whether Schedule and Budget were Met
Key Personnel Involved in Project (and Roles of Key Personnel)
Owner (Name, Address, Point of Contact, Phone)
Reference(s) (Name, Address, Point of Contact, Phone)

CONTRACTOR'S AFFIDAVIT

WORK INVOLVING DISTRICT FACILITIES OR EQUIPMENT

The undersigned individual or legal entity representative (hereafter referred to as Contractor/Consultant/Vendor) certifies that it shall comply with all obligations set forth below and all other Terms and Conditions of contract/purchase order number _____.

POLICY CODE ACKNOWLEDGEMENT – Pursuant to the Terms and Conditions of the contract/purchase order, Contractor's employees or hired workers working on-site at District facilities, using District equipment, or working on District plans and specifications or software, have submitted a signed "Consultant Policy Code Acknowledgement" form for each individual performing such work.

BACKGROUND CHECKS - Pursuant to the Terms and Conditions of the contract/purchase order, Contractor affirms that a thorough background check, pursuant to section 373.6055, Florida Statutes has been conducted for all its employees and hired workers who will be working at any District site. The background check consisted of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status. The results of the background check did not result in any reason to disqualify Contractor's employee or hired worker from working at a District site. Contractor acknowledges that it has an ongoing obligation to perform updated background checks on all employees, including new hires and existing employees and hired workers performing their respective duties on District facilities, and advise the District of any material changes.

DISTRICT CRITICAL STRUCTURES – Pursuant to the Terms and Conditions of the contract/purchase order, if the project or work under this Contract requires that the Contractor or its agents have unrestricted access to any District critical structures, Contractor affirms that a fingerprint-based criminal history check, pursuant to section 373.6055, Florida Statutes on all employees who will have access to any District critical structure has been completed. None of the employees or hired workers have been convicted of criminal violations as set forth in section 373.6055, Florida Statutes that will prohibit unrestricted access to District critical structures.

Signed and attested to this _____ day of _____ 20_____

Contractor/Consultant/Vendor Signature

Print Name

Title

TRENCH SAFETY ACT SECTION

553.60, FLORIDA STATUTE

NOTICE TO BIDDERS:

In order to comply with the Trench Safety Act, the Contractor is required to either specify the costs of compliance or certify that the project scope and / or his construction means and methods will not require trenching as defined by OSHA.

- **Bidders must fill out EITHER PART A or PART B of this form, BUT NOT BOTH, sign the form where indicated, and then submit the form with the bid.**

PART A: Specify Costs of Compliance with the Trench Safety Act

These costs **are not a separate pay item.** The Contractor must also reference the Trench Safety Standards which will be in effect during construction and assure in writing that the Contractor will comply with the applicable Trench Safety Standards.

1. TRENCH SAFETY MEASURE	UNITS OF MEASURE	QUANTITY	UNIT COST	COST
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

PART B: Certification that the Trench Safety Act does not apply.

☐

By placing a check mark in the box to the left I certify that this project either does not include trenching, or that my intended construction means and methods will not require trenching, as defined by OSHA.

From 29 CFR 1926.650 Subpart P, the definition of “Trenching” or “Trench excavation” means a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet (4.6 m). If forms or other structures are installed or constructed in an excavation so as to reduce the dimension measured from the forms or structure to the side of the excavation to 15 feet (4.6 m) or less (measured at the bottom of the excavation), the excavation is also considered to be a trench.

Signature

COMMON LAW PERFORMANCE BOND

BY THIS BOND, know that _____ as Principal, herewith called CONTRACTOR,
 Business Address _____, Business Phone _____, and _____,
 as _____, hereinafter called SURETY, Surety Address _____,
 Surety Phone Number _____, are bound to South Florida Water Management District, as Obligee, herein
 called DISTRICT, in the amount of _____ Dollars (\$_____) for payment of which CONTRACTOR
 and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly
 and severally, with reference to a written CONTRACT entered into by CONTRACTOR and DISTRICT, for the following:

Contract Number: 6000001215

Contract Title: Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

General Description of Project:

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

1. Performs said contract in accordance with its terms and conditions; and
2. Pays DISTRICT all losses, damages (direct and consequential including delay or liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that DISTRICT sustains because of a default by CONTRACTOR under the CONTRACT; and
3. Pays DISTRICT any and all other amounts due DISTRICT by CONTRACTOR because of a default by CONTRACTOR under the CONTRACT; and
4. Performs the warranty, extended warranty and guarantee of all work and materials furnished under the CONTRACT for the time specified in the CONTRACT;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

If there is no DISTRICT default, the SURETY's OBLIGATIONS UNDER THIS BOND shall arise after SURETY has received notice of DISTRICT's declaration of default of CONTRACTOR in accordance with the terms and conditions of the CONTRACT (including notice and cure periods), so that within 20 days of DISTRICT's declaration of CONTRACTOR's default, SURETY shall either (1) arrange for the CONTRACTOR, with the written consent of the DISTRICT, to timely perform and complete the contract or (2) undertake to timely perform and complete the contract either by retaining another contractor approved by the DISTRICT or undertaking to do the contract itself. SURETY shall be liable for any and all delays caused by the CONTRACTOR, SURETY, and/or the replacement contractor(s) provided by the SURETY. SURETY's failure to take such action shall be deemed to be a default on this Bond, thus entitling the DISTRICT to complete the contract with another contractor and recover all resulting damages, including, but not limited to, all direct and consequential damages including delay or liquidated damages, engineering and architectural fees, as well as, any and all legal costs and attorney's fees.

Any changes in or under the Contract Documents do not affect the Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Owner. Any suit under this bond must be initiated before the expiration of the limitation period applicable under Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this ____ day of _____, 20____.

Legal Form Approved:

 AFFIDAVIT FOR SURETY COMPANY

00630-122

WHEN THE PRINCIPAL IS AN **INDIVIDUAL**:

Signed and delivered in the presence of:

By: _____
 (Witness)

By: _____
 Individual Principal

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed and delivered in the presence of:

By: _____
(Witness)

By: _____
Signature of Individual

By: _____
(Witness)

WHEN A PARTNERSHIP:

Signed and delivered in the presence of:

By: _____
(Witness)

By: _____
Partner

By: _____
(Witness)

**WHEN THE PRINCIPAL IS A CORPORATION:
ATTEST:**

(Type Corporate Principal Name)

By: _____
President

By: _____
(Secretary)

SURETY:

ATTEST:

(Surety Seal)

(Type Corporate Surety Name)

By: _____
SURETY

By: _____
(Secretary)

ATTORNEY-IN-FACT

By: _____
(Type)

Name _____

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Common Law Performance Bond and the Payment Bond and the covered amounts of each are separate and distinct from each other.

STATUTORY PAYMENT BOND

BY THIS BOND, know that _____ as Principal, herewith called CONTRACTOR, Business Address _____, Business Phone _____, and _____, as _____, hereinafter called SURETY, Surety Address _____, Surety Phone Number _____, are bound to South Florida Water Management District, as Obligee, herein called DISTRICT, in the amount of _____ Dollars (\$_____) for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written CONTRACT entered into by CONTRACTOR and DISTRICT, for the following:

Contract Number: 6000001215

Contract Title: Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

General Description of Project:

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the contract;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the CONTRACT or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the DISTRICT.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20____.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed and delivered in the presence of:

By: _____
(Witness)

By: _____
(Individual Principal)

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed and delivered in the presence of:

By: _____
(Witness)

By: _____
Signature of Individual

By: _____
(Witness)

WHEN A PARTNERSHIP:

Signed and delivered in the presence of:

By: _____
(Witness)

By: _____
Partner

By: _____
(Witness)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Type Corporate Principal Name)

By: _____
President

By: _____
(Secretary)

SURETY:

ATTEST:

(Surety Seal)

(Type Corporate Surety Name)

By: _____
SURETY

By: _____
(Secretary)

(Type Florida Address for Service of Process)

1. ATTORNEY-IN-FACT

By: _____
(Type)

Name _____

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Common Law Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

AFFIDAVIT FOR SURETY COMPANY

TO BE SUBMITTED WITH PERFORMANCE & PAYMENT BOND

TO: South Florida Water Management District

RE: CONTRACT NUMBER: 6000001215

CONTRACT TITLE: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT

CONTRACTOR:

Name: _____
Address: _____
Telephone: _____

AMOUNT OF BOND: _____

SURETY COMPANY:

Name: _____
Address: _____
Telephone: _____
Email: _____

BEFORE ME, the undersigned authority, personally appeared the AFFIANT, who being duly sworn and says:

(1) He/She is _____ of the Surety Company;
(Officership)

1. (2) In accordance with Section 287.0935, Florida Statutes, the Surety Company fulfills each of the following provisions:

a) The Surety Company is licensed to do business in the State of Florida;

b) The Surety Company holds a certificate of authority authorizing it to write surety bonds in Florida;

c) The Surety Company has twice the minimum surplus and capital required by the Florida Insurance code at the time the invitation to bid is issued;

d) The Surety Company is otherwise in compliance with the provisions of the Florida Insurance Code; and

e) The Surety Company holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. ss. 9304 to 9308.

FURTHER AFFIANT SAYETH NOT.

Dated Signed Signature of AFFIANT (Officer of Surety Company)

Title of AFFIANT

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____, who, being duly sworn, executed this Affidavit and acknowledged to and before me the truthfulness and accuracy of the statements in the Affidavit.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20____, by AFFIANT, who is personally known to me.

By: _____

Name: _____

NOTARY PUBLIC

Commission Expiration Date: _____

ATTACHMENT “G” PROJECT EXPERIENCE VERIFICATION FORM
(For Informational Purposes)

DESIGNER’S/CONTRACTOR’S NAME:	
NAME OF ORGANIZATION CONTACTED: _____ NAME OF REFERENCE PROJECT: _____ CONTACT PERSON: _____ TELEPHONE NUMBER: _____ Questionnaire Completed by (signature): _____ Date: _____	FOR REVIEWER (Did Response Received from Contact Substantively Confirm Information Provided by Respondent in Project Reference Form (Circle Y or N?)
Did the designer/contractor participate in the Project, and in what capacity? 	Y or N
What was the scope of the Project (i.e., description of Project)? 	Y or N
What was the contract value of the Project? 	Y or N
What was the project schedule/duration? 	Y or N
Which key personnel were involved in the project and in what role(s)? 	Y or N

EXHIBIT 9.2 (D)
CONTRACT ADMINISTRATION AND RELATED FORMS

The following forms required to be used during the course of the Contract by Owner and Design/Builder, except as otherwise allowed by Owner:

00935	STORED MATERIALS
00940	APPLICATION FOR PAYMENT CONTRACTOR'S AFFIDAVIT INVOICE CHECKLIST
00950	SBE SUBCONTRACTOR UTILIZATION REPORT – EXHIBIT “E”
00953	SMALL BUSINESS ENTERPRISE SUBCONTRACTOR REVISED PARTICIPATION SCHEDULE
00960	SHOP DRAWING SUBMITTAL
00965	REQUEST FOR INFORMATION
00970	CHANGE ORDER
00972	FIELD ORDER
00975	WORK CHANGE DIRECTIVE
00980	CERTIFICATE OF SUBSTANTIAL COMPLETION
00990	CERTIFICATE OF FINAL ACCEPTANCE
00994	SBE FINAL SUBCONTRACTOR UTILIZATION REPORT – EXHIBIT “F”
00995	CONTRACTOR'S AFFIDAVIT AND FINAL RELEASE
00996	CONSENT OF SURETY TO FINAL PAYMENT

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

STORED MATERIALS FORM

CONTRACT NAME:						PAYMENT NO.:		
CONTRACT NUMBER:						PERIOD ENDING:		
CONTRACTOR:								
ITEM/ DESCRIPTION	INVOIC E NUMB ER	(PRIOR MONTH)		(CURRENT MONTH)		(TOTALS TO DATE)		
(BID ITEM NO. & DESC) LINE 1 (SUPPLIER NAME) LINE 2		(A) INVOICE VALUE DELIVERED (+)	(B) INVOICE VALUE INSTALLED (-)	(C) INVOICE VALUE DELIVERED (+)	(D) INVOICE VALUE INSTALLED (-)	(E) INVOICE VALUE DELIVERED (+)	(F) INVOICE VALUE INSTALLED (-)	(G) TOTAL VALUE STORED (=)
		\$	\$	\$	\$	\$	\$	\$

STORED MATERIALS FORM

00935-1

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
APPLICATION FOR PAYMENT

PAGE 1

CONTRACT TITLE:						INVOICE NO.:			
CONTRACT NUMBER:						PERIOD ENDING:			
CONTRACTOR:					PC NO.:		LN:		
STREET ADDRESS:					CITY STATE:				
VENDOR NO.:			COMMODITY NO.:			RC NO.:			
INVOICE DATE:									
ITEM NO.	DESCRIPTION	EST QTY	UNIT	UNIT PRICE	BID AMOUNT	EARNED THIS PERIOD		EARNED TO DATE	
						QTY	AMOUNT	QTY	AMOUNT
SUBTOTAL THIS PAGE 1					\$		\$		\$

Contractor's Remittance Address: _____

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

APPLICATION FOR PAYMENT

PAGE 2

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	BID AMOUNT	EARNED THIS PERIOD		EARNED TO DATE	
						QTY	AMOUNT	QTY	AMOUNT
SUBTOTAL THIS PAGE 2							\$		\$
SUBTOTAL PAGE 1							\$		\$
TOTAL STORED MATERIALS (NOT INCORPORATED IN THE WORK)									
TOTAL							\$		\$
01.TOTAL WORK COMPLETED TO DATE & STORED MATERIAL									\$
02.TOTAL CONTRACT AMOUNT									\$
03. TOTAL EARNED THIS PERIOD									\$
04. LESS RETAINAGE (5% OF LINE 03)									()
05. TOTAL RETAINAGE HELD									\$
06. AMOUNT DUE TO DATE									\$
07. LESS PREVIOUS PAYMENTS									()
08. GROSS AMOUNT DUE THIS PERIOD									\$
09.LESS PAYMENT DISCOUNT (OPTIONAL) ____% ____ DAYS									()
10. NET PAYMENT DUE THIS PERIOD									\$

SOUTH FLORIDA WATER MANAGEMENT DISTRICT APPLICATION FOR PAYMENT CONTRACTOR'S AFFIDAVIT

CONTRACT PRICE INFORMATION

ORIGINAL CONTRACT PRICE \$ _____
 CONTRACT CHANGE ORDER(S) AMOUNT TO DATE \$ _____
 C.O.'S TO DATE NO. _____ TO _____
 CURRENT CONTRACT PRICE \$ _____

CONTRACTOR'S AFFIDAVIT

The undersigned hereby swears under penalty of perjury that:

1. all previous progress payments received from the DISTRICT on account of Work performed under the contract referred to above and have been applied by the Contractor to discharge in full all obligations of the Contractor incurred in connection with Work covered by prior Applications for Payment under said contract, being Applications for Payment 1 through ____ inclusive;
2. all materials and equipment incorporated in said Project or otherwise listed in or covered by this Application for Payment are free and clear of all liens, security interests and encumbrances;
3. all previous progress payments have been applied by the Contractor to pay in full (less retainage) all amounts owed to its Subcontractors, Suppliers, Materialmen and Equipment Suppliers reflected (and listed) in prior Applications for Payments, except as stated on the attached.
4. The undersigned Contractor certifies to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the District and that current payment shown herein is now due.
5. The undersigned Contractor certifies that he has not received any Notices of Non-Payment and if any such notices have been received shall list them here: _____
6. The undersigned Contractor certifies that the percentage of the amount paid to his subcontractor(s) is as indicated below:

Subcontractor	Amount of Project	Payment Amount This Month	Amount Paid to Date

DATED _____,

By: _____

CONTRACTOR

COUNTY OF _____)

(NAME AND TITLE)

STATE OF _____)

Before me on this _____ day of _____, personally appeared _____, known to me, who duly sworn, deposes and says that (s)he is the _____ of the Contractor above mentioned; that (s)he executed the above Application for Payment and statement on behalf of said Contractor; and that all statements contained therein are true, correct and complete.

 NOTARY PUBLIC My Commission Expires _____

CONSTRUCTION INVOICE CHECKLIST

The following items should accompany the monthly pay request:

Item Number	Description	Reference Section	Attached (Y or N) Comments or N/A
1	Cost-Loaded Construction Baseline Schedule	00700 – 2.07.1	
2	SFWMD Application for Payment Form	00700 – 14.02 A.1	
3	SFWMD SBE Utilization Report	00700 – 14.02 A.2	
4	SFWMD Stored Materials Form (if billed)	00700 – 14.02.A.3	
5	SFWMD Contractor's Affidavit	00700 – 14.02.A.4	
6	SFWMD Keys (Receipt of keys returned to District must accompany final payment application)	00700 – 14.07.A.2	
7	Contractor's Progress Photos	01320	
8	Contractor's Construction Schedule Updates, Cost & Activity Reports and Narrative	01310	
9	Contractor's Record Documents – Review prior to payment approval	00700 – 6.12	
10	Insurance Policy Declaration Page & Endorsement Forms (Must be received within 30 days of Contract Execution)	00600 -1	

CONSTRUCTION INVOICE CHECKLIST

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SMALL BUSINESS ENTERPRISE SUBCONTRACTOR UTILIZATION REPORT

Exhibit "E"

Project Name (1)		Contract Number and Work Order Number (if applicable) (2)	
Report Number (3)	Reporting Period (4) to	Small Business Enterprise Contract Goal (5)	Contract Completion Date (6)
Contractor Name (7)		Contractor Telephone Number (8) () -	Contractor Email Address (9)
Contractor Street Address (10)	Project Manager Name (11)	Project Manager Telephone Number (12) () -	Project Manager Email Address (13)
Small Business Enterprise Payment Report			
Federal Identification Number (14)	SBE Subcontractor Business Name (15)	Description of Work (16)	Project Amount (17)
			Amount Paid this Reporting Period (18)
			Invoice Number (19)
			Total Paid to Date (20)
Total Paid to Date for All Small Business Enterprise Subcontractors (21) \$			

I certify that the above information is true to the best of my knowledge.

Contractor Name – Authorized Personnel (print) (22)	Contractor Name – Authorized Personnel (sign) (23)	Title (24)	Date (25)
---	--	------------	-----------

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Instructions

- Box (1) Project Name** - Enter the entire name of the project.
- Box (2) Contract Number (work order)** - Enter the District contract number and work order number, if applicable (i.e., 4600001234, and if work order contract include work order number - 4600000568 WO 01).
- Box (3) Report Number** - Enter the Small Business Enterprise (SBE) Subcontractor Utilization Report number. Reports must be in a numerical series (i.e., 1, 2, 3).
- Box (4) Reporting Period** - Enter the beginning and end dates for which this report covers (i.e., 10/01/2011 - 11/01/2011).
- Box (5) SBE Contract Goal** - Enter the SBE Contract Goal on entire contract.
- Box (6) Contract Completion Date** - Enter the expiration date of the contract, (not work order).
- Box (7) Contractor Name** - Enter the complete legal business name of the Prime Contractor.
- Box (8) Contractor Telephone Number** - Enter the telephone number of the Prime Contractor.
- Box (9) Contractor Email Address** - Enter the email address of the Prime Contractor.
- Box (10) Contractor Street Address** - Enter the mailing address of the Prime Contractor.
- Box (11) Project Manager Name** - Enter the name of the Project Manager for the Prime Contractor on the project.
- Box (12) Project Manager Telephone Number** - Enter the direct telephone number of the Prime Contractor's Project Manager.
- Box (13) Project Manager Email Address** - Enter the email address of the Prime Contractor's Project Manager.
- Box (14) Federal Identification Number** - Enter the federal identification number of the SBE Subcontractor(s).
- Box (15) SBE Subcontractor Business Name** - Enter the complete legal business name of the SBE Subcontractor(s).
- Box (16) Description of Work** - Enter the type of work being performed by the SBE Subcontractor(s) (i.e., electrical services).
- Box (17) Project Amount** - Enter the dollar amount allocated to the SBE Subcontractor(s) for the entire project (i.e., amount in the subcontract agreement).
- Box (18) Amount Paid this Reporting Period** - Enter the total amount paid to the SBE Subcontractor(s) during the reporting period.
- Box (19) Invoice Number** - Enter the SBE Subcontractor's invoice number related to the payment reported this period.
- Box (20) Total Paid to Date** - Enter the total amount paid to the SBE Subcontractor(s) to date.
- Box (21) Total Paid to Date for All SBE Subcontractor(s)** - Enter the total dollar amount paid to date to all SBE Subcontractors.
- Box (22) Contractor Name Authorized Personnel (print)** - Print the name of the employee that is authorized to execute the SBE Subcontractor Utilization Report.
- Box (23) Contractor Name Authorized Personnel (sign)** - Signature of authorized employee to execute the SBE Subcontractor Utilization Report.
- Box (24) Title** - Enter the title of authorized employee completing the SBE Subcontractor Utilization Report.
- Box (25) Date** - Enter the date of submission of the SBE Subcontractor Utilization Report to the District.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SMALL BUSINESS ENTERPRISE SUBCONTRACTOR
REVISED PARTICIPATION SCHEDULE

Contract No.		Date Submitted	
Project Name & Location		Project Start Date	
Bidder/Proposer			
Address			
Contact Person		Email Address	Telephone No.

ORGANIZATION STATUS

Business Association	Business Name	Business Address	Business Phone#	Work to be		
				Describe Type of Work to be Performed	% of Work	Dollar Amount
Prime Bidder/Proposer						
Non SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
					100%	\$0.00
						\$0.00

The prime contractor must notify the District when the need to replace a Small Business Enterprise (SBE) Subcontractor. Please provide a Revised SBE Subcontractor Utilization Plan and a brief explanation of the need for the addition or replacement. Please enter the explanation in the space provided below.

The listing of a SBE shall constitute a representation by the bidder/proposer to the District that the bidder/proposer believes such SBE to be technically and financially qualified and available to perform the work described. Bidders/Proposers are advised that the information contained herein may be verified.

Bidder/Proposer Signature

Title

Date

Form 1373 (08/2013)

Incorporated by reference in subsection 40E-7.672(4), F.A.C.



SHOP DRAWING SUBMITTAL

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
PROJECT/CONSTRUCTION MANAGEMENT**

SUBMITTAL NO. _____

TO: _____

FROM: _____

SUBJECT: _____

PROJECT: _____ **CONTRACTOR:** _____

SUBMITTED BY: _____

Contractor

Date

Any Contractor deviations to Drawings and Technical Specifications listed below:

ITEM NO.	
Copies	
Description	
Previous Submittal #	
Specification Section	
Plan Sheet #	
<input type="checkbox"/>	Accepted As Submitted
<input type="checkbox"/>	Accepted As Noted
<input type="checkbox"/>	Returned For Revision (see comments)
<input type="checkbox"/>	Not Acceptable (see comments)
<input type="checkbox"/>	Preliminary Submittal
<input type="checkbox"/>	For Reference Only
<input type="checkbox"/>	Distribution Copy
Comments: _____ _____	
Project Engineer: _____ Date: _____	

RFI NO. _____

REQUEST FOR INFORMATION

00965-1

REQUEST FOR INFORMATION

Project:
Contract No.

Contractor: _____

QUESTION

Reference: Specification Section: _____ Drawing No. _____

Requested by: _____ Date: _____

REPLY

Reply by: _____ Date: _____

CHANGE ORDER No. _____
BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND

CONTRACT NO: 46xxxxxxxx
CONTRACT TITLE: _____ COUNTY, FLORIDA

The following changes to the CONTRACT are hereby made part of the Contract Documents. All requirements of the Original Contract Documents shall remain in full force and effect except as modified herein.

I. ORIGINAL CONTRACT PRICE: _____

Price of all previous Change Orders: _____

PRICE of this Change Order: _____

The CURRENT CONTRACT PRICE including this Change Order: _____

II. ORIGINAL SUBSTANTIAL COMPLETION DATE: _____

Original Contract Time: _____ Days

Total of all previous Contract Times Adjustments _____ Days

Contract Times Adjustments this Change Order _____ Days

REVISED Total Contract Times: _____ Days

Revised SUBSTANTIAL COMPLETION DATE including this Change Order: _____

III. ORIGINAL FINAL COMPLETION DATE: _____

Original Contract Time: _____ Days

Total of all previous Contract Times Adjustments _____ Days

Contract Times Adjustment this Change Order: _____ Days

REVISED Total Contract Times: _____ Days

Revised FINAL COMPLETION DATE including this Change Order: _____

All requirements of the original Contract Document shall remain in full force and effect except as modified herein.

VI. WORK CHANGED BY CHANGE ORDER

A. _____

1. **Scope of Work:**
2. **Original contract scope impacted by the change order:**
3. **Cost of Work:**
4. **Justification:**

V. ACKNOWLEDGEMENTS

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order; and, it is expressly understood and agreed that the approval of the Change Order shall have no effect on the original, other than matters expressly provided herein. This change order constitutes the full compensation for the work described, including any costs which may result from protracted performance, delays, or extended overhead. This Change Order is not to be construed as an admission of any liability on the part of the District. This Change Order states the entire understanding and agreement between the parties regarding the change order work and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this change order. This Change Order is the final and full expression of the parties' agreement for payment hereunder. Upon execution, this change order shall be in accord and satisfaction concerning all potential claims related to the Change Order work, including inefficiencies or acceleration based claims.

VI. APPROVAL AND CHANGE ORDER AUTHORIZATION

Engineering and Construction Bureau Chief	Date
---	------

SFWMD Procurement Reviewed	Date
----------------------------	------

ACCEPTED BY CONTRACTOR:

Title: _____ Date: _____

APPROVED BY:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Procurement Bureau Chief	Date
--------------------------	------

Field Order No. _____

FIELD ORDER

Date of Issuance: _____ Effective Date: _____

Contract No.: _____

Contract Title: Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

Contractor: _____

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Terms & Conditions Article 9.03, for minor variations in the work which do not involve an adjustment in Contract Price or Contract Time.

Reference: Specification Section(s) _____ Drawing(s) No. _____

Attachment(s): _____

Description (Field Oder Direction, Error, Omission or Correction): _____

Justification: _____

ISSUED BY:

South Florida Water Management (Signature) Date

Print Name

Title

ACCEPTED BY CONTRACTOR:

Contractor (Signature) Date

Print Name

Title

WORK CHANGE DIRECTIVE NO. _____

TO

[Contractor _____]

DATE OF ISSUANCE: _____ EFFECTIVE DATE: _____

CONTRACT NO: _____ CONTRACT TITLE: _____

I. CONTRACTOR IS DIRECTED TO PROCEED PROMPTLY WITH THE FOLLOWING CHANGE(S):

Scope of Work: _____

Justification: _____

All requirements of the original Contract Document shall remain in full force and effect except as modified herein.

II. ATTACHMENTS (list documents supporting change): _____

III. PURPOSE FOR WORK CHANGE DIRECTIVE:

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

☐ Non-agreement on changes to Contract Price and/or Contract Time.

☐ Necessity to expedite Work described herein prior to agreeing to change to Contract Price and/or Contract Time.

IV. NOT-TO-EXCEED ESTIMATED CHANGES IN CONTRACT PRICE AND/OR CONTRACT TIME:

The amounts referenced below are only estimates and are subject to negotiations and approval by the parties herein.

Contract Price \$ _____ (increase/decrease) and/or Contract Time _____ days (increase/decrease)

V. ACKNOWLEDGEMENTS

The aforementioned work, and work affected thereby, is subject to all provisions of the original Contract not specifically changed by this Work Change Directive. Upon execution, this Work Change Directive becomes effective immediately and the Contractor shall proceed with the change(s) described above. This is not a Change Order, but only a directive to proceed with work that may be included in a subsequent Change Order. Upon completion of the work covered by this Work Change Directive, or final costs and times are determined, the Contractor shall submit documentation for inclusion in a Change Order. A Change Order will be processed to cover any undisputed sum or amount of time for work performed under this Work Change Directive. This Work Change Directive is not to be construed as an admission of any liability on the part of the District.

VI. APPROVAL AND WORK DIRECTIVE AUTHORIZATION:

SFWMD Project Mgt Approved: _____ Date: _____

Section Administrator

SFWMD Procurement Approved: _____ Date: _____

Contract Specialist

ACKNOWLEDGED BY CONTRACTOR: _____ Date: _____

Name/Title

APPROVED BY: SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Procurement Bureau Chief

Date: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

CONTRACT NO.: _____

PROJECT: Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____

This Certificate of Substantial Completion applies to all Work under the reference Contract Documents or the following specified parts thereof.

Work covered by this Certificate: _____

The Work to which this Certificate applies has been inspected by authorized representative of CONTRACTOR, DISTRICT and RESIDENT ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on the following date: _____
(DATE OF SUBSTANTIAL COMPLETION)

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within [NTS thirty (30) / sixty (60)] days of the above date of Substantial Completion.

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligations to complete the Work in accordance with the Contract Documents.

PREPARED BY DISTRICT:

Project/Construction Manager Date

Engineer of Record Date

ACCEPTED BY CONTRACTOR:

Signature Date

Title

APPROVED:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Field Station Superintendent/Field Rep Date

CERTIFICATE OF FINAL ACCEPTANCE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

PROJECT: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT

CONTRACT NO.: _____

CONTRACTOR: _____

A joint inspection of the work described in the Contract Documents has been made by the Resident Engineer, DISTRICT and the CONTRACTOR on ____/____/____ in accordance with the Contract General Terms & Conditions, and is accepted by the District, subject to the provisions contained in the Contract General Terms & Conditions, or for a period of warranty as otherwise agreed upon and attached.

PREPARED BY DISTRICT:

Project/Construction Manager

Date

Engineer of Record

Date

ACCEPTED BY CONTRACTOR:

Signature

Date

Title

APPROVED: SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Sponsor/Field Operations Bureau Chief

Date

Engineering/Construction Bureau Chief

Date

Small Business Enterprise Final Subcontractor Utilization Report

Exhibit "F"

Project Name (1)		Contract Number and Work Order Number (if applicable) (2)	
Report Number (3)	Reporting Period (4) to	Small Business Enterprise Contract Goal (5)	Contract Completion Date (6)
Contractor Name (7)		Contractor Telephone Number (8) () -	Contractor Email Address (9)
Contractor Street Address (10)	Project Manager Name (11)	Project Manager Telephone Number (12) () -	Project Manager Email Address (13)

Small Business Enterprise Payment Report						
Federal Identification Number (14)	SBE Subcontractor Business Name (15)	Description of Work (16)	Project Amount (17)	Amount Paid this Reporting Period (18)	Invoice Number (19)	Total Paid to Date (20)
Total Paid to Date for All Small Business Enterprise Subcontractors (21) \$						
I certify that the above information is true to the best of my knowledge.						
Contractor Name – Authorized Personnel (print) (22)	Contractor Name – Authorized Personnel (sign)(23)		Title (24)		Date (25)	

South Florida Water Management District

Instructions to Small Business Enterprise Subcontractor Utilization Report

- Box (1) Project Name** - Enter the entire name of the project.
- Box (2) Contract Number (work order)** – Enter the District contract number and work order number, if applicable. (i.e., 4600001234, and if work order contract include work order number – 4600000568 WO 01)
- Box (3) Report Number** – Enter the Small Business Enterprise (SBE) Subcontractor Utilization Report number. Reports must be in a numerical series. (i.e., 1, 2, 3)
- Box (4) Reporting Period** – Enter the beginning and end dates for which this report covers. (i.e., 10/01/2011 – 11/01/2011)
- Box (5) SBE Contract Goal** – Enter the SBE Contract Goal on entire contract.
- Box (6) Contract Completion Date** – Enter the expiration date of the contract, (not work order).
- Box (7) Contractor Name** – Enter the complete legal business name of the Prime Contractor.
- Box (8) Contractor Telephone Number** – Enter the telephone number of the Prime Contractor.
- Box (9) Contractor Email Address** – Enter the email address of the Prime Contractor.
- Box (10) Contractor Street Address** – Enter the mailing address of the Prime Contractor.
- Box (11) Project Manager Name** – Enter the name of the Project Manager for the Prime Contractor on the project.
- Box (12) Project Manager Telephone Number** – Enter the direct telephone number of the Prime Contractor's Project Manager.
- Box (13) Project Manager Email Address** – Enter the email address of the Prime Contractor's Project Manager.
- Box (14) Federal Identification Number** – Enter the federal identification number of the SBE Subcontractor(s).
- Box (15) SBE Subcontractor Business Name** – Enter the complete legal business name of the SBE Subcontractor(s).
- Box (16) Description of Work** – Enter the type of work being performed by the SBE Subcontractor(s). (i.e., electrical services)
- Box (17) Project Amount** – Enter the dollar amount allocated to the SBE Subcontractor(s) for the entire project. (i.e., amount in the subcontract agreement)
- Box (18) Amount Paid this Reporting Period** – Enter the total amount paid to the SBE Subcontractor(s) during the reporting period.
- Box (19) Invoice Number** – Enter the SBE Subcontractor's invoice number related to the payment reported this period.
- Box (20) Total Paid to Date** – Enter the total amount paid to the SBE Subcontractor(s) to date.
- Box (21) Total Paid to Date for All SBE Subcontractor(s)** – Enter the total dollar amount paid to date to all SBE Subcontractors.
- Box (22) Contractor Name Authorized Personnel (print)** – Print the name of the employee that is authorized to execute the SBE Subcontractor Utilization Report.
- Box (23) Contractor Name Authorized Personnel (sign)** – Signature of authorized employee to execute the SBE Subcontractor Utilization Report.
- Box (24) Title** – Enter the title of authorized employee completing the SBE Subcontractor Utilization Report.
- Box (25) Date** – Enter the date of submission of the SBE Subcontractor Utilization Report to the District.

CONTRACTOR'S AFFIDAVIT AND

FINAL RELEASE

STATE OF FLORIDA
COUNTY OF _____

CONTRACT NO.:

CONTRACT TITLE: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT

BEFORE ME, the undersigned authority, personally appeared _____ first duly sworn and says that:

1. He/She is _____ of _____ authorized to do business in
(title) (company)
the State of Florida, (hereinafter called "CONTRACTOR").
2. CONTRACTOR, pursuant to CONTRACT dated _____, (hereinafter referred to as "CONTRACT") with SOUTH FLORIDA WATER MANAGEMENT DISTRICT, (hereinafter referred to as "DISTRICT"), has heretofore furnished or caused to be furnished labor, material and services for the construction of certain improvements as more particularly set forth in the CONTRACT.
3. CONTRACTOR represents that all work to be performed under the CONTRACT has been fully completed; that all persons and firms who furnished material, labor and/or services incident to the completion of said work have been paid in full; and that there are no suits pending against the undersigned CONTRACTOR or anyone in connection with the work done and materials furnished or otherwise under said CONTRACT.
4. The CONTRACTOR, for and in consideration of final CONTRACT PRICE in the amount of \$ _____, does hereby waive, release, remise and relinquish the CONTRACTOR's right to claim, demand or impose a lien or liens for work done or materials and/or services furnished or any other class of liens whatsoever, on any of the premises owned by DISTRICT on which improvements have been completed in connection with the CONTRACT. Further, CONTRACTOR does hereby and for its heirs, executors, administrators, successors and assigns release, acquit and forever discharge and hold harmless the DISTRICT, and its employees, agents, servants, successors, heirs, executors, and administrators, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever, which the undersigned now has or which may hereafter accrue on account of or in any way relating to the CONTRACT.
5. The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.
6. The CONTRACTOR herein makes this Affidavit and Final Release for the express purpose of inducing DISTRICT to make final disbursement and payment to the CONTRACTOR in the amount of \$ _____.
7. This Affidavit and Final Release is made by CONTRACTOR with full knowledge of the applicable laws of the State of Florida. In addition to such rights as may be afforded to DISTRICT under said applicable laws, CONTRACTOR expressly agrees to indemnify and save DISTRICT harmless from any and all actual costs and expenses, including reasonable attorney's fees, arising out of claims by laborers, sub-contractors or materialmen who might claim that they have not been paid for services or material furnished by or through the CONTRACTOR in connection with the work performed under the CONTRACT.
8. To the best of CONTRACTOR's knowledge and belief, the following is a list of all employed under this CONTRACT who have filed a Notice to Owner with the DISTRICT:

	NAME	ADDRESS	AMOUNT DUE (If known)
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

(Attach a separate sheet if necessary)

The CONTRACTOR herein does hereby represent that he/she has the authority to execute a full and final release for and in behalf of the CONTRACTOR as set forth above.

(Corporate Seal) By: _____

Title: _____

SWORN TO and subscribed before me this _____ day of,
 _____ 20 ____ .

(Notary Seal) By: _____
 Notary Public

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires: _____

CONSENT OF SURETY TO FINAL PAYMENT

We, the _____ (“**SURETY**”), having heretofore executed the Performance and Payment Bonds for _____ (“**CONTRACTOR**”) covering the Project known as Design/Build of a Lower Kissimmee Basin Stormwater Treatment Project in the sum of \$_____ hereby agree that the **DISTRICT** may make full payment of the outstanding contract balance, including the retained percentage, to said **CONTRACTOR**. The **SURETY** concurs that full payment to the **CONTRACTOR** is appropriate and the **SURETY** expressly releases the **DISTRICT** from all liability to **SURETY** resulting from full payment to **CONTRACTOR**.

It is fully understood that the acknowledging of the right of the **DISTRICT** to make payment of the final estimate to said **CONTRACTOR** and/or his assigns, shall in no way relieve this **SURETY** company of its obligations under its bonds, as set forth in the Contract Documents and Bonds pertaining to the above Project.

This **SURETY** company further hereby agrees to the following:

1. Owner is under no obligation, as to **SURETY**, to conserve any additional funds on the project;
2. Owner has not made any improper payments on the Project to the **CONTRACTOR**;
3. **SURETY** hereby releases Owner of any potential claim that Owner’s final payment, including retainage, to **CONTRACTOR** is premature or in any way improper;
4. **SURETY** has satisfied for itself that **CONTRACTOR** has performed all conditions precedent entitling it to final payment on the Project, including but not limited to the securing of all necessary releases, affidavits, and sworn statements of accounts that **SURETY** may require from **CONTRACTOR** on the Project;
5. **SURETY** has satisfied for itself that **CONTRACTOR** has performed all Work that would thus entitled it to final payment on the Project; and
6. **SURETY**’s representations in this Consent Agreement are in no way based upon the representations of the Owner, including but not limited to, any representations of payments **CONTRACTOR** allegedly made to subcontractors, suppliers, laborers, or any other lower-tiered persons or entities on the Project.

In no way do the representations and agreements made in this Consent Agreement affect **CONTRACTOR**’s obligations to the Owner or **SURETY** on the Project. **CONTRACTOR** is not an intended third-party beneficiary to this Consent Agreement.

IN WITNESS WHEREOF, the _____ has caused this instrument to be executed on its behalf of its
_____ and its duly authorized attorney in fact, and its corporate seal to be hereunto affixed, all on this
_____ day of _____, 20____.

SURETY Company

Attorney-in-Fact

(Power of Attorney must be attached if executed by Attorney-in-Fact)

State of _____)
County of _____)ss
_____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
_____, who is personally known to me or who has produced _____ as
identification.

Signature

Print name: _____
Notary Public in and for the County and State Aforementioned

My commission expires: _____



SOUTH FLORIDA WATER MANAGEMENT DISTRICT SOLICITATION ADDENDUM

South Florida Water Management District
Attn: Procurement Bureau
B-1 Building, 2nd Floor West
3301 Gun Club Road
West Palm Beach, FL 33406

SOLICITATION NUMBER: 6000001215

ADDENDUM NUMBER: 1

DATE: MARCH 15, 2021

**PROJECT TITLE: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER
TREATMENT PROJECT**

This **ADDENDUM NO. 1** is issued for the purpose of providing the information below.

1. DEADLINE FOR SUBMISSION REMAINS: APRIL 12, 2021 @ 2:30 PM

RESPONSES WILL ONLY BE ACCEPTED VIA EMAIL TRANSMISSION TO PROCUREMENT@SFWMD.GOV. HAND DELIVERED OR PACKAGES MAILED VIA U.S. MAIL OR OVERNIGHT COURIER WILL NOT BE ACCEPTED WHILE THE DISTRICT REMAINS CLOSED TO THE PUBLIC.

2. OWNER'S ADVISOR: DELETE any reference to Parsons Environment & Infrastructure. The District does not have an OWNER ADVISOR for this project, at this time.

Please direct any questions to my attention at (561) 682-2520, or jlabrad@sfwmd.gov.

Johanna M. Labrada, CPPB, FCCM, FCCN
Procurement Bureau Chief
Procurement Bureau



SOUTH FLORIDA WATER MANAGEMENT DISTRICT SOLICITATION ADDENDUM

South Florida Water Management District
Attn: Procurement Bureau
B-1 Building, 2nd Floor West
3301 Gun Club Road
West Palm Beach, FL 33406

SOLICITATION NUMBER: 6000001215

ADDENDUM NUMBER: 2

DATE: MARCH 30, 2021

PROJECT TITLE: DESIGN/BUILD OF A LOWER KISSIMMEE BASIN STORMWATER TREATMENT PROJECT

This **ADDENDUM NO. 2** is issued for the purpose of providing the information below.

1. **DEADLINE FOR SUBMISSION REMAINS: APRIL 12, 2021 @ 2:30 PM**

RESPONSES WILL ONLY BE ACCEPTED VIA EMAIL TRANSMISSION TO PROCUREMENT@SFWMD.GOV. HAND DELIVERED OR PACKAGES MAILED VIA U.S. MAIL OR OVERNIGHT COURIER WILL NOT BE ACCEPTED WHILE THE DISTRICT REMAINS CLOSED TO THE PUBLIC.

2. **PRE-PROPOSAL CONFERENCE:** The following link provides access to the pre-proposal conference recording that was held March 22, 2021.

<https://zoom.us/rec/share/7SrFzOegGJiVyzgctRjmDvDyrwcXAr0KvQoDRFr5Yhy6hbqHIEF6BX3sNZF3uEYL.Qi2g4Sv2ffAcHiL9?startTime=1616421566000>

3. **EVALUATION COMMITTEE MEETINGS:** Pursuant to Florida's Sunshine Law, the Evaluation Committee Meetings are publicly noticed and open to the public. Public comment and participation are not permitted during these proceedings. The public is invited to attend via ZOOM, communications media technology, at the date and times below.

1. April 21, 2021 @ 9:00 AM; Alternate date if meeting is cancelled on April 21st, will be held April 22, 2021 @ 9:00 AM. Meeting registration is only required once. The following link must be used to register in advance of this meeting:

https://zoom.us/webinar/register/WN_NyqcB-l_TNam22OxTqD78Q

2. April 28, 2021 @ 9:00 AM; Alternate date if meeting is cancelled on April 28th, will be held April 29, 2021 @ 9:00 AM. Meeting registration is only required once. The following link must be used to register in advance of this meeting:

https://zoom.us/webinar/register/WN_Dia6HUgPQyydIcWtLzFXWQ

4. **ENGINEERING SUBMITTAL REQUIREMENTS:** See attached preliminary design and intermediate design submittal requirements made a part of this Addendum No. 2.

5. **QUESTIONS & ANSWERS:**

1. **Q:** (A) Does legal proof of property ownership/control need to be provided as part of the proposal package? (B) If not, how quickly do you envision Phase 1 commencing upon the District's selection of the most qualified team?

A: (A) Respondent must demonstrate, in their proposal, real estate interest in the property they plan to acquire. (B) Depending on the amount of time necessary to complete contract negotiations, Phase One may commence approximately 60 days thereafter.

2. **Q:** Can you please confirm if there is a set Schedule of Values for the Site work?

A: There is no Schedule of Values at this time.

3. **Q:** Can you please confirm if there is a set of plans available?

A: There are no plans available at this time. However, Design/Builder's preliminary design and intermediate design shall contain all applicable submittal requirements for Intermediate Plans and Specifications Submittal as described in the latest version of the District's Engineering Submittal Requirements, Engineering and Construction Bureau.

4. **Q:** The Project Description on page 108 states: "*Stand-alone innovative treatment technologies (such as chemical treatment) shall not be considered for this Project. However, an innovative treatment technology in conjunction with an STA or a storage facility (such as hybrid treatment component) may be considered as an enhanced water quality component.*" (A) Should this be interpreted to mean that a proposed "innovative treatment technology" CAN or CANNOT include chemical treatment? (B) Would a chemical treatment system be allowed in conjunction with an STA or storage facility to enhance the water quality component.

A: (A) As noted in the design criteria, stand-alone innovative treatment technology will not be considered for this Project. (B) Yes, an innovative treatment technology in conjunction with an STA or storage facility may be considered as an enhanced water quality component.

Please direct any questions to my attention at (561) 682-2520, or jlabrad@sfwmd.gov.

Johanna M. Labrada, CPPB, FCCM, FCCN
Procurement Bureau Chief
Procurement Bureau