

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN-BUILD SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT FOR DESIGN-BUILD SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City" or "Owner"), and **DINKINS CONSTRUCTION, LLC**, a limited liability company duly organized and authorized to do business in the state of Florida (EIN# 27-0867581) ("Dinkins" or "Design-Builder").

R E C I T A L S :

WHEREAS, on August 6, 2024, the City issued Request for Proposals ("RFP") No. ENG/240952 (the "Solicitation") to competitively solicit proposals from qualified, experienced, and licensed design-build firms for the provision of design and construction services for the City of Ocala's Fire Station #8 (the "Project"); and

WHEREAS, on December 20, 2024, a Selection Committee appointed by the City evaluated and ranked Dinkins Construction, LLC, as the most qualified firm to serve as the design-builder for the Project subject to the successful negotiation of an agreement for design-build services; and

WHEREAS, Dinkins shall perform design-build services for the Project in accordance with the Scope of Services as hereinafter stated and attached hereto as **Exhibit A** (the "Scope of Services"), the Design Criteria Package included in the Solicitation and attached hereto as **Exhibit B**, the proposal submitted by Design-Builder in response to the Solicitation and attached hereto as **Exhibit C** (the "Design-Builder's Proposal"), the City's Solicitation, and the preliminary Project Schedule attached hereto as **Exhibit D** (the "Project Schedule"); and

WHEREAS, Design-Builder proposed to the City a guaranteed maximum price for Design Build Services for the Project in an amount not to exceed **\$4,213,901**, except for agreed changes, as set forth in the Price Proposal attached hereto as **Exhibit E**; and

WHEREAS, Design-Builder acknowledges that: (i) it has represented to the City that it is qualified and duly licensed to provide design-build services in the state of Florida; and (ii) that such representation is a material inducement to the City to enter into this Agreement; and

WHEREAS, the City now desires to engage Design-Builder to provide design-build services for the Project and to provide the deliverables set forth in the Solicitation and the Scope of Services as hereinafter stated; and

WHEREAS, Design-Builder desires to render design-build services and meet the obligations set forth in this Agreement, as hereinafter stated; and

WHEREAS, Design-Builder accepts the relationship of good faith established between Design-Builder and the City by this Agreement and agrees to furnish at all times an adequate supply of workers and materials to complete the Project and to perform the Services in the best and the most expeditious and economical manner, consistent with the terms and conditions of the Contract Documents.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the City and Dinkins Construction, LLC hereby agree as follows.

TERMS AND CONDITIONS OF AGREEMENT:**ARTICLE 1****INCORPORATION OF RECITALS AND DEFINITIONS**

- 1.1. **INCORPORATION OF RECITALS.** City and Design-Builder hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
- 1.2. **DEFINITIONS.** For the purposes of this Agreement, certain terms, phrases, words and their respective derivations will have the meaning set forth and defined therein and shall be applicable in both. Definitions of terms in the Agreement shall first be governed by this Agreement and second, if not defined, according to its generally accepted meaning in the construction industry, and third, if there is no generally accepted meaning in the construction industry, according to the meanings ascribed to them in Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Inc., 11th ed., 2020, or any subsequent edition).
 - A. **Allowance** –shall refer to funds the Design-Builder and Owner agree to that are typically known work with unknown costs.
 - B. **Architect-Engineer** – shall refer to Architectural/Engineering Firm(s) as the qualified, licensed firm retained by the Design-Builder to serve as its design professional(s).
 - C. **Calendar Day** – shall include any day of 24 hours measured from midnight to the next midnight, including Saturday, Sundays, and holidays. Unless specified otherwise all days listed in this agreement shall refer to calendar days.
 - D. **Change Order** – shall mean a written order to Design-Builder signed by the Owner and Design-Builder, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Agreement. Design-Builder, when requested by City, shall prepare Change Order documentation.
 - E. **City Engineer** – shall refer to the Florida registered professional engineer appointed by the City Manager pursuant to section 2-312 of the Code of Ordinances for the City of Ocala to serve as the head of the City of Ocala Engineering Department. The City Engineer is the duly appointed representative of the City of Ocala for the purposes of the Project and has been given authority to manage the Project on behalf of the City of Ocala.
 - F. **City Project Manager** – shall mean the person designated by the City Engineer to provide direct interface with Architect-Engineer and Design-Builder regarding the City's interests and responsibilities. The City Project Manager shall have authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to the Work.
 - G. **Construction Documents** – shall consist of the design, project and performance specifications, and plans for the construction of the Project as completed by Design-Builder and approved in writing by the City Engineer which set forth the materials to be employed and the precise detail of the manner in which the Work of Design-Builder is to be executed, including any revisions.
 - H. **Design-Builder** – shall mean Dinkins Construction, LLC, the licensed firm and, where and if applicable, includes its team of design professionals and specialty subcontractors engaged by Dinkins Construction, LLC, to implement, direct, and control the design and construction of the Project as set forth in the Contract Documents.

- I. **Design-Builder's Project Manager** – shall mean the individual authorized and responsible to act on behalf of Design-Builder and who shall have full authority to bind and obligate Design-Builder on any matter arising under this Agreement unless substitute arrangements or individuals have been furnished to and approved in writing by the City. Design-Builder's Project Manager shall be responsible for acting on Design-Builder's behalf to administer, coordinate and interpret all aspects of the Services to be provided and performed by Design-Builder under this Agreement and to otherwise manage the contractual provisions and requirements set forth in this Agreement and all Change Order(s) issued hereunder. Design-Builder agrees that Design-Builder Project Manager shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Services provided and performed by Design-Builder under this Agreement.
- J. **Design-Builder's Proposal** – shall refer to the proposal submitted by Design-Builder in response to Request for Proposals No. ENG/240952 and all exhibits and addenda thereto.
- K. **Design Documents** – shall mean all design documents provided by Design-Builder and approved by Owner pursuant to this Agreement including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational. Design Documents shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design-Builder.
- L. **Final Completion** – shall mean the time at which the Services, in the opinion of the City Engineer, are complete in accordance with the Contract Documents, and there are no remaining Punch List items and Design-Builder is eligible for Final Payment.
- M. **Final Payment** – shall refer to the final payment of all payments due to Design-Builder for the Project, including all retainage.
- N. **Guaranteed Maximum Price ("GMP")** – shall refer to the Design-Builder's guaranteed offer to the City of the maximum price for which Design-Builder will construct the Project as represented in the Design-Builder's Proposal, excluding agreed changes, as set forth in this Agreement.
- O. **Owner** – shall refer to the City of Ocala, Florida, a municipal corporation of the State of Florida.
- P. **Schedule of Values** – shall refer to the schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, which will be used as a basis for progress and final payments to be made to Design-Builder by the City during performance and/or completion of the Work subject to the review and approval of the City.
- Q. **Shop Drawings** – shall refer to those drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Design-Builder and submitted by Design-Builder to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
- R. **Solicitation** – shall refer to the City's advertised Request for Proposals No. ENG/240952, including all attachments and addenda.
- S. **Subcontractor** – shall refer to an entity which has a direct contract with Design-Builder to perform a portion of the design or construction services, including those furnishing specially fabricated equipment and materials for the project.

- T. **Substantial Completion** – shall mean the point where: (1) the Project is sufficiently completed, in accordance with the Contract Documents, so that the Owner can reasonably occupy or utilize the Project (or designated portions thereof) for the use for which it is intended; (2) a Certificate of Substantial Completion has been executed and issued by Design-Builder; or (3) a Certificate of Occupancy has been issued by the permitting authority.
- U. **Supplier** – shall mean an entity providing only equipment or materials for the performance of construction work.
- V. **Value Engineering** – shall refer to Design-Builder’s obligation to continuously review all aspects of the Project during both the design and construction phases of the Project in order to determine whether savings can be realized by the City without compromising the achievement of the specific objectives and the minimum operating standards that are set forth in the Project’s Construction Documents and to timely present to the City any detailed, written recommendations in order to realize savings.

ARTICLE 2
CONTRACT DOCUMENTS

- 2.1. **CONTRACT DOCUMENTS.** The documents comprising the entire understanding between City and Design-Builder shall be collectively referred to herein as the “Contract Documents,” and shall include only:
 - A. this Agreement and all exhibits hereto, subject to any written modifications to this Agreement, executed by both Owner and Design-Builder, including any Owner approved Change Orders;
 - B. the Solicitation and all exhibits and addenda thereto;
 - C. the Design Criteria Package prepared and sealed by the City Engineer for the Project and each of the Project Specifications identified at Paragraph 3.6 of the Solicitation;
 - D. the Design-Builder’s Proposal;
 - E. the Design-Builder’s General Conditions and Special Conditions, if any; and
 - F. the Construction Documents.

- 2.2. **INTERPRETATION OF THE CONTRACT DOCUMENTS.** The Contract Documents are incorporated herein by reference for all purposes and are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with design and construction industry standards. In the event of any conflict, ambiguity, or discrepancy among the Contract Documents, the following preferences shall control in resolving such conflicts, ambiguities, or discrepancies:
 - A. As between this Agreement (subject to all duly executed written modifications and/or Change Orders entered into hereafter) and the plans or specifications, or the Solicitation, or the Design Criteria Package, this Agreement shall govern.
 - B. As between plans and specifications, the requirements of the specifications shall govern.
 - C. As between figures given on plans and scaled measurements, the figures shall govern.
 - D. As between large-scale plans and small-scale plans, the large-scale plans shall govern.

2.3. THE PROFESSIONAL SERVICES AGREEMENT.

- A. **Amendment.** No modification or amendment to the Agreement shall be valid or binding upon the Owner or Design-Builder unless in writing and executed by both the Owner and Design-Builder.
- B. **Section Headings.** The headings contained within this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such articles, sections, paragraphs, schedules, exhibits and/or attachments hereto.
- C. **Mutuality of Negotiation.** The Owner and Design-Builder acknowledge they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party, regardless of who is responsible for its preparation. The remedies granted to the parties in the Agreement are cumulative and not in limitation of any other rights and remedies of the parties at law or in equity.
- D. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- E. **Survival.** All representations and covenants of the parties shall survive the expiration of the Agreement. All of Design-Builder's representations, indemnifications, warranties, and guarantees made in or required by the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion, and acceptance of Design-Builder's Work or termination or completion of the Agreement or termination of the Work of Design-Builder.
- F. **Legal Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained herein.
- G. **Electronic Signatures.** The Parties, if and by offering electronic signatures in any form whatsoever, accept and agree to be bound by said electronic signatures to all terms and conditions of this Agreement. Further, a duplicate copy of this Agreement containing a non-original signature will be treated the same as the original signed copy of this Agreement for all purposes.

ARTICLE 3

GENERAL DESCRIPTION OF THE SERVICES

- 3.1. **SERVICES TO BE PROVIDED.** Design-Builder shall furnish or arrange for the furnishing of all architectural, engineering, and construction services and materials required for the completion of the Project as set forth in the Scope of Work attached hereto as **Exhibit A** and reasonably inferable from the Contract Documents.
- 3.2. **SUFFICIENCY OF THE PROJECT SITE.** Prior to commencing design and construction work, Design-Builder shall:
 - A. visit and thoroughly inspect the Project Site and any structure(s) or other man-made features to be modified and become familiar with the local conditions under which the Project will be constructed and operated;

- B. familiarize itself with pre-performed surveys related to the Project including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project;
- C. familiarize itself with the Owner’s layout and design requirements, conceptual design objectives, and budget for the Project;
- D. familiarize itself with agreed pertinent Project dates and programming needs;
- E. review and analyze all geotechnical investigations and recommendations as further required by and outlined in Section 6.8 below and herein;
- F. review and analyze any structural, chemical, electrical, mechanical and construction materials tests, investigations, and recommendations which may be necessary for Design-Builder to adequately perform their design and construction obligations under this Agreement; and
- G. gather any other information necessary for a reasonably sufficient understanding of the Project.

Claims made by Design-Builder resulting from Design-Builder’s failure to comply with this Section shall be deemed waived.

3.3 **ADHERENCE TO PROJECT SCHEDULE.** Design-Builder has provided Owner with a preliminary Project Schedule for the planning, design, and construction of the Project which is attached hereto as **Exhibit D**. This preliminary Project Schedule shall serve as the framework for the subsequent development of all detailed construction schedules for the Project. Design-Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the agreed upon Project Schedule, subject to delays that are not the fault of Design-Builder or its subcontractors. The Parties acknowledge and agree that time is of the essence in the performance of this Agreement.

3.4 **DESIGN-BUILDER’S PROJECT TEAM.** Design-Builder agrees to use the Project Team identified in **Exhibit C** for the completion of all Services. Design-Builder shall not remove or replace any members of the Project Team without the written approval of Owner based upon good cause shown or as directed by Owner as provided herein. Should any member of the Project Team discontinue service on the Project for any reason whatsoever, Design-Builder shall promptly replace such team member with a qualified individual, company or firm approved by Owner, in writing, which approval shall not be unreasonably withheld.

3.5 **SUBCONTRACTORS OF DESIGN-BUILDER.** Design-Builder shall provide Owner with written notification of the persons or entities proposed by Design-Builder to act as subcontractors on the Project. Owner shall promptly notify Design-Builder, in writing, of any objections Owner may have to such proposed subcontractors and Design-Builder shall not enter into subcontracts with any proposed subcontractor objected to by Owner. Design-Builder shall be entitled to reasonable additional costs and time incurred in retaining a replacement subcontractor approved by Owner.

- A. By appropriate written agreement, Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Design-Builder and to assume toward Design-Builder all the obligations and responsibilities which the Design-Builder, by these Documents, assumes toward the Owner including, without limitation, those rights relating to contract suspension and termination, compliance with Florida’s E-Verify and public entity crimes requirements, and the responsibility for safety of the Subcontractor’s Work,

- B. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
 - C. Where appropriate, Design-Builder shall require each Subcontractor to enter into similar agreements with sub-subcontractors.
 - D. It is expressly agreed that no relationship of agency, employment, contract, obligation, or otherwise shall be created between Owner and any Subcontractor and a provision to this effect shall be inserted into all contracts between Design-Builder and its Subcontractors.
 - E. If, at any time during the completion of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design-Builder's Project Team is unsatisfactory, Owner may require Design-Builder to remove such Subcontractor or Project Team member from the Project immediately and to replace the Subcontractor or Project Team member at no cost or penalty to Owner for delays or inefficiencies caused by the change.
- 3.6 **COOPERATION.** Design-Builder shall endeavor to develop, implement, and maintain a spirit of cooperation, collegiality, and open communication with Owner so that the goals and objectives for the Project are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 3.7 **COMMISSIONING.** Design-Builder shall participate in, and cooperate with, commissioning, validation, and other third-party quality assurance and quality control processes implemented by the Owner during both the design and construction phases of the Project.

ARTICLE 4

OWNER RIGHTS, DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

- 4.1. **STATUS OF THE OWNER.** Owner shall not have control or charge of the means of construction or the methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Design-Builder be deemed to be an agent of the Owner.
- 4.2. **PROJECT REQUIREMENTS.** Owner shall provide Design-Builder with criteria and information as to the Owner's requirements for design and construction of the Project in a timely manner, including objectives, constraints, space, capacity and performance requirements, flexibility and expandability matters, and any budgetary limitations, along with copies of the City's design and construction standards for inclusion in the Construction Documents.
- 4.3. **SURVEY.** Prior to design, Owner shall furnish survey for control and existing site features and base map information including existing conditions and features in AutoCAD format, along with estimated location of existing utilities known to Owner. Owner does not warrant the adequacy, fitness, or suitability of any such information; however, Design-Builder may reasonably rely on this information without absolving Design-Builder of its responsibility to independently verify or investigate information that a reasonably prudent professional engineer or architect should or would inquire about.
- 4.4. **INFORMATION PERTINENT TO THE PROJECT.** Owner shall, upon request, provide Design-Builder with reasonably available information pertinent to the Project (including previous reports and other data relative to design or construction of the Project), and Owner shall advise Design-Builder as to what information, if any, the Owner believes to be accurate.

Design-Builder is ultimately responsible for satisfying itself as to the accuracy of any data provided and, furthermore, Design-Builder is responsible for bringing to Owner's attention any material inconsistencies or errors in such data which may come to Design-Builder's attention. Should Owner require Design-Builder's assistance in resolving any such error or inconsistency, such Services may be provided by mutual agreement between the Parties.

- 4.5. **ACCESS TO THE PROJECT SITE.** Owner shall arrange for access to and make provisions for Design-Builder to enter upon public property as reasonably required for Design-Builder to perform the Services. Design-Builder shall make its own arrangements for access to private property which Design-Builder believes is necessary to perform its Services.
- 4.6. **OWNER'S UTILITIES.** Design-Builder shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction.
- 4.7. **CITY PROJECT MANAGER.** The City Project Manager shall be the City Engineer or his designee who will be fully acquainted with the Project and who shall define the lines of Owner authority to approve construction budgets and changes in the Project within the Scope of Work and Product Budget. The City Project Manager shall be available as required for conferences during the Pre-Construction Phase and at the Project Site during the Construction Phase to manage the Project on Owner's behalf.
- 4.8. **OWNER COOPERATION.** Owner shall cooperate with Design-Builder in securing any necessary licenses, permits, easements, approvals or other necessary authorizations required for the design, construction and certification of the Project.
- 4.9. **PURPOSE OF OWNER'S REVIEW.** Owner's review, inspection, or approval of any Work, design documents, Applications for Payment or other submittals shall be solely for the purpose of determining whether such Work or documents are generally consistent with Owner's construction and project requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design-Builder of its responsibility to perform its obligations under this Agreement or the accuracy, adequacy, fitness, suitability, or coordination of its design or construction services. Approval of any Work, design documents, or Construction Documents by any governmental or other regulatory agency or other body with jurisdiction shall not relieve Design-Builder of its responsibility for the performance of its obligations under this Agreement. Payment by Owner pursuant to this Agreement shall not relieve Design-Builder shall not constitute a waiver of any of Owner's rights under this Agreement or at law. Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment by Owner, including final payment. Notwithstanding the foregoing, prompt written notice shall be given by the Owner to the Design-Builder if Owner becomes aware of any fault or defect in any design document or any Work of the Project or non-conformance with the Agreement.
- 4.10. **OWNER'S RIGHTS AND DUTIES.**
 - A. **Right to Inspect Work.** Owner shall have the right to inspect the Work at all times. Such inspection will not relieve Design-Builder of any of its obligations to perform the Work in strict accordance with the Contract Documents.
 - B. **Right to Reject Work.** Owner shall have the right to reject Work that does not conform to the Contract Documents. Owner may require special inspection or testing of the Work to determine if the Work is non-conforming. If the Work is found to be conforming, the cost of inspection or testing will be charged to Owner and an appropriate Change Order issued to the Design-Builder for the additional time and cost incurred as a result of such

inspection. If such Work is found to be non-conforming, Design-Builder will pay the cost of correction, inspection or testing.

- C. **Right to Stop Work.** If Owner reasonably believes that Design-Builder is failing to carry out the Work in accordance with the Contract Documents, then Owner may order Design-Builder to stop the Work, or a portion of the Work, until such time as the cause for such Stop-Work Order has been eliminated. Stop-Work Orders shall be issued by the City Engineer. Owner shall incur no liability for delays occasioned by any Stop-Work Order issued in accordance with this Article.
- D. **Right to Carry Out Work.** Should Design-Builder fail to prosecute the Work properly (including, but not limited to, the failure to man the Work due to labor disputes of any type), or fail to perform any provision set forth in the Contract Documents including, without limitation, unauthorized Project Schedule delays, Owner, after seven (7) calendar days written notice to Design-Builder without correction, may, without prejudice to any other rights or remedy Owner may have, correct the deficiencies or otherwise supplement Design-Builder performance through the Owner's own forces or through others, and may deduct the cost thereof from the payment then or thereafter due to Design-Builder.
- E. **Right to Audit.** City shall have the right to audit the books, records, and accounts of Design-Builder that are directly related to the Agreement.
 - (1) Design-Builder agrees to maintain such financial records and other records as may be prescribed by the City, as are consistent with the Owner's and Design-Builder rights and obligations under this Agreement, or as may be required by applicable federal and state laws, rules, and regulations.
 - (2) Design-Builder shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement.
 - (3) Subject to the City's limited right to solely audit the books, records and accounts of Design-Builder only for the costs used to determine the cost of the allowance items and the contingency line item expressly identified in **Exhibit D**, and the costs required to reconcile any owner-direct-purchase tax savings, and to comply with said federal or state audits, Design-Builder shall preserve and make available, at reasonable times for examination and audit by the Florida Office of the Inspector General, the City's internal and/or external auditors, or by any other Florida official with proper authority such financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings; provided, however, that it shall be City's responsibility to notify Design-Builder of the pendency of such audit.
 - (4) If any incomplete or incorrect entry in such books, records, and accounts is discovered as a result of the foregoing audit, then the City shall notify Design-Builder in writing of the specific deficiency, and may withhold any payment upon such entry, until Design-Builder provides reasonable documentation to complete or correct such deficiency.
- F. **Right to Access.** Owner shall have the right of access to the Work at all times.

- G. **Right to Perform Work and Engage Others.** Design-Builder acknowledges that portions of the Work related to the Project may be performed by Owner’s own forces or under separate contracts by Owner.
 - H. **Duty to Coordinate.** Nothing in the Contract Documents shall be deemed to create any duty on the part of the Owner to coordinate the Work with the work of the Design-Builder, other contractors or subcontractors. Design-Builder shall be responsible for coordinating all work with others so as to facilitate the general progress of the Project.
- 4.11 **TIMELY PERFORMANCE.** Owner shall perform the duties and obligations set forth in this Section in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder’s design and construction services.

ARTICLE 5
DESIGN-BUILDER REPRESENTATIONS

- 5.1. **SPECIFIC REPRESENTATIONS.** Notwithstanding anything to the contrary contained in this Agreement, Owner and Design-Builder agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Builder’s stated qualifications, expertise, and ability to provide design-build services, along with the following express representations:
- A. Design-Builder represents and warrants that the design team includes professionally and fully qualified agents to act as the design professional and that the general contractor for the Project and is, and shall remain, licensed to practice engineering and architecture and general contracting in the State of Florida by all public entities having jurisdiction over Design-Builder and/or the Project.
 - B. Design-Builder represents and warrants that it is thoroughly familiar with and understands the requirements of the Project scope and currently holds and shall continue to maintain valid licenses, certificate(s) of competency, or other authorizations necessary to perform the Services required under this Agreement until Design-Builder’s obligations under this Agreement have been fully satisfied.
 - C. Design-Builder represents and warrants that it is fiscally capable to provide the design and construction services required under this Agreement and that it will perform all services under this Agreement in an expeditious and economical manner consistent with good business practices. Design-Builder further warrants that there are no existing obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.
 - D. Design-Builder represents and warrants that prior to the execution of this Agreement, it has visited and inspected the Project site and local conditions under which the Services will be performed and Design-Builder accepts the conditions of the Project Site and has taken those conditions into account in entering into this Agreement.
 - E. Design-Builder represents and warrants that its subcontractors or others employed or retained by Design-Builder in connection with the Project have and shall maintain all licenses, certificate(s) of competency, or other authorizations necessary to perform Services on behalf of Design-Builder as required under this Agreement. Design-Builder further warrants that it shall assume full responsibility and liability to Owner for the improper acts and omissions and negligence of its subcontractors or others employed or retained by Design-Builder in connection with the Project.
 - F. Design-Builder represents and warrants that it shall at all times use its best efforts to perform Design Services and Construction Work in the highest professional manner.

ARTICLE 6**DESIGN SERVICE REQUIREMENTS AND STANDARDS**

- 6.1. **GENERALLY.** Design-Builder shall perform all Design Services described in, contemplated by, inferable from, necessary, or to achieve the Project objectives, including all Design Services necessary for the Project to be properly constructed by Design-Builder and operated and maintained by Owner.
- 6.2. **QUALITY OF DESIGN SERVICES.** Design-Builder shall be responsible for the quality, completeness, accuracy, and coordination of the Design and Construction Documents. Design-Builder shall provide Design Services that meet all environmental and regulatory requirements. Design-Builder shall provide for all testing and inspections required by sound architectural and engineering practices and by any governmental authorities having jurisdiction over the Project.
- 6.3. **DUTY TO CORRECT ERRORS AND OMISSIONS.** Design-Builder shall, at no additional cost to Owner, immediately make additions, changes and corrections to any documents prepared by Design-Builder necessitated by errors and omissions in the Design-Builder's performance of its services. Additionally, Design-Builder shall not be entitled to any compensation or adjustment in the Guaranteed Maximum Price for additional work required as a result thereof. The foregoing shall not relieve Design-Builder for liability to Owner for any damages resulting from any error or omissions by Design-Builder in the course of its duties under this Agreement.
- 6.4. **LEGAL STANDARD.** Design-Builder shall perform all design-build services in accordance with design-build standards currently practiced by design-builders in the State of Florida on projects similar in size, complexity, and cost of the Project and shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project.
- 6.5. **DESIGN STANDARDS.** Design-Builder shall perform all services in accordance with the requirements of governmental agencies having jurisdiction over the Project, the City of Ocala standard specifications and policies, and any other guidance described in the Scope of Services attached hereto as **Exhibit A** and the Design Criteria Package attached hereto as **Exhibit B**. Design-Builder's design shall comply with all applicable building codes, accessibility laws and regulations, City of Ocala's construction standards, and all other standards in effect at the time of the design work. To the extent the City's standards exceed applicable legal requirements, the City's standards shall be met unless Design-Builder obtains a variance from Owner in writing.
- 6.6. **PERMITS.** Design-Builder shall be responsible for obtaining all necessary permits and other governmental approvals necessary for the development of the Project and shall obtain said permits at times necessary to meet the Project schedule and the City acknowledges the permit fee allowance provided by the Design-Builder within the Schedule of Values.
- 6.7. **SITE INFORMATION.** Site information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and any information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

- A. Design-Builder shall prepare, as necessary, surveys and topographic information needed to establish line and grade of sewers, and the location of property lines and easements, including aerial photographs. Sewer easements, both those for construction and permanent, shall be referenced to property lines by field surveys and plans shall include the location of any improvement as it relates to property lines.
- 6.8. **GEOTECHNICAL SERVICES.** Geotechnical services may include, but are not limited to, test borings, test pits, sub-surface imaging, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate Design-Builder recommendations.
 - A. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of a geotechnical consultant. Design-Builder shall retain, at Design-Builder's expense, the services of geotechnical consultants as necessary for the Project.
 - B. To the extent that owner provides to Design-Builder geotechnical analyses and recommendations prepared by a geotechnical consultant retained by Owner, Owner does not warrant the adequacy, fitness, or suitability of any such information; however, Design-Builder may reasonably rely on this information without absolving Design-Builder of its responsibility to independently verify or investigate information that a reasonably prudent professional engineer or architect should or would inquire about.
- 6.9. **LEGAL COMPLIANCE.** Should Design-Builder believe or be advised by another design professional retained to provide services on the Project that the implementation of any instruction received from Owner would constitute a violation of any applicable law, Design-Builder shall promptly so notify Owner in writing.

ARTICLE 7

BASIC DESIGN AND PRE-CONSTRUCTION SERVICES

- 7.1 **PROJECT OBJECTIVES.** Prior to the preparation of the preliminary design for the Project, Design-Builder shall meet with the Owner to ascertain the objectives and requirements of the Project. Design-Builder shall carefully analyze any information furnished to Design-Builder by Owner concerning Project requirements including, but not limited to, any design, construction scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Criteria Package, each in terms of the other.
- 7.2 **SCHEDULE OF DESIGN AND PRE-CONSTRUCTION PHASE SERVICES.** The Design and Pre-Construction Phase of the Project shall commence with the issuance of the Limited Notice to Proceed to be issued by Owner on or after **MARCH 19, 2025**, and include the kick-off meeting, public meeting(s), submission of preliminary, intermediate, and final design documents and development drawings, as set forth in the preliminary Project Schedule attached hereto as **Exhibit D**. This Phase is expected to last **TWO HUNDRED ELEVEN (211)** Calendar Days, but in no case will extend beyond **OCTOBER 17, 2025**.
 - A. At any time during the performance of Design and Pre-Construction Phase Services, should Design-Builder have reason to believe that it will be unable to meet any milestone date established for the Work, Design-Builder shall immediately notify the Owner in writing. Design-Builder's notice shall include the reason for the delay, the party responsible, and the steps being taken by the Design-Builder to remedy or minimize the

impact of the delay. Design-Builder's failure to submit such notice shall constitute a waiver by Design-Builder of any claim for adjustment to Contract Price, Design Schedule, or Contract Time.

- 7.3 **PRELIMINARY DESIGN.** Design-Builder shall prepare and submit to Owner a Preliminary Design for the Project no later than the date set forth in the preliminary Project Schedule attached hereto as **Exhibit D** which shall address all requirements of the Project and include, without limitation, the following:
- A. preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
 - B. preliminary drawings which illustrate each exterior view of the Project;
 - C. preliminary drawings which illustrate the layout and functional area of the Project and the dimensions thereof;
 - D. preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
 - E. a written description of the materials and equipment to be incorporated into the project and the location of same; and
 - F. any other document or things required to effectively illustrate, describe, or depict the Preliminary Design and conformity of the Preliminary Design with the requirements of the Design Criteria Package and this Agreement.
- 7.4 **OWNER REVIEW OF PRELIMINARY DESIGN.** Design-Builder shall review the Preliminary Design with Owner and shall incorporate any changes ordered by the Owner, which shall be completed and submitted to Design-Builder in accordance with the preliminary Project Schedule attached hereto as **Exhibit D**, regarding the Preliminary Design or the requirements of the Project. After incorporation of any changes ordered by Owner, Owner shall provide written authorization for Design-Builder to commence preparing the Detailed Design, or such other part thereof as directed.
- 7.5 **DETAILED DESIGN.** Design-Builder shall prepare and submit to Owner a Detailed Design for the Project no later than the date set forth in the preliminary Project Schedule attached hereto as **Exhibit D** which shall include all Design Documents describing with specificity all elements, details, components, materials, and other information necessary for the complete construction of the project to include the satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable authorities required to render the Project and its components operational and functionally and legally usable for their intended purpose.
- 7.6 **DOCUMENTS CONSIDERED OWNER'S PROPERTY.** The Design Documents and Contract Documents including, but not limited to, the drawings, specifications, and other documents or things prepared by Design-Builder specifically for the Project, except and excluding Design-Builder's construction and design standards, shall immediately become and be the sole property of Owner. Any use or reuse of these documents without Design-Builder's involvement or approval shall be at Owner's sole risk and liability. Any documents furnished by Owner shall remain the property of the Owner. Design-Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with; however, in no event shall Design-Builder use, or permit to be used, any portion of any such documents on other projects without Owner's written authorization.

ARTICLE 8
CONSTRUCTION PHASE SERVICES

- 8.1. **GENERAL INTENT.** Design-Builder shall perform all Work and construction administration services necessary to construct the Project in accordance with this Agreement and to render the Project and all of its components operational and functionally and legally usable.
- 8.2. **WORK DEFINED.** The term "Work" as used herein shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project in compliance with the Contract Documents including, without limitation, the following:
- A. construction of the whole and all parts of the Project in full and strict conformity with the Contract Documents;
 - B. provision of and prompt payment for all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, utilities, and things required for the completion of the Project;
 - C. the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
 - D. the creation and submission to Owner of detailed as-built drawings depicting all as-built construction;
 - E. the furnishing of any required surety bonds and insurance as required by this Agreement;
 - F. the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract Documents; and
 - G. the furnishing of all other services and things required or reasonably inferable from the Contract Documents.
- 8.3. **STRICT COMPLIANCE WITH CONSTRUCTION DOCUMENTS.** All Construction Work performed by Design-Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract Documents is defective.
- 8.4. **SUPERVISION OF CONSTRUCTION WORK.** Construction Work shall be strictly supervised and directed using the Design-Builder's best and highest skill and effort. Design-Builder shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Design-Builder. Design-Builder will be solely responsible for the means, methods and techniques of performing the Work. Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Design-Builder shall, as Owner's construction representative during construction, advise and consult with the Owner and provide administration of the Contract Documents. Design-Builder shall staff the Project Staff with personnel who shall, at a minimum:
- A. supervise and coordinate Design-Builder's personnel and act as its primary liaison with the Owner;
 - B. coordinate subcontractors, suppliers, and trade contractors and supervise Project Site construction management services;
 - C. be familiar with all trade divisions and trade contractors' scopes of work, all applicable building codes and standards, and this Agreement;
 - D. check, review, coordinate, and distribute shop drawings;
 - E. check and review materials delivered to the Site;

- F. regularly review the Work to determine its compliance with the Construction Documents and this Agreement;
 - G. confer with the appropriate Owner representatives as necessary to assure acceptable levels of quality;
 - H. prepare and maintain Project records and process documents;
 - I. schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status, and other information as necessary and to provide notification of and minutes from such meetings to Owner;
 - J. schedule and conduct weekly progress meetings with the Owner to review such matters as construction progress, schedule, shop drawing status, and other information as necessary; and
 - K. make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire, and accidents as required by the Contract Documents.
- 8.5. **RECORD COPY OF CONTRACT DOCUMENTS.** Design-Builder shall continuously maintain at the Project Site, for the benefit of Owner, an updated copy of this Agreement and Contract Documents. Design-Builder shall also maintain at the Project Site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, samples, and other submittals.
- 8.6. **NOTICE OF COMMENCEMENT.** After Owner has approved the Design Documents from the Detailed Design, Owner shall issue a Notice to Commence Work directing Design-Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date").
- 8.7. **SCHEDULE OF CONSTRUCTION PHASE SERVICES.** Within **Fifteen (15) Calendar Days** after the Commencement Date, Design-Builder shall submit to the Owner Design-Builder's Schedule of Construction for the completion of the Work by the scheduled date for completion of the Project.
- A. The Schedule of Construction shall reflect the performance of all Work on weekdays and non-holidays.
 - B. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to Owner.
 - C. The Schedule of Construction shall relate to the entire Project and shall be revised at least monthly to reflect conditions encountered from time to time. Each such revision shall be furnished to Owner.
 - D. Design-Builder's strict compliance with the requirements of this Section shall be a condition precedent for payment to Design-Builder.
 - E. No claim for an increase in the Guaranteed Maximum Price ("GMP") shall be allowed as a result of Design-Builder basing the GMP upon an early completion schedule or as a result of delays and costs attributable to completion later than the proposed early completion date, unless such early completion or delayed completion result from directions, acts or omissions by Owner, Owner's agents, or conditions otherwise under Owner's control.
- 8.8. **COMPLIANCE WITH CONSTRUCTION REGULATIONS.** Design-Builder shall perform the Work in accordance with all construction codes, laws, ordinances and regulations applicable to the design and execution of the Work. Any fine or penalty imposed as a consequence of Design-Builder's violation of this provision shall be paid by Design-Builder and Design-Builder shall fully indemnify and hold Owner harmless from all loss, damage, and expense, including attorneys' fees, resulting from any such violation. The indemnification requirement set forth

in this Section shall not apply if the violation is caused in part by a negligent or willful act or omission of Owner, its officers, agents, or employees; in which case Design-Builder's obligation to indemnify shall be based on Design-Builder's pro rata contribution to the loss, damage or expense.

- 8.9. **WARRANTY OF CONSTRUCTION WORKMANSHIP AND MATERIALS.** Design-Builder warrants and guarantees to Owner that all labor furnished for the provision of Work under this Agreement shall be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results in strict compliance with the Contract Documents, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Agreement and that the Work will be free of faults and defects. Any and all Work not strictly conforming to these requirements shall be considered defective and shall constitute a Breach of Design-Builder's Warranty.
- 8.10. **OWNERSHIP ACCESS TO CONSTRUCTION WORK.** At all times relevant to the Contract, Design-Builder shall provide access to the Construction Work to Owner and its designees without formality or other procedure.
- 8.11. **CLEANING THE PROJECT SITE.** Design-Builder shall keep the Project Site reasonably clean during the performance of the Construction Work. Upon Final Completion of the Construction work Design-Builder shall thoroughly clean the Site and remove all waste, debris, trash and excess materials or equipment, together with Design-Builder's property.
- 8.12. **REPAIR OF COLLATERAL DAMAGE.** Unless otherwise instructed by Owner, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities damaged by Design-Builder's completion of the Work.
- 8.13. **SUBSTANTIAL COMPLETION.**
- A. **Notification.** When Design-Builder considers the Work to be Substantially Complete, Design-Builder will prepare for submission to Owner written notice of same which will include a list of items remaining to be completed or corrected ("Punch List"). Design-Builder's failure to include any items on the Punch List shall not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents.
 - B. **Inspection.** Owner will then inspect the Work to determine, in Owner's sole discretion, whether Substantial Completion of the Work has been achieved, as defined in the Contract Documents, and to verify the accuracy and completeness of the Punch List.
 - C. **Certificate of Substantial Completion.** If Owner determines that the Work is Substantially Complete, Owner shall prepare for Design-Builder's acceptance and execution a "Certificate of Substantial Completion" setting forth the date of Substantial Completion of the Work, identifying the responsibilities of Owner and Design-Builder for security, maintenance, utilities, damage to the Work, and insurance, and will fixing the time within which Design-Builder will complete the items on the Punch List. In no event shall the date within which Design-Builder shall complete the items on the Punch List be greater than **thirty (30) calendar days** after the date of Substantial Completion.
 - D. **Use.** Notwithstanding any failure or refusal by Owner to declare or acknowledge in writing that all or a portion of the Work is Substantially Complete, Owner's use thereof for its intended purpose shall be deemed Substantial Completion of the Work or such portion thereof so used.

8.14. **FINAL COMPLETION.**

- A. **Determination of Final Completion.** When Design-Builder considers that all of the Construction Work is complete and ready for final inspection, Design-Builder will prepare for submission to Owner written notice of same along with the Final Pay Application.
- B. **Inspection.** Owner will then make final inspection of the Work and if Owner finds, in Owner's sole discretion, the Work is acceptable and all terms and conditions of the Contract Documents have been fulfilled, the date of such inspection shall be the Date of Final Completion of the Work.
- C. **Payment After Final Completion.** Owner shall make final payment of all remaining sums due to Design-Builder within thirty (30) calendar days after Final Completion as reflected by Owner's final acceptance of the Work, provided that all documents and things required to be delivered to Owner under this Agreement have been delivered as required and all other conditions precedent to payment have been satisfied.
- D. **Conditions Precedent to Final Payment.** As a condition precedent to receipt of final payment, Design-Builder shall furnish Owner with the following:
 - (1) consent to final payment by Design-Builder's Surety Company;
 - (2) a notarized Contractor's Final Payment Affidavit in compliance with section 713.06(3)(d), Florida Statutes; and
 - (3) all product warranties, operating manuals, instruction manuals and other close-out documentation, waivers of lien, drawings and things customarily required of a contractor as part of or prior to Project closeout.
- E. **Release of Retainage.** Upon Substantial Completion of the Construction Work and execution of the Certificate of Substantial Completion and receipt of all required close-out documentation as described in **Exhibit A**, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion Punch List and all Liquidated Damages and other damages for which Owner reasonably determines Design-Builder is liable.
- F. **Acceptance of Final Payment and Waiver.** Design-Builder's acceptance of final payment from Owner shall constitute a waiver and release of all claims by Design-Builder against Owner except for those claims previously made in writing and pending at the time of final payment and specifically identified in Design-Builder's Final Pay Application as unsettled at the time of submission.

ARTICLE 9

ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER

- 9.1 **DESIGN-BUILDER TO PERFORM ALL WORK REQUIRED BY AGREEMENT.** The intent of this Agreement is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Services and Work that may be required, reasonably implied, or reasonably inferred by the Agreement, or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price as provided under this Agreement.

- 9.2 **DESIGN-BUILDER’S REVIEW AND APPROVAL OF SUBMITTALS.** Design-Builder shall engage in prompt and adequate review of shop drawings and other submittals in order to maintain the Construction Schedule and shall use its best independent professional judgment in its review to determine compliance with the Contract Documents. Design-Builder shall review, study, approve, and take other necessary action upon all shop drawings and other submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract Documents. Design-Builder shall not allow any deviation from, substitution for, or other modification of the Contract Documents in a shop drawing or submittal without written approval in the form of a Change Order from Owner.
- A. In addition to the design submittals Owner must review in accordance with Article 7.4, Owner shall also have the right to review and approve other submittals, at its discretion. If Owner so elects to exercise the right to review such other submittals, Design-Builder shall not perform any portion of the Work to which Owner has required submittal and review until such submittal has been approved by the Owner. If Owner elects to conduct a discretionary review of other submittals, then it shall promptly notify Design-Builder of such election in writing, who shall tender the submittal documents package to Owner within 48 hours after receiving Owner’s written election and obtaining the complete submittal documents package to be reviewed. Owner shall conduct and complete any desired discretionary review and approval of such submittals within five (5) days after receipt of the submittal documents package, so as to not delay the Work or impact the Project Schedule. If Owner’s submittal review delays or otherwise impacts the progress of the Work or Project Schedule, then Design-Builder shall be entitled to an extension of time for the Project completion and compensation for costs incurred as a result of such delay or impact.
 - B. Design-Builder shall have the duty to carefully review, inspect and examine any and all submittals before submission to Owner.
 - C. Approval of submittals by the Owner shall not be evidence that Work installed or performed pursuant to the Owner’s approval conforms to the requirements of the Contract Documents nor shall such approval relieve Design-Builder of any of its responsibilities or warranties under this Agreement.
 - D. Drawings and other submittals from Design-Builder do not constitute a part of this Agreement.
- 9.3 **PROCUREMENT AND REVIEW OF WARRANTIES.** Design-Builder shall procure from all Subcontractors and Suppliers and shall transmit to Owner all warranties required by the Contract Documents. Design-Builder shall first review all such warranties and certify to Owner that the warranties are in strict compliance with the requirements of this Agreement.
- 9.4 **PROCUREMENT OF OPERATIONS AND MAINTENANCE DOCUMENTATION.** Design-Builder shall prepare or procure from and shall transmit to Owner all documentation required by this Agreement regarding the operation and recommended maintenance programs relating to various elements of the Work.
- 9.5 **COMMENCEMENT OF GUARANTEES AND WARRANTIES.** Special or specific guarantees and warranties required by this Agreement to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work for a period of **Two (2) Years**. The required Maintenance and Guarantee bond, as described in **Exhibit A**, shall

commence on the date of Substantial Completion and continue for a period of **Three (3) Years**.

- 9.6 **AS-BUILT DRAWINGS.** Design-Builder shall prepare and provide to Owner a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Work in strict compliance with the requirements of the Contract Documents.
- 9.7 **COMPLIANCE WITH LABOR LAWS.** Design-Builder shall assume all responsibility for all personnel assigned to or contracted for the performance of Work and agrees to strictly comply with all obligations attaching to an employer with respect to said personnel and contractors under all applicable labor laws.
- 9.8 **TESTING, INSPECTIONS, AND APPROVALS.** Design-Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Design-Builder shall submit certified results of any such tests performed to Owner.
- 9.9 **PERMITS, LICENSES AND NOTICES.** Design-Builder shall be responsible for obtaining all necessary permits construction and building permits, licenses, and other authorizations necessary for the construction of the Project. Design-Builder shall notify Owner when said permits, licenses, and authorizations, have been received and shall supply Owner with copies of same. Upon completion of the Work, the originals of permits, licenses and authorizations shall be delivered to Owner, and receipt of these documents by Owner shall be a condition precedent to final payment. Design-Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Project.
- 9.10 **CONDITIONS TO SITE ACCESS.** While on Owner's property, all Design-Builder's employees and Subcontractors shall confine themselves to areas designated by Owner and will be subject to Owner's badge and pass requirements, if any, in effect at the Project site.
- 9.11 **SITE SAFETY AND SECURITY.**
 - A. **Safety Management.** Design-Builder shall be responsible for developing, implementing, maintaining and supervising all safety programs in connection with the Work and the Project site. Design-Builder shall be responsible for taking all reasonable steps and legally required measures to comply with applicable safety regulations and standards and to adequately protect the Work, stored materials, temporary structures located on the premises, and all individuals performing Work at or otherwise on the Project site, including all other persons who may be physically injured by the Work.
 - B. **Safety of Property.** Design-Builder will be responsible for taking all reasonable precautions to prevent damage to property and securing the property. Protection of property includes the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the Project Site, or under the care, custody or control of Design-Builder or any person or entity for whom Design-Builder is responsible. In addition, protection of property includes other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities. Design-Builder acknowledges that the site is located downtown and will secure the property against trespassing, vandalism and other unauthorized access to the property.

- C. **Applicable Safety Laws.** Design-Builder shall ascertain and comply with all legal notice and posting requirements and will comply with all applicable laws bearing on the safety of persons or property and/or their protection from damage, injury, or loss.
 - D. **Required Safeguards.** Design-Builder will ascertain the requirements for and will erect and maintain, as required by law and/or existing conditions, all reasonable safeguards for safety and protection, including but not limited to, the posting of danger signs and other warnings against hazards, and the promulgation of safety regulations and notification to owners and users of adjacent property.
 - E. **Hazardous Activities.** If the Work involves any hazardous activities or the use or storage of hazardous materials or equipment, Design-Builder and subcontractors will fully coordinate with Owner exercise the utmost care and will carry on such activities under the supervision of properly qualified and licensed personnel. The use of explosives while undertaking any Project is prohibited.
 - F. **Remedy of Damages.** Any and all damage or loss to any property, caused by Design-Builder, subcontractors or any other person or entity for whose performance Design-Builder is responsible, will be promptly remedied or repaired at the expense of Design-Builder.
- 9.12 **REPAIR OF COLLATERAL DAMAGE.** Unless otherwise instructed by Owner, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities damaged by Design-Builder’s performance of the Construction Work.
- 9.13 **CLEANING THE SITE.** At all times Design-Builder shall be responsible for keeping the Project site and related storage areas and public and private areas free from accumulations of waste materials or rubbish. If for any reason, Design-Builder or any subcontractor fails to completely clean up and remove its waste materials, rubbish and other materials at the Project site to a level acceptable to the Owner, Owner, after 24-hour written notice to Design-Builder of its intent to do so, may do so and the cost thereof will be charged to Design-Builder, through a deduction from the final pay application.
- 9.14 **DECISIONS REGARDING AESTHETIC EFFECT.** The City’s decisions in matters relating to aesthetic effect shall be final.
- 9.15 **INDEPENDENT CONTRACTOR.**
- A. Design-Builder acknowledges and agrees that at all times during the performance of both Design Services and Construction Work under this Agreement Design-Builder shall be acting as an independent contractor and that no provision hereunder shall create an employment or agent relationship between the parties.
 - B. Design-Builder acknowledges and agrees that in no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents
 - C. Design-Builder shall exercise independent judgment in performing its duties under this Agreement and shall be solely responsible for scheduling or prioritizing the workflow and determining how all Work shall be performed. Design-Builder shall be solely responsible for the acts of its employees and subcontractors in the performance of the Work.
 - D. Design-Builder agrees that if Design-Builder is injured or damaged by any other contractor, including without limitation, delay damages, acceleration costs, extra work

claims, inefficiency claims, damage to others' work, damage to property and injuries to persons (including death), Design-Builder's sole remedy is to assert a Claim or cause of action directly against the other contractor causing the injury or damage. Design-Builder hereby releases, acquits, holds harmless and forever discharges Owner of and from any and all liability for performance or non-performance of other contractors or for any act or omission of other contractors.

- 9.16 **OWNER OCCUPANCY.** Design-Builder shall smoothly provide for the Owner's occupancy of the Project. Design-Builder shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed by Design-Builder, "online" and in such condition as will satisfy Owner's operational requirements. Design-Builder recognizes Owner is a public entity responsible for operating public facilities. If the Project, or any portion, is not complete in time for regularly scheduled occupancy by the City, then Owner may, at its option, occupy the Project or a portion thereof prior to Design-Builder obtaining Substantial Completion. In the event of occupancy prior to Substantial Completion, that occupancy will be construed as acceptance of the Work or construed as Substantial Completion of the portion so occupied or used. Design-Builder shall conduct the punch list inspection, incorporating the Owner's punch list, and coordinate the completion of all final punch list work to be done with Owner occupancy requirements in mind.

ARTICLE 10
COMPENSATION

- 10.1. **PROJECT BUDGET.** Owner shall pay Design-Builder for the performance of the Design Services, pre-construction services, the Construction Work, and any reimbursable expenses permitted hereunder in an amount not to exceed **FOUR MILLION, TWO HUNDRED THIRTEEN THOUSAND, NINE HUNDRED AND ONE DOLLARS (\$4,213,901)**. Owner's Project Budget for the design and construction of the Project shall be subject to adjustments permitted hereunder. There shall be no reallocation of amounts among such categories, without Owner's written consent. The Project Budget shall be comprehensive in scope so that all Design-Builder costs necessary for the proper execution of the Design Services and the Construction Work shall be clearly identified and no other costs shall be allowed, subject to permissible adjustments and Change Orders as set forth hereunder. In the event that upon full completion of the Design Services and Construction Work it is discovered that the actual cost thereof is less than the Project Budget, Owner shall be entitled to the difference for any unused amounts from the contingency and specified allowance line items expressly identified in **Exhibit E** and for any owner-direct-purchase tax savings only; Design-Builder shall be entitled to retain any and all other savings or unused funds.
- 10.2. **PAYMENT FOR DESIGN AND CONSTRUCTION.** Owner shall pay, and Design-Builder agrees to accept, the Guaranteed Maximum Price agreed upon by the parties as full and complete compensation for the performance of all Design and Construction Work and other requirements as set forth by the Contract Documents, subject to additions and deductions by Change Order as provided in the Contract Documents.
- A. **Guaranteed Maximum Price ("GMP").** The Guaranteed Maximum Price (the "GMP") shall represent Design-Builder's guaranteed offer to the City of the maximum price for which it will design and construct the Project, as represented in the Design and

Construction Documents, including any fee for Design-Builder's services. Design-Builder agrees and guarantees the GMP shall in no event exceed **\$4,213,901**, subject to additions and deductions by Change Order as provided in the Contract Documents.

- (1) The intent and purpose of the GMP is to establish a maximum not-to-exceed price for the construction of the Project, not a maximum price for line items. Design-Builder shall provide a line-item reconciliation of the contingency and specified allowance line items identified in **Exhibit E** and for any owner-direct-purchase tax savings at the conclusion of the Project, at the time of the submission of the Final Payment Application, reconciling the final Schedule of Values to Design-Builder's final job cost detail of those line items only.
- (2) The GMP, unless changed by formal amendment, supplemental agreement, Change Order, represents the absolute limit of obligation or liability that Owner may ever have insofar as the cost for full and final completion of the Construction Work and the total of all payments to Design-Builder or its Subcontractors are concerned.
- (3) Design-Builder agrees that it will be responsible for paying all costs of completing the Work required to be expended for the completion of the Construction Work which exceed the GMP, as adjusted in accordance with the Construction Documents, and Owner shall never be liable for same.
- (4) Notwithstanding anything contained herein or elsewhere to the contrary, should the final cost of the Work and Design-Builder's fee total less than the GMP, or any approved amendment thereof, the difference shall inure to the benefit of Design-Builder, except that Owner shall be entitled to any savings for the contingency and allowance line items identified in **Exhibit E** and for any Owner-direct-purchase tax savings, only.
- (5) Owner and Design-Builder understand, acknowledge and agree that in cases where cost reductions are available – either at the request of Owner or through value engineering identified by the Design-Builder – said cost reduction proposals shall be based upon the actual cost savings to the Project and take the form of deductive change orders presented by the Design-Builder and approved or denied by the Owner.

B. GMP Contents. The Guaranteed Maximum Price shall include the cost of the Design and the Construction Work (general conditions, subcontracted costs and other direct costs as defined herein) and the fee for Design-Builder's services. The GMP shall also include the following items which, once approved and executed, shall be incorporated into this Agreement:

- (1) an itemized statement of Design-Builder's General Conditions expenses for the Project which are to be paid as the Work progresses with each Application for Payment based on the percentage of completion of the Work;
- (2) a Project Schedule;
- (3) a schedule of values; and
- (4) the Design-Builder's contingency for the Work which is included for the purpose of defraying the risks associated with cost estimates based on incomplete construction documents, estimating errors, code compliance issues, and other

unforeseen circumstances, and which may be used as determined in Design-Builder's sole judgement.

- 10.3. **APPLICATIONS FOR PAYMENT.** Each Application for Payment shall constitute a certification and representation by Design-Builder to Owner that the project has progressed to the point indicated and the quality of the Work covered by the application is in accordance with the Contract Documents. Payment requests shall be processed and paid in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act, and the terms of this Agreement.
- A. **Schedule of Values.** Before submitting its first Application for Payment to Owner, Design-Builder shall submit a Schedule of Values allocating the GMP to various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Owner may reasonably require. This Schedule of Values, unless objected to by Owner, will be used as the basis for evaluating Design-Builder's Applications for Payment.
- B. **Itemized Applications for Payment.** On or before the **twentieth (20th) day** of each month, Design-Builder shall submit to Owner an itemized Application for Payment in compliance with the Schedule of Values and supported by such data substantiating Design-Builder's right to payment as Owner may reasonably require, but in each case less the total of payments previously made, and less amounts properly withheld. Each request for payment shall include a certification by Design-Builder of the percentage of completion as of the date of such request for payment and shall be sent to **Sean Lanier, Project Manager, Engineering Department, 1805 NE 30th Avenue, Building 700, Ocala, Florida 34470, E-Mail: slanier@ocalafl.gov, Phone: (352) 351-6772.**
- (1) **Change Orders.** Application for Payments will show agreed upon Change Orders as separate itemized line items for payment, including the percent of completion of the Change Order, the amounts of previous Application for Payments, retainage and payments for the Change Order.
- (2) **Materials at Project Site.** Payments will be made on account of materials or equipment incorporated into the Work and/or, in cases where materials and/or equipment are not yet incorporated into the Work, on account of materials or equipment delivered, suitably stored and protected at the Project site and/or, following express approval by the City, on account of materials which are clearly demonstrated to be (a) in transit to the Project site; or (b) suitably stored and protected at an offsite location controlled by Design-Builder.
- C. **Payment by Owner.** Within **twenty (20) calendar days** of receipt of Design-Builder's properly prepared and certified application for payment, Owner shall issue payment to Design-Builder in an amount equal to the total of the Cost of the Work and Services properly performed and approved by Owner as of the date(s) covered by such application for payment, less retainage in the amount of **Five Percent (5%)**, and less any payments previously made by Owner to Design-Builder.
- (1) As a condition precedent to payment, Design-Builder must have submitted updated schedules for the performance of the Design Services and Construction Work as required by this Agreement.
- (2) Owner shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount requested is in excess of the

amount allocated in the Schedule of Values for such Design Services or Construction Work based upon the percentage of completion as of the date of the request for payment, subject to any amount allocated to such request from the contingency line item.

- (3) If Owner does not agree with the Application for Payment, Owner will promptly notify Design-Builder in writing within five (5) business days of receipt, specifically identifying the nature and amount of each item so disputed and the reason(s) therefor. Owner will withhold payment for only those items in dispute; undisputed items will be paid in accordance with the Agreement.
 - (4) It is mutually agreed that no payment (including final payment) issued by Owner under this Agreement, nor the partial or complete use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Services or Work not performed in accordance with the Contract Documents.
- D. **Transfer of Title.** Title of all Work, materials and equipment covered by an Application for Payment will pass to Owner either by incorporation in the Work or upon the receipt of payment by Design-Builder, whichever occurs first, and will be free and clear of all liens, claims, security interests or encumbrances. Design-Builder will have no property interest in Work, materials and equipment, including without limitation, stored materials and equipment, for which title has passed to Owner.
- E. **Payment to Subcontractors.** Upon receipt of payment from Owner, Design-Builder shall promptly pay all subcontractors, materialmen, laborers, and suppliers such amounts as they are entitled for the Work covered by such payment, in accordance with the terms and conditions contained in the agreements between Design-Builder and such subcontractors, materialmen, laborers, and suppliers.
- (1) **Use of Joint Checks.** Should Owner become aware that Design-Builder has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, Owner shall have the right, but not the duty, to issue payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.
- 10.4. **OWNER DIRECT PURCHASES.** Based on the current understanding of the intended design for the Project, which is still subject to modification through the design phase, Design-Builder has included in the GMP the sales tax that would be applied to its purchase of the materials and/or components from suppliers, vendors and subcontractors anticipated to be used in the Work in the GMP. Owner is legally exempt from sales tax of such materials and/or components. Therefore, to provide additional savings to Owner, Design-Builder agrees, if Owner elects, to participate in an Owner-Direct-Purchase ("ODP") program, as follows:
- A. Design-Builder will identify in writing for Owner all potential ODP items, defined as those materials and/or components to be purchased from a single supplier, vendor or subcontractor for single orders that exceed \$25,000.00, and shall provide an itemization of the taxable portion and the sales tax thereon;

- B. Design-Builder will also provide Owner with a deadline by which Owner must notify Design-Builder of its election to participate in the ODP for such items;
 - C. If Owner elects to participate in the ODP for any item, Design-Builder will prepare the purchase order on behalf of Owner, or provide all information for Owner to prepare the purchase order, as Owner may prefer, to be executed by Owner and the particular supplier, vendor or subcontractor of said materials and/or components;
 - D. A deductive Change Order for the direct purchase price Owner pays for the materials and/or components, plus the tax savings for the taxable amount of said direct purchase, shall be prepared and executed by the Parties, upon agreement.
- 10.5. **RETAINAGE ON PROGRESS PAYMENTS.** Owner shall withhold an amount equal to **Five Percent (5%)** of each monthly progress payment for the Construction Phase only, as retainage to secure Design-Builder's full and faithful performance of its obligations under this Agreement. Design-Builder shall not be entitled to any interest received by City on retainage funds held. Owner may release any portion of any retainage withheld which is attributable to the labor, services, or materials supplied by Design-Builder or by one or more Subcontractors or suppliers at any point at all. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more Subcontractors or suppliers Design-Builder shall timely remit payment of such retainage to those subcontractors and suppliers.
- 10.6. **WITHHOLDING OF PAYMENT.** Owner shall have the right to refuse to make payment and, if the balance of unpaid contract amount is insufficient to pay them, then Owner, may demand the return of a portion or the entire amount previously paid to Design-Builder in an amount then reasonably adequate to cover the demonstrated penalties, damages, and potential losses resulting or reasonably likely to result from:
- A. the quality of a portion, or all, of Design-Builder's Construction Work not performed in accordance with the Contract Documents;
 - B. the quantity of Design-Builder's Work not corresponding with what is represented in Design-Builder's application for payment, or otherwise;
 - C. Design-Builder's rate of progress being such that, in Owner's reasonable and demonstrated opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
 - D. Design-Builder's failure to use payments received from Owner to pay Design-Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers in accordance with the agreements between Design-Builder and such third parties;
 - E. evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - F. claims made, or likely to be made, against Owner or its property;
 - G. loss to Owner caused by Design-Builder arising out of its Work; and/or
 - H. Design-Builder's failure or refusal to perform any of its obligations to Owner.
- In the event that Owner issues written demand to Design-Builder for amounts previously paid, Design-Builder shall promptly comply with such demand.

ARTICLE 11

TIME FOR CONSTRUCTION, EXTENSIONS, LIQUIDATED DAMAGES, AND FORCE MAJEURE

- 11.1 **TIME OF THE ESSENCE.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Owner and Design-Builder recognize that Owner will suffer financial loss if the Work is not substantially completed within the time specified Project Schedule, as said time may be adjusted as provided for herein.
- 11.2 **START AND EXPEDITIOUS COMPLETION OF THE WORK.** Design-Builder shall begin Work per the Notice(s) to Proceed issued by Owner, provide adequate staffing, and man the Project site with adequate forces to achieve Substantial Completion and Final Completion of the Work within the time specified in the Project Schedule, as said time may be adjusted as provided for herein.
- 11.3 **NOTICE OF COMMENCEMENT.** After Owner has approved the Design Documents from the Detailed Design, Owner shall issue a Notice to Commence Work directing Design-Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The Notice of Commence Work shall be issued at least ten (10) calendar days prior to the Commencement Date.
- 11.4 **TIME FOR COMPLETION.** Design-Builder shall commence the Work on the Commencement Date and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Work **not later than TWO HUNDRED NINETY EIGHT (298) calendar days** after the Commencement Date, or such other date designated by Change Order (the "Scheduled Completion Date"). Design-Builder shall achieve Final Completion of the Work no later than **thirty (30) calendar days** after achieving Substantial Completion.
- 11.5 **LIQUIDATED DAMAGES.** The parties agree that it would be extremely difficult and impracticable under the presently known facts and anticipated circumstances to ascertain and quantify the total amount of damages that Owner would incur should Design-Builder fail to achieve Substantial Completion and/or Final Completion of the Work by the dates specified for each under the terms of this Agreement because this is a public construction project that will, when completed, benefit the public. These liquidated damages are in lieu of all liability for extra costs, losses, expenses, claims, penalties and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion and/or Final Completion date(s).
 - A. Accordingly, the Parties agree that it is appropriate and fair for Owner to assess against Design-Builder, as liquidated damages and not as a penalty, the sum of **Two Thousand Six Hundred Fifty and No/100 Dollars (\$2,650) Per Day** for each calendar day of unexcused delay in achieving Substantial Completion beyond the date specified for Substantial Completion in the Construction Schedule, as extended in accordance with the Contract Documents, starting on the first day following expiration of the established deadline for Substantial Completion and continuing each calendar day until the actual date that Substantial Completion is achieved.
 - B. After Substantial Completion is achieved, the Parties agree that it is appropriate and fair for Owner to assess against Design-Builder, as liquidated damages and not as a penalty, the sum of **Two Hundred and No/100 Dollars (\$200) Per Day** for Design-Builder's neglect, failure, or refusal to complete punch list items or other remaining Work by the

date established in the Construction Schedule for Final Completion of the Work as extended in accordance with the Contract Documents. Liquidated Damages for punch list items shall commence on the first day following expiration of the established date for Final Completion and shall accrue until the Final Application for Payment has been approved by Owner.

- C. The Liquidated Damages amount per calendar day is fixed and agreed upon by and between Design-Builder and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. It is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, by the Owner.
- D. Permitting Design-Builder to continue and finish the Work, or any part thereof after the time fixed for its completion or after any date to which time for completion may have been extended shall in no way constitute a waiver by Owner of any rights under the Agreement.
- E. Owner shall have the right to: (a) deduct the liquidated damages from any money in its hands or from any money otherwise due or to become due to Design-Builder; or to (b) initiate any applicable dispute resolution procedure for the recovery of liquidated damages within the times specified under this Agreement.
- F. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays is intended to compensate Owner solely for Design-Builder's failure to substantially complete the Work in the Contract Time and shall not release Design-Builder from liability from any other breach of Agreement requirements.
- G. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Design-Builder's failure to achieve Substantial Completion of the Work.

11.6 **DELAYS AND EXTENSIONS OF TIME.**

- A. **Delays.** If Design-Builder is materially delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or of an employee separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes not caused by wrongful or unlawful acts of Design-Builder, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Design-Builder control; or by other causes that the Owner determines may justify delay, then the Time for Completion may be extended (an "Extension of Time") by Change Order for such reasonable time and/or cost as the Owner may determine.
- B. **Changes and Extensions of Time.** All changes to the scope of the Design Services or Construction Work or extensions of the agreed upon Design Schedule or Time for Completion of the Work shall be made by mutual agreement of Owner and Design-Builder. All Change Orders or other changes requested by Design-Builder, including claims for additional compensation or extensions of the Time for Completion occurring during either the Design and Pre-Construction Phase or Construction Phase of the Project shall be governed by the applicable provisions of the City of Ocala's Standard Specifications for Construction of Streets, Stormwater, Traffic, Water, and Sewer Infrastructure, February 2023, which is incorporated herein by reference.
 - (1) **Owner's Right to Order Changes.** Changes in the Design Services or the Construction Work under this Agreement may be unilaterally ordered by Owner

without invalidating the Agreement. Such changes shall be communicated by Change Order, Field Order, or supplemental agreement, as applicable. Design-Builder shall proceed diligently with any changes and the changes shall be accomplished in strict accordance with this Section.

- (2) **Owner's Right to Order Acceleration.** Design-Builder acknowledges and agrees that Substantial Completion of the Construction Work by or before the Scheduled Completion Date is of substantial importance to Owner. Accordingly, Owner shall have the right, in its sole discretion, to order Design-Builder to accelerate its progress in such a manner as to achieve Substantial Completion on or before such date as Owner may reasonably direct, and Design-Builder shall comply, subject to the parties' agreement in writing to the extent of such acceleration and associated costs.
- (3) **Design-Builder's Duty to Provide Notice and Documentation.** Design-Builder's claims for extensions of the time to either the Design Schedule or Time for Completion of the Construction Work shall be made in writing within **seven (7) calendar days** after occurrence or Design-Builder's knowledge of the event giving rise to the claim, whichever occurs last, and shall be supported by sufficient documentation to allow the Owner to reasonably understand the merits of the request and the amount of time and/or compensation requested. Failure of Design-Builder to provide notice as required under this Section for an increase in compensation or an extension of time shall constitute a waiver by Design-Builder of any entitlement thereto.
- (4) **Continuing Duty to Perform Work Pending Resolution or Denial of Claim.** Design-Builder shall continue to diligently perform the Design Services and Construction Work during the pendency of any claim for extension of time or increase in compensation resulting from a Change Order or supplemental agreement and shall keep thorough records of the cost of performance under same. The resolution of any claim under this Article shall be reflected by Change Order or supplemental agreement executed by Owner and Design-Builder. Owner may deny all or any part of Design-Builder's claim for extension of time or increase in compensation by providing written notice of its decision within **seven (7) calendar days** of receipt of Design-Builder's claim. In the event of Owner's denial of Design-Builder's claim, Design-Builder shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date and shall have the right to assert a claim for any denied increase in time or compensation.
- (5) **Limit of Owner's Liability for Increased Compensation.** In connection with any claim by Design-Builder for compensation in excess of the Guaranteed Maximum Price for the Construction Work, any liability of Owner shall be strictly limited to the Cost of the Construction Work and Design Services as defined herein and shall in no event include any indirect, consequential, impact or other costs, expenses, or damages of Design-Builder or its Subcontractors. Owner shall not be liable to Design-Builder for claims of third parties, to include Design-Builder's Subcontractors, for the acts, omissions, events, or conditions for which Owner

would not be otherwise liable to Design-Builder under the terms of this Agreement.

- 11.7 **FORCE MAJEURE.** Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, pandemic, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:
- A. Upon the occurrence of a Force Majeure Event, the affected party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event or as soon as possible after such failure or delay if the Force Majeure Event precludes the affected party from providing notice within such time period.
 - B. Upon the occurrence of Force Majeure Event, the affected party will be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
 - C. In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work will be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement. Additionally, Design-Builder will be entitled to reasonable compensation for any additional compensable project costs and expenses directly resulting from the Force Majeure Event, subject to the City's verification of such costs via documentation and mutual agreement between the parties.

ARTICLE 12

INDEMNITY, SOVEREIGN IMMUNITY, AND INSURANCE

- 12.1 **INDEMNITY.** Design-Builder shall indemnify and hold harmless City, its officers, directors, agents and employees against and from any and all claims, damages, losses, expenses, penalties, demands, judgments, actions, proceedings, losses, or costs, including reasonable attorneys' and paralegal fees, whether resulting from any claimed breach of Design-Builder or arising out of resulting from the performance of the Work, provided that any such claim, damage, loss, expense, direct or consequential damages, or other economic loss is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful conduct of Design-Builder, its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss,

or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist to any party or person described in this Section.

- A. Design-Builder's indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- B. To the extent that this Agreement constitutes a contract subject to the limitations of section 725.06, Florida Statutes, Design-Builder's indemnification obligations contained herein shall be deemed or otherwise interpreted to provide the maximum indemnification allowed by same and to fully comply with section 725.06, Florida Statutes, including any amendments thereto, in all respects. Furthermore, if (and only if) applicable law requires that there be a maximum monetary limit of indemnification for which Design-Builder is responsible so that any such indemnification provision remains enforceable, such limit shall be One Million Dollars (\$1,000,000) per occurrence, which City and Design-Builder agree bears a commercially responsible relationship to this Agreement and the Work and Services to be performed hereunder. Design-Builder's indemnification obligations in the Agreement are in addition to and not in lieu of any common law indemnification to which any of the indemnified parties are entitled.

12.2 **SOVEREIGN IMMUNITY.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Nothing herein may be deemed as a waiver of immunity by City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.

12.3 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** For the life of this Agreement, Design-Builder shall procure and maintain Commercial Automobile Liability Insurance providing coverage for all automobiles owned, non-owned, hired, and scheduled by Design-Builder with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Design-Builder's policy of Commercial Automobile Liability Insurance shall name the City of Ocala, a political subdivision of the State of Florida, as an additional insured.

12.4 **COMMERCIAL GENERAL LIABILITY INSURANCE.** For the life of this Agreement, Design-Builder shall procure and maintain Commercial General Liability Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate. The only aggregate limit acceptable is "project aggregate" and the Certificate must show an appropriate endorsement (ISO CG 25 01 or equal). Design-Builder may provide evidence of an umbrella policy to meet this requirement.

- A. Design-Builder's Commercial General Liability Insurance shall include coverage for Design-Builder's operations, independent contractors, subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal advertising injury, and products liability/completed operations including what is commonly known as Groups A, B, and C.

- (1) Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by Design-Builder or by any of its subcontractors arising from work or services performed under the Agreement.
 - (2) Public liability coverage shall include either blanket contractual insurance or a designated contractual liability coverage endorsement indicating expressly the Design-Builder's agreement to indemnify, defend, and hold harmless the City as provided in this Agreement.
 - (3) The commercial general liability policy shall provide coverage to City when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, independent contractors, Property of City in Contractor's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU) Coverage, Contractual Liability or Separation of Insureds.
- B. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85.
 - C. Design-Builder shall require its subcontractors performing work under this Agreement to add the City of Ocala as an additional insured to their respective Commercial General Liability policies as an additional insured by ISO Endorsement CG 20 38.
 - D. All commercial liability policies required by this Section shall provide a waiver of subrogation in favor of the City.
- 12.5 **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** For the life of this Agreement, Design-Builder shall procure and maintain Workers' Compensation and Employer's Liability Insurance in amounts necessary to meet the requirements under Florida law. Design-Builder waives, and shall ensure that its insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. Design-Builder's policy must be endorsed with WC 00 03 13 Waiver of Our Right to Recover from Others, or equivalent.
- 12.6 **PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS INSURANCE.** Design-Builder shall procure and maintain, for a period of at least Five (5) Years from the date of acceptance of the Work by the City, a policy of professional liability/errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- 12.7 **POLLUTION AND REMEDIATION LEGAL LIABILITY INSURANCE (HAZARDOUS MATERIALS).** If not otherwise included in Design-Builder's Commercial General Liability Insurance coverage, Design-Builder shall procure and maintain, for a period of **Three (3) Years** after final completion of the Project, pollution liability insurance coverage for claims arising from the Design-Builder's discharge, dispersal, release, or escape of any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse, or body of water, including groundwater, during the construction, in an amount not less than One Million

Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit. This shall include coverage for claims of: (a) clean up, either on-site or off site; (b) third party liability, including bodily injury, property damage, natural resource damage, third party property loss of use/revenue, and clean up; and/or (c) costs incurred for the investigation, defense, or settlement of claims.

12.8 **INSTALLATION FLOATER INSURANCE.** Design-Builder shall procure and maintain a policy of installation floater insurance to over damages or destruction to equipment being installed or otherwise being handled or stored by the Design-Builder. The amount of coverage should be adequate to provide full replacement value of the equipment otherwise being handled or stored on or off premises or in transit. All risks coverage shall be provided either in a single policy or in a combination of underlying and umbrella on excess policies.

12.9 **BUILDER’S RISK (PROPERTY) COVERAGE.** From the issuance of the notice to proceed for construction and continuing until the Work has been completed and the project has been accepted by City, Design-Builder shall take out and maintain a Builder’s Risk Policy insuring the interests of the Owner, Design-Builder, and Subcontractors in the property against all risk of physical loss and damage, as their interests may appear. Owner shall be listed as an Additional Insured under the policy. Coverage shall be afforded in an amount not less than 100% of the total project cost, including soft costs and written on an “all risk” basis including theft, stored materials, and flood and windstorm with no co-insurance clause. Coverage and protection under the policy shall not be diminished, altered, waived, or otherwise affected by partial or complete occupancy by Owner. In addition to the foregoing, the coverage form shall include, but be not limited to, the following:

- A. guaranteed policy extension provision;
- B. storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the Project;
- C. equipment breakdown for cold testing of all mechanized, pressurized, or electrical equipment; and
- A. LEG2 coverage or equivalent.

12.10 **ADDITIONAL INSURANCE PROVISIONS.**

- A. **Insurance Requirements.** These insurance requirements shall not relieve or limit the liability of Design-Builder. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Design-Builder’s interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Design-Builder. Design-Builder’s insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.
- B. **Premiums and Deductibles.** Design-Builder has sole responsibility for payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs

for adding the City as an Additional Insured shall be at the Design-Builder's expense. Approval will not be unreasonably withheld.

- C. **Certificates of Insurance.** No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided. Binders are unacceptable. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
 - (1) The "City of Ocala, 110 SE Watula Avenue, Ocala, FL 34471" shall appear as an additional insured and certificate holder on Certificates of Insurance for all liability policies, with the exception of Workers' Compensation and Professional Liability policies. City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
 - (2) The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.
 - (3) Design-Builder shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A.
 - (4) Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided.
 - (5) Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: vendors@ocalafl.org** prior to the policy expiration.
- D. **Notice of Cancellation.** Design-Builder shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) calendar days' notice if cancellation is for nonpayment of premium. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Design-Builder to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- E. **Failure to Maintain Coverage.** In the event Design-Builder fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Design-Builder under this Agreement, Design-Builder shall be considered to be in default of this Agreement.
- F. **Severability of Interests.** Design-Builder shall arrange for its liability insurance to include, or be endorsed to include a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

ARTICLE 13 - BONDS

13.1 BONDING REQUIREMENTS.

- A. **Public Construction Bond.** As security for the faithful performance of all Work and the payment of all bills and obligations arising from the performance of this Agreement, Design-Builder shall furnish a separate Public Construction Bond in amount not less than **One Hundred Percent (100%) of the total Guaranteed Maximum Price** and in such form as prescribed pursuant to section 255.05, Florida Statutes and with such sureties as

are acceptable to the City. Bonds must be submitted with the Guaranteed Maximum Price and approved prior to commencement of the Construction Phase Services for the Project. The bond form shall be AIA A-312.

- B. **Maintenance and Guarantee Bond.** Prior to final payment, Design-Builder shall furnish a Maintenance and Guarantee Bond in the amount of **Ten Percent (10%) of the total Guaranteed Maximum Price**, for a period of **Three (3) Years** for labor and **Three (3) Years** for materials from the date of final completion. Prior to the City's receipt of Design-Builder's fully executed Maintenance and Guarantee Bond, Design-Builder's will warrant all labor and materials completed pursuant to this Agreement.

13.2 **QUALIFICATION OF SURETIES.** To be acceptable to Owner as Surety for Payment and Performance Bonds and Public Construction Bonds, a Surety Company shall comply with the following provisions:

- A. The surety shall be rated "A+" or better on the Financial Strength Rating (FSR), published by A. M. Best Company. Financial Strength Rating of companies providing insurance for the project shall be "A-" or better.
- B. The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
- C. The surety companies proposed by Design-Builder for the Project are subject to City's approval which approval shall not be unreasonably withheld. At any time after approval, if the City, for cause (such cause being defined as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), Design-Builder shall, within fifteen (15) calendar days after written notice from the City to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the City. The premiums on the bond(s) shall be paid by Design-Builder. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the City.

ARTICLE 14

SUSPENSION OF WORK AND TERMINATION

14.1 **RIGHT OF OWNER TO SUSPEND WORK.** Owner may, at any time and without cause, order Design-Builder to suspend, delay or interrupt the Work in whole or in part for such period of not more than sixty (60) consecutive days by written notice to Design-Builder. Any such directive shall fix the date upon which Work will be resumed and Design-Builder shall resume the Work on the date so fixed. Provided that Design-Builder submits a Change Order request, Design-Builder shall be entitled to an adjustment in the Cost of Work as set forth in the GMP or the Contract Time, or both, for verified increases and time directly attributable to such suspension, delay or interruption. No adjustment shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Builder is responsible; or an equitable adjustment is made or denied under another provision in this Agreement.

14.2 **TERMINATION FOR CONVENIENCE BY OWNER.** The Owner may, at any time, terminate this Agreement for the Owner’s convenience and without cause upon **thirty (30) calendar days**’ advance written notice.

A. **Design-Builder’s Action Upon Notice.** Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, Design-Builder shall:

- (1) cease operations as directed by the Owner in the notice;
- (2) take those actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

B. **Design-Builder Payment.** In case of termination for the Owner’s convenience, Design-Builder shall be entitled to receive payment for Work executed, and costs actually and reasonably incurred by reason of such termination, as follows:

- (1) Design-Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing, or other data required by Owner. If Design-Builder fails to file a termination claim within sixty (60) calendar days of the effective date of termination, Owner shall pay Design-Builder an amount in compliance with Subparagraph (3) of this Section.
- (2) Design-Builder and Owner may agree to the compensation, if any, due to Design-Builder under this Section.
- (3) Absent an agreement between Design-Builder and Owner to the amount due to Design-Builder, Owner shall pay Design-Builder, as full compensation for Owner’s termination for convenience, the following amounts:
 - (a) the Cost of the Construction Work and Services, to the extent incurred or paid prior to the effective date of termination;
 - (b) such portion of Design/Builder's Fee which is earned and unpaid as of the date Design/Builder is directed to cease Work;
 - (c) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 14.2(A)(3).;
 - (d) reasonable costs of demobilization; and
 - (e) materials created and stored by Design-Builder or Design-Builder’s Subcontractors.
- (4) In no event shall Design-Builder be entitled to recover lost profits on unperformed Work or other incidental or consequential damages from Owner on account of a termination for convenience.

14.3 **TERMINATION BY THE CITY FOR CAUSE.**

A. **Time Frame and Causes.** Owner may terminate this Agreement for cause if Design-Builder:

- (1) persistently refuses or fails to perform the Work in accordance with the Contract Documents (including, but not limited to, supplying enough properly skilled workers or proper materials or failing to adhere to the Project Schedule);
- (2) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Design-Builder and the subcontractors;

- (3) disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - (4) otherwise materially breaches a provision of the Contract Documents, which may include failure to comply with the Project Schedule, failure to provide adequate supervision, or failure to maintain a safe Project site.
- B. **Owner's Rights Upon Breach.** When any of the above causes exist, Owner shall provide Design-Builder and its Surety with written notice of default and a reasonable time to cure said default; said reasonable time to commence to cure shall be dependent on the nature and extent of the default but shall not be less than thirty (30) calendar days, provided that said cure period does not otherwise alter, amend, or adjust the Project Schedule. Thereafter, if Design-Builder fails to cure, or commence cure of said default, Owner may, without prejudice to any other rights or remedies of the Owner terminate employment of Design-Builder and may, subject to any prior rights of the Surety:
- (1) exclude Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon paid for and intended to become part of the Project by the Design-Builder;
 - (2) accept assignment of subcontracts pursuant to the terms of this Agreement;
 - (3) finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work; and
 - (4) accept Design-Builder's proposed remedy to immediately correct any material breach of a provision of the Contract Documents.
- C. **Payment to Design-Builder.** Upon Owner's termination for cause for one of the reasons set forth in this Section, Design-Builder shall not be entitled to receive further payment until the Work is finished.
- D. **Effect of Termination for Cause on GMP Balance.** In the event of Owner termination for cause, should the unpaid balance of the GMP exceed the costs of finishing the Work, including other damages incurred by the Owner and not expressly waived, such excess shall be paid to Design-Builder. If such costs and damages exceed the unpaid balance, Design-Builder shall pay the difference to the Owner. The amount to be paid to the Owner shall survive termination of the Agreement. Owner's costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs, including, but not limited to, the loss of use of the Project incurred by the Owner because of the termination of Design-Builder as stated herein.
- E. **Erroneous Termination for Cause.** In the event this Agreement is terminated by Owner for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the provisions of Paragraph 14.2 shall apply.

ARTICLE 15

CLAIMS AND DISPUTES, ATTORNEYS' FEES, AND GOVERNING LAW

- 15.1 **CLAIMS.** The following disputes between Owner and Design-Builder (each considered a "Claim" under this Agreement) shall be first submitted through the Claims process set forth in this Article, which, together with the Final Resolution of Disputes as set forth herein, shall serve as the formal dispute resolution procedure prescribed in the construction contract pursuant to section 218.735(4), Florida Statutes:
- A. Design-Builder's appeal of the City of Ocala Engineer's decisions regarding Change Orders;
 - B. Owner's demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - C. Disputes that the City Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- 15.2 **SUBMITTAL OF CLAIMS.**
- A. Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to the City Engineer and other party to the contract promptly (but in no event later than 30 calendar days) after the start of the event giving rise thereto or after the claimant knows of the Claim, whichever occurs latest.
 - B. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 calendar days after the start of such event (unless the Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter).
 - C. A Claim for an adjustment in Contract Price or Contract Time shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Claim shall be accompanied by claimant's statement certifying that the Claim is made in good faith that the supporting data are accurate and complete, and that to the best of claimant's knowledge and belief that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.
 - D. The opposing party, if any, shall submit its response to the Engineer and the Claimant within 30 calendar days after receipt of the Claimant's last submittal (unless the City Engineer allows additional time).
- 15.3 **REVIEW AND RESOLUTION OF CLAIMS.**
- A. **Decision by the City Engineer.** The City Engineer will render a formal decision in writing within thirty (30) calendar days after receipt of the last submittal of the Claimant or the last submittal of the opposing party, if any. The written decision of the City Engineer on such Claim, dispute, or other matter shall be final and binding upon the Owner and Design-Builder unless a written notice of Design-Builder's intention to appeal is delivered to the City Engineer within thirty (30) calendar days after the date of such decision, and, if applicable, providing pre-suit notice to Owner of Design-Builder's intent to file a cause of action in Circuit Court in Marion County, Florida.

- B. **No Decision.** Should the City Engineer fail to render a formal written decision within the time set forth herein, a decision approving the Claim in its entirety shall be deemed to have been issued thirty-one (31) calendar days after receipt of the last submittal of the Claimant or the last submittal of the opposing party, if any.
- C. **Partial Approval:** Should the City Engineer approve the Claim in part and deny it in part, such action shall be final and binding unless within thirty (30) calendar days of such action the other party invokes the procedure set forth herein for final resolution of disputes.
- D. **Denial of Claim.** A denial of the Claim shall be final and binding unless within thirty (30) calendar days of the denial the other party invokes the procedure set forth herein for the Final Resolution of Disputes.
- E. **Appeal of Claim.** Design-Builder shall be entitled to an appeal by filing a formal proceeding instituted by the appealing party in Circuit Court, Marion County, Florida, within thirty (30) calendar days of Design-Builder's notice to Owner of Claim, sixty (60) calendar days after the date of the written decision of the City Engineer, or within sixty (60) calendar days after Substantial Completion, whichever is later (unless otherwise agreed in writing by the City Engineer and the Design-Builder), to exercise such rights of remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable laws and regulations.

15.4 **FINAL RESOLUTION OF DISPUTES**

- A. **Disputes Subject to Final Resolution.** The following disputed matters are subject to final resolution under the provisions of this Article, which serves as the formal dispute resolution procedure prescribed in the construction contract pursuant to Section 218.735(4), Florida Statutes:
 - (1) timely appeal of an approval in part and denial in part of a Claim;
 - (2) timely appeal of a denial in full; and
 - (3) disputes between Owner and Design-Builder concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. **Final Resolution.** Claims and disputes between the Owner and the Design-Builder which cannot be resolved to the satisfaction of both parties, shall be filed in the Circuit Court, Marion County, Florida.

15.5 **ATTORNEYS FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability or otherwise, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

15.6 **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF,

OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

15.7 **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

15.8 **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

**ARTICLE 16
MISCELLANEOUS PROVISIONS**

17.1 **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Design-Builder’s performance. Any such evaluation will become public record.

17.2 **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.

17.3 **PUBLIC RECORDS.** Design-Builder shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Design-Builder shall:

- A. Keep and maintain public records required by the public agency to perform the service.
- B. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 Design-Builder does not transfer the records to the public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Design-Builder or keep and maintain public records required by the public agency to perform the service. If Design-Builder transfers all public records to the public agency upon completion of the contract, Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records

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

IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 17.4 **PUBLICITY.** Design-Builder shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
- 17.5 **PUBLIC ENTITY CRIMES.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Design-Builder understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Design-Builder further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 17.6 **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
- 17.7 **COMPLIANCE WITH F.S. 287.135.** City may terminate Agreement immediately upon discovering that Contractor: (A) has been placed on the Scrutinized Companies that Boycott Israel List; (B) is engaged in a boycott of Israel; (C) has been placed on the Scrutinized

Companies with Activities in Sudan List; (D) has been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (E) has been engaged in business operations in Cuba or Syria. This Agreement may also be terminated immediately if the Design-Builder falsely certified they are eligible to bid and contract with local government entities under F.S. 287.135.

17.8 **DRUG FREE WORKPLACE REQUIREMENT.** Design-Builder submitted a drug free workplace certification with their proposal, and agrees to provide a drug free workplace.

A. The Design-Builder, if other than an individual, shall-within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible for contracts of less than 30 calendar days performance duration:

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about: (i) the dangers of drug abuse in the workplace; The Design-Builder's policy of maintaining a drug-free workplace; (ii) any available drug counseling, rehabilitation, and employee assistance programs; and (iii) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph 15.10.1(a) of this Section;
- (4) Notify such employees in writing in the statement required by subparagraph 15.10.1(a) of this Section that, as a condition of continued employment on this contract, the employee will: (a) abide by the terms of the statement; and (b) notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- (5) Notify the Contracting Officer in writing within ten (10) calendar days after receiving notice under subparagraph 15.10.1(d) of this Section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

B. Within 30 calendar days after receiving notice under subparagraph 15.10.1(e) of this Section of a conviction, Design-Builder shall take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (1) take appropriate personnel action against such employee, up to and including termination; or
- (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (3) make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 15.10.1(a) through 15.10.1(d) of this Section.

C. Design-Builder agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing Work under this Agreement.

- D. In addition to other remedies available to the City, Design-Builder's failure to comply with the requirements of this Section may, pursuant to FAR 23.506, render Design-Builder subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.
- 17.9 **E-VERIFY.** Pursuant to section 448.095, Design-Builder shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Design-Builder shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Design-Builder certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Design-Builder understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Design-Builder may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Design-Builder shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
- 17.10 **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder of a future failure. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.
- 17.11 **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
- 17.12 **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:
- If to Design-Builder:
- Dinkins Construction, LLC
 Attention: John "Chap" Dinkins, Manager
 2831 SE 17th Street
 Ocala, Florida 34471
 Phone: 352.368.2299
 Email: chap@dinkinsconstruction.com

If to City of Ocala: Sean Lanier, PE, CFM, City Engineer
City of Ocala Engineering Department
1805 NE 30th Avenue, Building 600
Ocala, Florida 34470
Phone: 352-351-6772
Fax: 352-351-6718
Email: slanier@ocalafl.gov

With copies to: Daphne M. Robinson Esq., Contracting Officer
City of Ocala Procurement and Contracting Department
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343
Fax: 352-690-2025
Email: notices@ocalafl.gov

William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Email: cityattorney@ocalafl.gov

- 17.13 **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.
- 17.14 **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 17.15 **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements, or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.



IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST

CITY OF OCALA

Angel B. Jacobs
City Clerk

By: _____
Council President

Printed Name

Approved as to form and legality

DINKINS CONSTRUCTION LLC

William E. Sexton
City Attorney

By: _____
John "Chap" Dinkins
Manager