

Progressive Design-Build Agreement for Fire Station #36

This Agreement (“Agreement”) is entered into this ____ day of _____, 2026 (“Effective Date”) by and between the Midway Fire District, an interlocal government agency of the State of Florida existing under Sections 163.01 and 373.713, Florida Statutes (“Owner”) and _____, a corporation authorized to do business in the State of Florida. (“Design-Builder”).

Background

The Owner intends to design and construct a project known as Fire Station #36 - Final Design, Permitting, and Construction (the “Project”).

The Owner and Design-Builder will implement the Project in two sequential phases:

- **Phase 1 – Pre-Construction:** Design-Builder will perform preconstruction and design services including but not limited to 60% design milestone and related permitting needs and will develop a schedule and Guaranteed Maximum Price proposal for the Phase 2 services. Exhibit 1.1 provides the Scope of Design-Builder Services for Phase 1.
- **Phase 2 – Final Design and Construction:** If the Owner accepts the price proposal for the Phase 2 services, Design-Builder will complete 100% design, permitting, construction and post-construction tasks, including performance testing, commissioning, training, support, and turnover. The Parties will then develop and execute a contract amendment (known as the Guaranteed Maximum Price Amendment) setting forth the Parties’ obligations for Phase 2.

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

Article 1 **The Work**

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

- 1.1. Phase 1 – Preliminary Design and Pre-Construction Services. Design-Builder will perform the Phase 1 Services set forth in Exhibit 1.1. As set forth more fully in Article 8, the Phase 1 Services includes Design-Builder providing Owner with a proposal that will establish the commercial terms for the Final Design and Construction Phase (“Phase 2”) Services, including but not limited to the Guaranteed Maximum Price and Scheduled Substantial Completion Date. Design-Builder acknowledges that Owner is under no obligation to accept the proposal, and that Owner has the right to terminate this Agreement in accordance with Article 8.

- 1.2. Phase 2 – Final Design and Construction Services. Design-Builder will perform the Final Design and Construction Phase in accordance with the Agreement Amendment and the General Conditions.

Article 2 **Exhibits**

Exhibits

- 2.1 Exhibits. The following exhibits are part of this Agreement:
- Exhibit 1.1 Design-Builder’s Phase 1 Services
 - Exhibit 3.2 Phase 1 Services Milestones
 - Exhibit 4.1 Compensation for Phase 1 Services
 - Exhibit 6.2 List of documents that Owner will provide to Design-Builder
 - Exhibit 7.1 Project Performance Criteria
 - Exhibit 9.1.A Schedule of Required Insurance for Pre-Construction Services
 - Exhibit 9.1.B Schedule of Required Insurance for Construction of the Work
 - Exhibit 10.1 Required Form of Payment, Performance, & Warranty Bonds
 - Exhibit 11 General Conditions

Article 3 **Contract Time**

3.1 Date of Commencement

- A. Design-Builder shall commence the Phase 1 Services upon Design-Builder’s receipt of Owner’s Notice to Proceed (“NTP with Phase 1 Services”). Owner will issue an NTP within seven days after the Effective Date of the Agreement unless the Parties mutually agree otherwise in writing.
- B. Design-Builder shall commence the Phase 2 Services upon Design-Builder’s receipt of Owner’s Notice to Proceed (“NTP with Phase 2 Services”). Owner will issue an NTP within seven (7) days after the Effective Date of the Guaranteed Maximum Price Amendment, unless the Parties mutually agree otherwise in writing.

3.2 Schedule for Performance of Phase 1 Services.

- A. Design-Builder shall perform the Phase 1 Services in accordance with the time periods set forth in Exhibit 3.2, “Phase 1 Services Milestones.”

- B. Within fourteen (14) days from the NTP for Phase 1 Services, Design-Builder shall submit to Owner, for its review and approval, a proposed Phase 1 Services Schedule that includes, among other things: (a) the order in which Design-Builder proposes to carry out the Phase 1 Services; and (b) the times when submissions and approvals or consents by Owner are required (provided, however, that such times shall be no less than the Owner's minimum review durations identified in the Contract Documents. Upon approval of the Phase 1 Services Schedule, Design-Builder shall provide monthly updates that show the actual progress of its performance of the Phase 1 Services as compared to the projected progress of the work.

3.3 Contract Time for Phase 2 Services.

- A. This Agreement is in full force and effect upon execution by Owner and will remain in effect until final inspection and final payment by the Owner unless earlier terminated as provided in this Agreement.
- B. Scheduled Substantial Completion Date. Design-Builder shall substantially complete the Work no later than the date set forth in the Guaranteed Maximum Price Amendment ("Scheduled Substantial Completion Date"). The term "Substantial Completion" means the time at which the Work has progressed to the point where, in the opinion of the Owner and its consultants, all structural elements of the framework, roofing, screening, hatches, doors, electrical grounding, electrical circuit relocation and exterior luminary work has been completed and the Work is otherwise sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- C. Scheduled Final Acceptance Date. Design-Builder shall achieve Final Acceptance no later than ninety (90) days from Substantial Completion ("Scheduled Final Acceptance Date"). In the event the Project is not Substantially Complete in accordance with the date in the Guaranteed Maximum Price Amendment, the allowable period between Substantial Completion (date when reached) and Scheduled Final Acceptance Date is thirty (30) calendar days. The term Scheduled Final Acceptance Date means the time at which the Work has progressed to the point where, in the opinion of the Owner and its consultants, the Work, including all "punch list" items, is fully and finally completed in a good and workmanlike manner, in accordance with the Contract Documents and free of all defects and deficiencies; and all required final governmental inspections and approvals have been obtained.

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

3.5 Calculation of Days. "Day" or "day" means calendar day unless otherwise specifically defined. "Business Day" means any day other than a Saturday, Sunday, or legal holiday on

which the State of Florida is open for business to the public.

3.6 Delay Liquidated Damages.

A. Application. This paragraph 3.5 applies only to Phase 2 Services.

B. Calculation of Delay Liquidated Damages. If Design-Builder does not meet the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. To compensate Owner for those damages, if Substantial Completion has not occurred on or before the Scheduled Substantial Completion Date, then Design-Builder shall pay to Owner liquidated damages for each day the sum of \$1200.00 per day for each and every calendar day elapsing after the time specified in Paragraph 3.3 above, until the Design-Builder has achieved Substantial Completion. After Substantial Completion, if Design-Builder refuses, neglects, or fails to complete the remaining Work within the Contract Times for completion and readiness for final payment, Design-Builder shall pay Owner the sum of \$800.00 per day for each and every calendar day after such time until the Work is completed and ready for final payment. 4.6.2. Liquidated damages for failing to attain Substantial Completion and Final Acceptance are not additive, and will not be imposed concurrently.

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

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

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

Contract Documents or affect any other remedy Owner has under the Agreement or as a matter of law.

Article 4

Phase 1 Compensation and Phase 2 Contract Price

- 4.1 Compensation for Phase 1 Services. Owner shall pay Design-Builder for the Phase 1 Services the sum set forth in Exhibit 4.1.
- 4.2 Phase 2 Contract Price.
- A. Owner shall pay Design-Builder in accordance with the General Conditions a contract price (“Contract Price”) equal to the amount set forth in the Guaranteed Maximum Price Amendment (“GMP Amendment”). The Contract Price is subject to adjustments made in accordance with Article 9 of the General Conditions.
 - B. The Contract Price is deemed to include all sales, consumer, use, employment- related and other taxes mandated by applicable Laws and Regulations or that result from the performance of the Work.
 - C. Risk Items. Risk Items and their corresponding values will be set forth in the GMP Amendment and will be included in the Contract Price. The GMP Amendment will, at a minimum, describe: (a) the items for which Risk Items may be used, (b) the process by which the amounts are accessed during the project, and (c) how any unspent amounts will be allocated at project closeout. Article 8 of this document provides the required contents and process for developing the GMP Amendment.

Article 5

Payment Procedures

- 5.1 Submittal and Processing of Payments.
- A. Design-Builder shall submit, and Owner will process, Applications for Payment in accordance with Article 6 of the General Conditions.
 - B. All Applications for Payment shall include the purchase order number for this Agreement and shall follow the same format as shown on the Application for Payment provided in the Contract Documents. For Phase 2 Services Design-Builder shall include the wage information required under Exhibit 9.1.
 - C. Failure of Design-Builder to follow the instructions set forth in the Contract Documents regarding a proper Application for Payment and acceptable services may result in an unavoidable delay in payment by Owner.
 - D. Any early payment discount offered by Design-Builder shall be clearly indicated on the Application for Payment), including the percentage of the discount and the time period for which the discount is valid. Owner reserves the option to accept

such early payment discounts.

5.2 Progress Payments.

A. Payments for the Phase 1 Services. Owner shall make progress payments for the Phase 1 Services within the time set forth in paragraph 5.4 below after Owner's receipt of each properly submitted and accurate Application for Payment submitted in accordance with Article 6 of the General Conditions. All such payments will be measured by Exhibit 4.1 (Compensation for Phase 1 Services), pursuant to Article 6 of the General Conditions and shall reflect the total of payments previously made and amounts properly withheld under Article 6 of the General Conditions.

B. Payments for Work Performed after the Effective Date of the Guaranteed Maximum Price Amendment.

1. For Work performed after the Effective Date of the Guaranteed Maximum Price Amendment, Owner shall make progress payments within the time set forth in paragraph 5.4 below after Owner's receipt of each properly submitted and accurate Application for Payment submitted in accordance with Article 6 paragraph of the General Conditions. All such payments will be measured by the Schedule of Values, pursuant to Article 6 of the General Conditions, and shall reflect the total of payments previously made and amounts properly withheld as retainage, as set forth below, and under Article 6 of the General Conditions.

2. Owner will make progress payment in an amount equal to 95% of Work completed and materials and equipment not incorporated in the Work in place but delivered and suitably stored on Site, less in each case the aggregate of payments previously made. Owner will hold the remaining 5% as retainage. In no event shall payments for materials and equipment stored exceed 95% of the value of the related cost for the specific item of work in place shown in the schedule of values regardless of the stated value of the materials or equipment. Owner will pay an amount equal to 95% of materials and equipment not incorporated in the work stored offsite if stored in a manner acceptable to Owner, as stated above for on-site stored materials. When payment to Design-Builder is made for stored materials and equipment, Design-Builder shall submit invoices marked paid by the supplier with the next month's request for payment to document that Design-Builder has paid for said materials and equipment or the previously paid amount for stored materials shall be deducted from any remaining payment(s) or retainage for any stored materials not so properly documented.

5.3 Final Payment. Upon Final Acceptance of the Work in accordance with Article 6 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in Article 6 of the General Conditions.

- 5.4 Date of Payment. Owner will make payment for all goods and services in a timely manner as provided in Part VII of Chapter 218, Florida Statutes, known as the Local Government Prompt Payment Act.

Article 6
Design-Builder's Representations

Design-Builder shall be deemed to have made the following representations with its submission of the Guaranteed Maximum Price Proposal and the execution of the Guaranteed Maximum Price Amendment:

- 6.1 Understanding. Design-Builder has examined, carefully studied, and thoroughly understands the Contract Documents and the Reference Documents associated with the Work covered by a Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Amendment.
- 6.2 Site conditions. Design-Builder has reviewed the Site and the documents identified in Exhibit 6.2 and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work covered by the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Amendment.
- 6.3 Laws and Regulations. Design-Builder understands all Laws and Regulations that may affect cost, progress, and performance of the Work covered by the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Amendment.
- 6.4 Nature of work. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.5 Correlation. Design-Builder has correlated the Contract Documents with the information known to Design-Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data that Design-Builder believes is necessary to perform the Work.
- 6.6 Discrepancies. Design-Builder has reviewed all available information and data shown or indicated in this Agreement and has given the Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents and the Owner's written resolution thereof, if any, is acceptable to Design-Builder.
- 6.7 Sufficiency. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work covered by the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price

Amendment.

- 6.8 Obligations. Design-Builder shall be bound by and shall perform its obligations in full compliance with the Contract Documents. Design-Builder will not be relieved of its obligations to perform the Work in accordance with the Agreement either by activities or duties in the Owner's administration of the Agreement, or by tests, inspections or approvals required or performed by persons or entities other than the Design-Builder. Design-Builder is solely responsible for the means, methods, techniques, sequences, and procedures of construction. Design-Builder shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Agreement. At all times during the progress of the Work, Design-Builder shall assign a competent resident superintendent who will be on the Site at all times and will not be replaced without notice to and approval by the Owner except under extraordinary circumstances. Design-Builder shall maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of the Work or persons or property at the Site or adjacent thereto, and except as otherwise stated in the Agreement, all Work at the Site will be performed during regular working hours, Monday through Friday.
- 6.9 Authority. Design-Builder has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary actions of the governing entity of Design-Builder. Design-Builder is duly authorized to conduct business in the State of Florida.
- 6.10 Accuracy of RFQ Response. All the information provided by Design-Builder in response to the Request for Qualifications for the Project was true and accurate when Design-Builder submitted it to the Owner and has not materially changed as of the Effective Date of this Agreement.
- 6.11 Expertise. Design-Builder has special expertise in the type of professional services to be provided under this Agreement and Design-Builder acknowledges that such representations were a material inducement to the Owner to enter into this Agreement with Design-Builder.
- 6.12 Valid Agreement. This Agreement is a valid, binding, and enforceable obligation of Design-Builder, and does not violate any law, rule, regulation, contract, or agreement otherwise enforceable by or against Design-Builder except as it may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.
- 6.13 Scrutinized Companies. Design-Builder certifies that it is in compliance with section 287.135, Florida Statutes. The Owner may terminate this Agreement if Design-Builder is found to be out of compliance with this statute. Design-Builder certifies that (1) it is not on any of the following lists: Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in Iran Terrorism Sectors, or Scrutinized Companies that Boycott Israel, and (2) it is not engaged in business operations in Cuba or Syria. The Owner may terminate this Agreement if Design-Builder is found to have been placed on the

Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The Owner may terminate this Agreement if Design-Builder is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or has been placed on a list created pursuant to section 215.473, Florida Statutes, relating to scrutinized active business operations in Iran. Design-Builder acknowledges the remedies provided in subsection 287.135(5), Florida Statutes, against anyone found to have submitted a false certification including civil penalties.

- 6.14 Public Entity Crimes. Design-Builder understands the requirements of sections 287.132 and 287.133, Florida Statutes. Neither Design-Builder nor any of its Affiliates are currently on the convicted vendor list for public entity crimes maintained by the Florida Department of Management Services and neither of them has been on the convicted vendor list within the past thirty-six (36) months. Design-Builder is in full compliance with sections 287.132 and 287.133, Florida Statutes, will remain in compliance with them throughout the term of this Agreement, and will notify the Owner if it becomes non-compliant.
- 6.15 E-Verify. Design-Builder is in compliance with section 448.095, Florida Statutes. As required by subsection 448.095(5)(a), Florida Statutes, Design-Builder has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees. As required by subsection 448.095(5)(b), Florida Statutes, Design-Builder shall require any subcontractors to provide the Design-Builder with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Design-Builder shall maintain a copy of such affidavit for the duration of the Agreement.
- 6.16 Truth-in-Negotiation. Design-Builder's execution of this Agreement constitutes a truth-in-negotiation certificate certifying that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting as required by subsection 287.055(5)(a), Florida Statutes. Design-Builder will continuously comply with subsection 287.055(5)(a), Florida Statutes, and will adjust the original contract price and any additions thereto to exclude any significant sums by which the Owner determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within one (1) year following the end of the Agreement.
- 6.17 No Contingent Fees. As required by subsection 287.055(6), Florida Statutes, Design-Builder has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder or its Design Subconsultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Design-Builder or its Design Subconsultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If Design-Builder breaches or violates this provision, the Owner has the right to terminate this Agreement without liability and, at its discretion, to deduct from Design-Builder's compensation, or otherwise recover, the full amount of such fee, commission, percentage,

gift, or consideration.

Article 7
Contract Documents

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

- A. This Agreement including all the Exhibits;
- B. Project Performance Criteria, as set forth in Exhibit 7.1;
- C. The insurance provided by the Design-Builder;
- D. Performance, Payment, and Warranty Bonds;
- E. The Request for Qualifications No. 2026-01 Progressive Design-Build Services for Fire Station #36 dated June 25, 2026 and Design-Builder's response to it ("the RFQ and response"); and
- F. The following, which shall be designated, completed, delivered, prepared, or issued after the Effective Date of the Agreement and are not attached hereto:
 - 1. Any and all written amendments (other than the Guaranteed Maximum Price Amendment), Change Orders, Work Change Directives, and Field Orders amending, modifying, or supplementing the Contract Documents. The Guaranteed Maximum Price Amendment executed in accordance with Article 8 below;
 - 2. The Final Drawings and Specifications, which shall be developed, submitted, and acted upon pursuant to the General Conditions.

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

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

- A. Written amendments signed by the Parties (other than the Guaranteed Maximum Price Amendment) with those of a later date taking precedence;
- B. Work Change Directives, Change Orders, and Field Orders with those of a later date taking precedence;
- C. The Guaranteed Maximum Price Amendment;
- D. This Agreement, including all Exhibits;

- E. The Final Specifications;
- F. Final Drawings; and
- G. The Project Performance Criteria.

Article 8
Guaranteed Maximum Price Proposal and
Guaranteed Maximum Price Amendment Process

- 8.1 Submission of Guaranteed Maximum Price Proposal. Upon written authorization by Owner, Design-Builder shall submit a proposal for the Final Design and Construction (Phase 2) Services. Design-Builder shall produce a format for the Guaranteed Maximum Price Proposal, including the format of supporting documentation and line items of the Work, and provide it to Owner for review and approval. At a minimum, the support documentation must include a complete line-item cost estimate indicating the itemized costs that comprise the total proposal amount. The Parties must agree on the format of the Guaranteed Maximum Price Proposal at least sixty (60) days before Design-Builder submits it.
- 8.2 Contents of Guaranteed Maximum Price Proposal. Design-Builder shall include the following in the Guaranteed Maximum Price Proposal, unless the Parties agree otherwise:
 - A. A proposed Guaranteed Maximum Price.
 - B. A complete list of the Guaranteed Maximum Price Proposal Documents. At a minimum, Design-Builder shall provide the documentation described in this paragraph 8.2.
 - C. A list of the assumptions and clarifications made by Design-Builder in the preparation of the proposal, which list is intended to supplement the information contained in the Guaranteed Maximum Price Proposal Documents.
 - D. The following schedules:
 - 1. A progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including the Scheduled Substantial Completion Date upon which the proposal and progress schedule is based.
 - 2. The Design-Builder shall use project management software approved by Owner for creating and updating all progress schedules and reports.
 - 3. A Schedule of Submittals which lists each required Submittal and the times for submitting, reviewing, and processing each Submittal.
 - 4. A Schedule of Values for all the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices must include an appropriate amount of overhead and profit applicable to each item of Work.

5. A cash flow projection estimating that portion of the Contract Price to be due during each month of performance.
- E. If applicable, a list of Risk Items and values, and a complete description of their basis as follows:
1. The Contract Price set forth in the GMP Amendment will include an itemized list of Owner Risk Items and Design-Builder Risk Items. Risk Items describe those anticipated items and values which the Parties expect could be needed, but for which the extent or amount has not been quantified at the time of the GMP Amendment. Each Risk Item identifies a project risk above what has been included in the baseline cost for the work. A Risk Register will list each Risk Item and the predicted reasonable amount it could cost and will provide the basis for developing the amount. The Risk Items listed on the Risk Register will also be shown on the GMP Schedule of Values "Risk Items" section.
 2. The Parties have carefully considered the items and costs that could affect this project. However, unforeseen items for unexpected or extra work needed to complete the project could occur other than those items listed in the Risk Register. Such items will be considered contingency cost overruns and will be documented in a Change Order.
 3. For each Risk Item shown on the Risk Register Design-Builder will submit invoices and Owner will only pay for actual costs incurred. Design-Builder is not required to use any or all of the amounts listed for any Risk Item. Any amounts remaining at the end of the Project will be savings to the Owner or shared by the Parties as provided in the GMP Amendment.
 4. "Owner Risk Items" are those items for which Owner will bear the risk. If the cost of any Owner Risk Item exceeds the cost shown on the Risk Register, Owner will determine whether and how much additional money it will spend on that item and that additional cost will be reflected in a Change Order. Design-Builder will not perform any work on an Owner Risk Item without first obtaining written authorization to proceed from Owner. The basis for the values for Owner Risk Items is contained in the Risk Register but is not a guarantee by Design-Builder that the Risk Item in question can be performed for the Risk Item Value.
 5. "Design-Builder Risk Items" are those items for which Design-Builder will bear the risk. Design Builder is responsible for completing the item for the cost indicated. Design-Builder will have full control of the amounts identified for all Design-Builder Risk Items. If one Design-Builder Risk Item has a cost overrun, Design-Builder may use unused funds from another Design-Builder Risk Item to cover those costs. The calculations provided with the Risk Register merely explain the method by which Design-Builder developed the cost for each item but have no effect on the total amount of Design-Builder Risk amounts available for use by the Design-Builder at its discretion.
- F. If applicable, a schedule of alternate prices.
- G. If applicable, a schedule of unit prices.
- H. If applicable, a statement of Additional Services which may be performed but which are not included in the Guaranteed Maximum Price and which, if performed, shall be

the basis for an increase in the Guaranteed Maximum Price and/or Scheduled Substantial Completion Date.

- I. A list of Subcontractors and Suppliers whose proposals have been accepted by Owner.
 - J. An updated letter from its surety or sureties verifying that Design-Builder has bonding capacity in the amount of the Guaranteed Maximum Price.
 - K. The time limit for acceptance of the proposal, which shall include an adequate number of days for approval of the Guaranteed Maximum Price Amendment by the Owner's Board of Fire Commissioners.
 - L. All bid documentation received from Subcontractors and Suppliers that are used as the basis for the Design-Builder's price proposal.
 - M. The Design-Builder's proposed fee for performing the Work.
 - N. A line-item cost estimate for all General Conditions costs, including all labor and materials cost elements.
 - O. A line-item cost estimate for all direct construction costs, including all labor, materials, subcontractor, and supplier cost elements.
 - P. A description of the scope of services, and a breakdown of the corresponding fee, for start-up, training, and commissioning services to be provided by the Design-Builder.
 - Q. A description of the scope of services, and a breakdown of the corresponding fee, for professional services to be provided by the Design-Builder, including but not limited to final design, engineering services during construction, and materials testing/quality control.
- 8.3 Owner's Review of Proposal. After submission of a proposal, Design-Builder and Owner shall meet to discuss and review it, negotiate in good faith, and attempt to reach agreement on it. Design-Builder shall provide such information as Owner may reasonably request relative to the proposal and must provide all information that formed the basis for the Guaranteed Maximum Price to Owner on an "open book" basis.
- 8.4 Acceptance of Guaranteed Maximum Price Proposal. If Owner accepts the Guaranteed Maximum Price Proposal, as may be amended by Design-Builder based on discussions with Owner, the Guaranteed Maximum Price Proposal shall be incorporated into the Contract Documents by the Guaranteed Maximum Price Amendment, approved by the Owner's Board of Fire Commissioners, and duly executed by both Parties.
- 8.5 Owner's Rights if Parties Fail to Reach Agreement on Proposal. If the Parties are unable to reach an agreement on the Guaranteed Maximum Price Proposal within the time limit for acceptance specified in the proposal, as may be extended by the mutual agreement of

the Parties, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- A. Owner may suggest modifications to the proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Guaranteed Maximum Price Proposal shall be deemed accepted, and the Parties shall proceed in accordance with paragraph 8.4 above;
- B. Owner may authorize Design-Builder to continue to advance the final design of the Project under this Agreement or as an Additional Service, as applicable; or
- C. Owner may terminate this Agreement for convenience in accordance with Article 11 of the General Conditions, having the right, among other things, to exercise its available options to perform the final design and construction with parties other than Design-Builder. The Design-Builder acknowledges that the Owner's ability to successfully complete the Project may be significantly impacted if Owner elects to terminate Design-Builder's services at the end of the Phase 1 Services phase, rather than proceeding to the Phase 2 Services phase, and certain design subconsultants are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if Owner terminates Design-Builder for any reason, Owner will have the right to contract directly with such design subconsultants for design-related services on this Project, and Design-Builder shall take such steps as are reasonably necessary to enable Owner to implement such relationship.

8.6 Design-Builder's Rights if Owner Fails to Act. If Owner fails to exercise either of its options under subparagraphs 8.5.A. or 8.5.B. above in a reasonable period of time, Design-Builder may give written notice to Owner that it intends to suspend performance of the Work in accordance with Article 11 of the General Conditions.

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

Article 9 **General Insurance** **Requirements**

- 9.1 Design-Builder, at its sole expense shall maintain the insurance under this Agreement at all times throughout the duration of this Agreement and have this insurance approved by Owner. Design-Builder shall immediately provide written notice to the Owner upon receipt of cancellation of an insurance policy or a decision to terminate an insurance policy.
 - 9.1.1. Design-Builder shall require and ensure that each of its sub-vendors or subcontractors providing services under this Agreement, if any, procures and maintains

adequate insurance, until the completion of their respective services, to protect the interests of Owner and Design-Builder. At a minimum, this will include Workers' Compensation, Commercial General Liability, and Business Auto Liability to the limits required of Design-Builder in Exhibits 9.1.A and Exhibit 9.1.B. Sub-vendors or subcontractors providing professional services under this Agreement, if any, shall also be required to carry adequate Professional Liability insurance.

9.1.2. Neither approval by Owner nor failure by Owner to disapprove the insurance furnished by Design-Builder will relieve Design-Builder of its full responsibility for liability, damages, and accidents.

9.1.3. Neither Owner's review of the coverage afforded by or the provisions of the policies of insurance purchased and maintained by Design-Builder in accordance with this Section, nor Owner's decisions to raise or not to raise any objections about either or both, in any way relieves or decreases the liability of Design-Builder.

9.1.4. If Owner elects to raise an objection to the coverage afforded by or the provisions of the insurance furnished, then Design-Builder shall promptly provide to Owner such additional information as Owner may reasonably request, and Design-Builder shall remedy any deficiencies in the policies of insurance within ten (10) days.

9.1.5. Owner's authority to object to insurance does not in any way whatsoever give rise to any duty on the part of Owner to exercise this authority for the benefit of Design-Builder or any other party.

9.2 General Requirements.

9.2.1. Before commencing Work, Design-Builder shall furnish Owner with a current Certificate of Insurance on a current ACORD Form signed by an authorized representative of the insurer evidencing the insurance required by this Section and the applicable Exhibit, either Exhibit 9.1.A (Preconstruction Insurance Requirements), or Exhibit 9.1.B (Construction Insurance Requirements) and including the following as Certificate Holder:

Midway Fire District
Attn: Fire Chief
1322 College Parkway
Gulf Breeze, Florida 32563

The Certificate of Insurance must evidence and all policies must be endorsed to provide the Owner with not less than thirty (30) days (10 days for non-payment) written notice prior to the cancellation or non-renewal of coverage directly from the Insurer and without additional action of the Insured or Broker. Until such time as the insurance is no longer required to be maintained, Design-Builder shall provide Owner with a renewal or replacement Certificate of Insurance within ten (10) days after the expiration or replacement of the insurance for which a previous certificate has been provided.

9.2.2. All liability policies shall:

9.2.2.1. Name the Midway Fire District, and all of its representatives, appointed and elected officials, officers, employees, and authorized agents as Additional Insureds;

9.2.2.2. Include a Severability of Interest/Separation of Insureds provision; and

9.2.2.3. Be primary and non-contributory to any insurance or self-insured program carried by the Owner.

9.2.3. The insurer shall provide the Owner with not less than sixty (60) calendar days'

written notice (ten (10) days for non-payment of premium) prior to cancellation, non-renewal, or material change in coverage.

9.2.4. Until insurance is no longer required, Design-Builder shall provide renewal or replacement Certificates within ten (10) days of expiration or replacement. Upon request, Design-Builder shall provide certified copies of policies directly from the insurer.

9.2.5. Deductibles or self-insured retentions must be declared to and approved by the Owner. Any loss within a deductible shall be borne solely by the Design-Builder.

9.2.6. Insurers must defend and pay defense costs outside policy limits.

9.2.7. In the event of a property loss, proceeds shall be payable to the Owner and apportioned between Owner and Design-Builder as their interests may appear.

9.3 Insurance Company Requirements. Insurance companies providing the insurance must meet the following requirements:

A. Such companies must be either: (a) authorized by maintaining Certificates of Authority or Letters of Eligibility issued to the companies by the Florida Office of Insurance Regulation to conduct business in the State of Florida, or (b) with respect only to the coverage required by this agreement for Workers' Compensation/Employers' Liability, authorized as a group self-insurer by Section 624.4621, Florida Statutes (2025), as this statute may be amended from time to time.

B. In addition, such companies other than those authorized by Section 624.4621, Florida Statutes (2025), as this statute may be amended from time to time, must have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

C. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company, (a) loses its Certificate of Authority or Letter of Eligibility, (b) no longer complies with Section 624.4621, Florida Statutes (2025), as this statute may be amended from time to time, or (c) fails to maintain the Best's Rating and Financial Size Category, then Design-Builder shall immediately notify Owner as soon as Design-Builder has knowledge of any such circumstance and, upon request of Owner, immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as Design-Builder has replaced the unacceptable insurer with an insurer acceptable to the Owner, Design-Builder will be deemed to be in default of this Agreement.

9.4 Specifications. Without limiting liability, the Design-Builder shall procure, maintain, and keep in force insurance of the following types and minimum limits. Where the RFQ sets lower minimums, the requirements of this Agreement shall govern.

9.4.1. Worker's Compensation/Employer's Liability. The Design-Builder shall maintain insurance covering itself and all subcontractors of every tier for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation and Employers Liability Policy (NCCI Form WC 00 00 00 A), as filed for use in Florida. Such coverage shall include, as applicable, the Florida Workers' Compensation Act, the United States Longshoremen and Harbor Workers' Compensation Act, the Federal Employers' Liability Act, and any other applicable federal or state law. Employer's Liability limits shall not be less than \$100,000 each accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

9.4.2. Commercial General Liability. The Design-Builder shall maintain Commercial General Liability insurance on ISO Form CG 00 01 or equivalent, written on an occurrence basis, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general

aggregate. Such coverage shall not exclude products/completed operations, contractual liability, or separation of insureds, and shall include blasting, explosion, collapse, and underground hazards if applicable to the Work. The policy shall be endorsed with ISO Endorsements CG 20 10 (or CG 20 26) and CG 20 37, or their equivalent, to provide Additional Insured status to the Midway Fire District, and all of its representatives, appointed and elected officials, officers, employees, and authorized agents.

9.4.3. Automobile Liability. The Design-Builder shall maintain Business Automobile Liability insurance on ISO Form CA 00 01, or equivalent, covering owned, non-owned, and hired vehicles, with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage. Coverage shall include the MCS-90 endorsement if operations are governed by the Motor Carrier Act of 1980, and endorsement CA9948, Pollution Liability – Broadened Coverage for Covered Autos, if operations involve pollutants.

9.4.4. Excess/Umbrella Liability. The Design-Builder shall maintain Umbrella or Excess Liability coverage written on a follow-form basis over the Commercial General Liability, Automobile Liability, and Employers’ Liability policies, with limits of not less than \$10,000,000 each occurrence.

9.4.5. Pollution Liability. The Design-Builder shall maintain Pollution Liability insurance with limits of not less than \$1,000,000 each claim, covering bodily injury, property damage (including cleanup costs), and defense costs. Coverage shall apply to both sudden and non-sudden pollution conditions and to the discharge, dispersal, release, or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water. If the Design-Builder operates a hazardous or non-hazardous treatment, storage, or disposal facility, such coverage shall extend to losses arising from such facility.

9.4.6. Professional Liability. The Design-Builder shall maintain Professional Liability (Errors and Omissions) insurance with limits of not less than \$500,000 per occurrence and \$1,000,000 aggregate, covering wrongful acts, errors, or omissions. If such coverage is written on a claims-made basis, the retroactive date shall precede the effective date of this Agreement, and continuous coverage or an extended reporting period of not less than three (3) years after completion shall be provided. If the Design-Builder contends that other insurance it maintains satisfies this requirement, it shall provide proof of such coverage subject to Owner approval.

9.5 The maintenance of the insurance coverage set forth in this Section may not be construed as to limit or have the effect of limiting Design-Builder’s liability under the provisions concerning indemnification or any other provision of this Agreement.

9.6 All required policies shall waive rights of subrogation against the Midway Fire District, and all of its representatives, appointed and elected officials, officers, employees, and authorized agents, to the extent permitted by law.

Article 10 **Bond Requirements**

10.1 The Design-Builder shall be required to provide payment, performance, and warranty bonds each having a penal sum equal to the GMP. The amount of the premiums for such bonds shall be included in the estimate of Owner’s Costs provided to the Owner. Performance, Payment, and Warranty Bonds shall meet all requirements of Section 255.05, Florida Statutes, for public construction bonds. Additionally, upon execution of this Agreement, all original Performance and Payment bonds will be submitted to the Owner for recording of

said bonds. The bonds will be acceptable to the Owner only if the following conditions are met:

- A. The Surety is licensed to do business in the State of Florida;
- B. The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- C. The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the invitation to bid is issued;
- D. The Surety is otherwise in compliance with the Florida Insurance Code;
- E. The Surety holds a currently valid Certificate of Insurance of Authority issued by the United States Department of Treasury under 31 U.S.C. § 9304;
- F. The Surety shall have the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability A- to A+. If the rating of the insurer or surety should fall below this standard, the Design-Builder shall cause the policy to be replaced promptly by an acceptable insurer or surety.
- G. The Payment and Performance Bonds are in the same or substantially and materially identical form to Exhibit 10.1.

If the Surety for any bond furnished by the Design-Builder is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, the Design-Builder shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

The Design-Builder shall use the Owner's bond forms attached hereto as Exhibit 10.1.

- 10.2 The Design-Builder shall be required to provide a maintenance bond. If so, the penal sum of the bond shall be (\$_____).
- 10.3 The cost of required bonds shall be identified in the schedule of values.

Article 11 **Miscellaneous**

11. Miscellaneous.

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

11.2 Records.

- A. Duty to Maintain and Provide Records. Design-Builder shall keep and maintain all public records required to perform services under this Agreement as required by Chapter 119, Florida Statutes. All analyses, data, documents, models, modeling, reports, and tests performed or utilized by Design-Builder shall be made available to the Owner upon request and are considered public records in accordance with Chapter 119, Florida Statutes, unless they are exempt under the Law.

- B. 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 DISTRICT’S CUSTODIAN OF PUBLIC RECORDS AT 850-932-4771, EMAIL bidinfo@midwayfire.com, OR MAIL AT 1322 COLLEGE PARKWAY, GULF BREEZE, FLORIDA 32563.**
- C. Post Contract Responsibilities. Upon completion of this Agreement, Design-Builder shall keep and maintain, at no cost, to the Owner, all public records produced under this Agreement in the possession of the Design-Builder or shall transfer them to the Owner. If the Design-Builder transfers all public records to the Owner, Design-Builder shall destroy any duplicate public records. If Design-Builder keeps and maintains public records after completion of the Contract, the Design-Builder shall meet all legal requirements for retaining public records including the rules and retention schedules adopted by the Division of Library and Information Services of the Department of State under Section 119.021(2)(a), Florida Statutes. All records stored electronically must be provided to the Owner upon request from the Owner in a format that is compatible with the information technology systems of the Owner.
- D. Exempt Records. Design-Builder shall ensure that public records that are exempt from disclosure are not disclosed except as authorized by law. Chapter 119, Florida Statutes, describes records that are exempt from disclosure including building plans, blueprints, schematic drawings, and diagrams, which depict the internal layout and structural elements of a building, water treatment facility, or other structure.
- E. Trade Secrets. Under Florida laws, including Sections 119.071(1)(f) and 1004.22 Florida Statutes, trade secrets are exempt from disclosure as a public record. If a records request is made of the Owner for public disclosure of trade secrets owned by or licensed to the Design-Builder and the Design-Builder has clearly marked the record as “Trade Secret – Exempt from Public Disclosure” the Owner will advise the Design-Builder of such request. In the event a dispute arises regarding the records request, Design-Builder has the sole burden and responsibility to take all legal measures necessary to protect the record from disclosure.
- F. Audit Rights. Design-Builder shall keep all books, records, files, plans, drawings, and other documentation, including all electronically stored items, which concern or relate to the Services hereunder (collectively referred to herein as “Records”) for a minimum of three (3) years from the date of expiration or termination of this Agreement or as otherwise required by Law, which ever date is later. the Owner, or any duly authorized agents or representatives of the Owner, shall have the right to audit, inspect and copy all or such Records as often as they deem necessary during any such period of time. This right to audit, inspect and

copy the Records shall include all Records of Subconsultants.

G. This paragraph 9.2 shall survive the expiration or termination of this Contract.

- 11.3 Entire Agreement. The Contract Documents state the entire understanding between the Parties and supersede any written or oral representations, statements, negotiations, or agreements to the contrary. Design-Builder recognizes that any representations, statements, or negotiations made by Owner staff or Owner consultants do not suffice to legally bind Owner in a contractual relationship unless they have been reduced to writing, approved, and signed by an authorized Owner representative. The Agreement governs the relationship between the Owner and Design-Builder on the Project.
- 11.4 Severability. If any part of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable.
- 11.5 No Third-Party Beneficiaries. The rights and obligations in this Agreement shall inure solely to the Parties hereto (their successors, assigns and legal representatives) and no other party shall have any rights or obligations under or by virtue of this Agreement.
- 11.6 Applicable Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action under state law arising under this Agreement shall be in the First Judicial Circuit of Florida. Claims justiciable in federal court shall be in the Northern District of Florida.
- 11.7 Notices. All notices or other communications permitted or required under this Agreement must be in writing and must be sent to the Party at that Party's address set forth below or at whatever other address the Party specifies in writing. Notices must be personally delivered, sent by certified or registered mail, sent by overnight courier, postage prepaid, or sent to all email addresses listed below for each Party.

If to the Owner:

Chief Shannon Stone
Midway Fire District
1322 College Parkway
Gulf Breeze, Florida 32563
Shannon.stone@midwayfire.com

If to Design-Builder:

- 11.8 No Construction Against Drafting Party. Each Party acknowledges that it has carefully reviewed and understands this Agreement and has had an opportunity to review it with

counsel of its choosing. This Agreement shall not be construed more strongly against any Party, regardless of who drafted or prepared it.

- 11.9 Communications. The Design-Builder's communications with the Owner shall be limited to the Owner's Fire Chief and designated staff. Communications with the Owner's Commissioners are prohibited, except with the prior permission of the Owner's Fire Chief or at a duly noticed public board meeting. Any such prohibitive communications shall be deemed to be a material breach of this Agreement by Design-Builder. This provision does not prohibit or limit contacts by or on behalf of the Owner Commissioners with Design-Builder.
- 11.10 Interpretation. All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend to and include all genders. Unless the context requires otherwise: The term "include" contemplates "including but not limited to." The terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 11.11 Time is of the Essence. Time is of the essence of this Agreement and each of its provisions.
- 11.12 Contest of Owner Decisions. The Owner shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services called for hereunder, or the character, quality, amount, or value thereof. The decision of the Owner upon all such claims, questions or disputes shall be final and binding if not contested by Design-Builder in a written notice delivered to the Owner within seven (7) days after Design-Builder's receipt of written notice from the Owner concerning such decision.
- 11.13 Survival. All representations, warranties, guarantees, indemnifications, made or given in this Agreement will survive Final Acceptance, final payment, and completion or termination of the Agreement.
- 11.14 Waiver. Unless expressly stated in writing, no action or inaction by a Party shall be considered a waiver of the other Party's duty to comply with any representation, warranty, or responsibility under this Agreement.
- 11.15 Independent Contractor. Design-Builder is retained by the Owner only for the purposes and to the extent set forth in this Agreement, and its relationship with the Owner is that of an independent contractor. Design-Builder has the discretion to select the means and methods of performing such services, subject to the requirement that it perform the services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement. Design-Builder is fully responsible for the employment, direction, supervision, compensation, and control of all persons employed or retained by Design-Builder. Neither Design-Builder nor any DB-Related Entity shall be considered as being an employee or agent of the Owner and they are not entitled to any employment benefits from Owner. Design-Builder expressly and voluntarily waives and agrees not to make any claim to participate in any of Owner's employee benefits or benefit plans should Design-Builder or any of its officers, agents, or employees be adjudicated for any reason to be an employee of Owner.

- 11.16 Waiver of Jury Trial. To the extent permitted by applicable law, Design-Builder and the Owner irrevocably waive any right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any of the transactions contemplated by it. Neither the Owner nor Design-Builder or any successor thereof will seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in contract or in tort) arising out of or related to this Agreement or the relationship created by it. Neither the Owner nor Design-Builder shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived.
- 11.17 No Discrimination. Design-Builder hereby assures that no person will be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Contract. Design-Builder shall take all measures necessary to effectuate these assurances.
- 11.18 No Lobbying. Under section 216.347, Florida Statutes, Design-Builder is prohibited from the expenditure of any funds under this Contract to lobby the legislature, the judicial branch, or another agency.
- 11.19 Computation of Times. When any period of time is referred to in the Contract Documents by days, it will be computed based on calendar days and will exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- 11.20 Cumulative Remedies. The duties and obligations imposed by this Contract and the rights and remedies available to the Parties are in addition to and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by: 1) Laws and Regulations; or 2) any special warranty or guarantee; or 3) other provisions of the Contract Documents. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
- 11.21 Advertising. No advertising is permitted on any part of the Site. Owner has sole discretion concerning whether to allow any news or press releases pertaining to the services, work product(s), or performance of Design-Builder under this Agreement or the Project.
- 11.22 No Solicitation of Employees. Design-Builder and Owner shall not directly or indirectly, or through any other person, agency, company, or organization solicit employees of the other Party to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this Agreement and for a period of one (1) year thereafter (the “non-solicitation period”). The Parties acknowledge that actual or threatened violations of this paragraph may give rise to irreparable injury to the other Party, inadequately compensable in damages and, therefore, either Party may seek and obtain injunctive relief against the breach or threatened breach of the other Party’s

obligations and undertakings thereunder, in addition to any other legal remedies which may be available. This paragraph will survive the termination of this Agreement. Violation of this paragraph during the non-solicitation period will be deemed a material breach of contract.

- 11.23 No Right to Assign. Design-Builder shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of Owner. Any attempted assignment in violation of this paragraph will be null and void.
- 11.24 No Right to Pledge Credit. Design-Builder shall not pledge Owner's credit or make Owner a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.
- 11.25 SDN List. Design-Builder, by its execution of this Agreement, acknowledges and attests that neither it, nor any DB-Related Entity, is included on the list of specially designated nationals and blocked persons (SDN list) which is administered by the U.S. Department of Treasury, Office of Foreign Assets Control to enforce economic and trade sanctions. Design-Builder accepts that this Agreement will be either void by Owner or subject to immediate termination by Owner in the event there is any misrepresentation by Design-Builder. Owner, in the event of such termination, shall not incur any liability to Design-Builder for any Work or materials furnished.
- 11.26 Waiver of Consequential Damages. Design-Builder and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement including but not limited to losses of use, profits, business, reputation, or financing. This waiver of consequential damages does not affect the payment of liquidated damages as provided in this Agreement.
- 11.27 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder and any DB-Related Entity to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) will not exceed 100% of the Contract Price. The Parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.
- 11.28 Cooperation with Inspector General. Design-Builder agrees to comply with subsection 20.055(5), Florida Statutes, and will cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- 11.29 Indemnification. As provided in Section 725.06, Florida Statutes, Design-Builder shall indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Design-Builder and persons employed or utilized by the Design-Builder in the performance of the Agreement. The Design-Builder expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Design-Builder shall

in no way limit the responsibility to indemnify, keep and save harmless, the Owner or its officers, employees, agents, and instrumentalities as herein provided. Nothing in this agreement will affect the rights, privileges, and sovereign immunities of the Owner as set forth in Section 768.28, Florida Statutes. Each party assumes the risk of personal injury and property damage attributable to the acts or omissions of that party and its officers, employees and agents. In no event shall either Party be liable for any indirect, special, consequential or punitive damages in connection with Work performed under this Agreement.

11.30

The Parties have caused their duly qualified representatives to execute this Agreement on the

[The remainder of this page is intentionally blank]

dates set forth below.

Witnesses:

Signature

Print name

Print title

Date

Signature

Print name

Print title

Date

Attest:

Signature

Print name

Print title

Date

Approved as to Form:

District Counsel

Design-Builder:

Firm Name

Signature

Print name

Print title

Date

Midway Fire District:

Signature

Print name

Print title

Date

EXHIBIT 1.1

DESIGN-BUILDER'S PHASE 1 SERVICES

EXHIBIT 3.2
PHASE 1 SERVICES
MILESTONES

EXHIBIT 4.1
COMPENSATION FOR
PHASE 1 SERVICES

EXHIBIT 6.2
LIST OF DOCUMENTS
THAT OWNER WILL
PROVIDE TO Design-Builder

The following documents are provided to the Design-Builder by the Owner:

Architectural Plans for Fire Station #36

EXHIBIT 7.1
PROJECT
PERFORMANCE
CRITERIA

Performance Criteria

The Project is to construction a new Fire Station #36. Additions to and modifications of the proposed Project as described in the RFQ and Architectural Plans for Fire Station #36 may occur during negotiations after the Owner selects a Design-Builder and during Phase 1 Design and Pre-Construction development as appropriate.

The selected progressive design-build team must complete final design, permitting, construction, testing, commissioning, and turnover of the Project by April 30, 2028.

The scope and fee for Phase 1 of the Project Scope will be presented to the Owner Board of Fire Commissioners for consideration at the May 11, 2027, Owner Board meeting.

The draft scope and Guaranteed Maximum Price (GMP) for Phase 2 of the Project Scope on the Project must be completed by June 22, 2027, and a final Owner approved scope and associated GMP prepared by, for consideration at the July 13, 2027, Owner Board meeting.

EXHIBIT 9.1.A
SCHEDULE OF REQUIRED
INSURANCE FOR PRE-
CONSTRUCTION
SERVICES

SCHEDULE OF REQUIRED INSURANCE FOR PRE-CONSTRUCTION SERVICES

The Design-Builder shall provide and maintain at all times during the term of this Agreement without costs or expense to the Owner policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the Owner, insuring the Design-Builder against any and all claims, demands, or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations under this Agreement.

Such policies of insurance and confirming certificates of insurance shall ensure the Design-Builder is in accordance with the following minimum limits:

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$50,000
Contractual Liability	Included

- (ii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (iii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the Design-Builder must provide a notarized statement that if he or she is injured, he or she will not hold the Owner responsible for any payment or compensation.

- (iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

Midway Fire District (Owner), an independent special district of the State of Florida, shall be named as additional insured as their interest may appear on the general liability policy.

Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the Owner of any change or cancellation of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:
Midway Fire District (Owner)
1322 College Parkway
Gulf Breeze, Florida 32563

Certificates of insurance shall evidence a waiver of subrogation in favor of the Owner, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the Owner.

The Design-Builder shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the Design-Builder evidencing coverage and terms in accordance with the Design-Builder's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The Owner shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the Agreement for default.

Neither approval by the Owner of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

EXHIBIT 9.1.B
SCHEDULE OF REQUIRED
INSURANCE FOR
CONSTRUCTION OF THE
WORK

SCHEDULE OF REQUIRED INSURANCE FOR CONSTRUCTION OF THE WORK

The Design-Builder shall provide and maintain at all times during the term of this Agreement without costs or expense to the Owner policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the Owner, insuring the Design-Builder against any and all claims, demands, or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations under this Agreement.

Such policies of insurance and confirming certificates of insurance shall ensure the Design-Builder is in accordance with the following minimum limits:

- (vi) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$50,000
Contractual Liability	Included

- (vii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (viii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the Design-Builder must provide a notarized statement that if he or she is injured, he or she will not hold the Owner responsible for any payment or compensation.

- (ix) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (x) Design-Builder's Property Insurance in the amount of the full replacement cost thereof. This insurance shall:

- a. include the interest of Owner, Design-Builder, Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
- b. be written on a Builder's Risk or Installation Floater, as appropriate "all-risk" policy form that shall at least include insurance for physical loss and

damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage for, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood) and such other perils or causes of loss as may be specifically required by the Agreement;

c. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

d. cover materials and equipment stored at the Project Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work;

e. allow for partial utilization of the Work by Owner;

f. include testing and startup; and

g. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Design-Builder and with thirty (30) calendar days written notice to each other additional insured to whom a certificate of insurance has been issued.

Contractor shall be responsible for any deductible or self-insured retention.

- (xi) Excess/Umbrella Liability with the following minimum limits and coverage: \$10,000,000 each occurrence.
- (xii) Pollution Liability with the following minimum limits and coverage: \$1,000,000 each claim, covering bodily injury, property damage (including cleanup costs), and defense costs.
- (xiii) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$500,000 and annual aggregate of \$1,000,000.

Midway Fire District (Owner), an independent special district of the State of Florida, shall be named as additional insured as their interest may appear on the general liability policy.

Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the Owner of any change or cancellation of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:
Midway Fire District (Owner)
1322 College Parkway
Gulf Breeze, Florida 32563

Certificates of insurance shall evidence a waiver of subrogation in favor of the Owner, that

coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the Owner.

The Design-Builder shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the Design-Builder evidencing coverage and terms in accordance with the Design-Builder's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The Owner shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the Agreement for default.

Neither approval by the Owner of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

EXHIBIT 10.1
REQUIRED FORM OF
PAYMENT, PERFORMANCE,
& WARRANTY BONDS

PAYMENT BOND

BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS that [CONTRACTOR NAME] [Address, Phone No.], as Principal, and [SURETY NAME], [Address, Phone No.], as Surety, are held and firmly bound to Midway Fire District (OWNER), an independent special district of the State of Florida, 1322 College Parkway, Gulf Breeze, Florida 32563, as Obligee, in the sum of _____ and 00/100 Dollars (\$____.00), for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

WHEREAS, Principal has agreed to perform construction services for the construction project titled Fire Station #36, located at Santa Rosa County, Florida, parcel ID 27-2S-28-0180-00B00-0050, which involves the construction of a new fire station (“Project”); and

WHEREAS, Principal entered into the Progressive-Design Build Services Agreement with Obligee (“Agreement”), which is hereby incorporated by reference and made a part hereof.

THE CONDITION OF THIS BOND is that if Principal:

- a. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement;
 - b. Pays Obligee all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Obligee sustains because of Principal’s failure to make payments to claimants; and
 - c. Defends, indemnifies, and holds Obligee harmless from any claims, demands, suits, or liens, then the obligation of this Bond is void, otherwise, it remains in full force.
1. Surety’s obligations to Obligee under this Bond shall be triggered upon Surety’s receipt of Obligee’s written correspondence notifying Principal and Surety of any claims, demands, liens, or suits against Obligee or the Project by any person or entity seeking payment for labor, materials, or equipment provided to Principal for use in performance of the Agreement.
 2. Upon Surety’s receipt of Obligee’s written notice identified in Paragraph 1, Surety shall promptly, and at its sole expense, defend, indemnify, and hold Obligee harmless against any claim, demand, lien, or suit by any person or entity seeking payment for labor, materials, or equipment provided to Principal for use in performance of the Agreement.
 3. Any changes in or under the Agreement, including changes to time or price, are binding on Surety and will not affect Surety’s obligation under this Bond. Any increase to the Agreement price shall accordingly increase the amount of this Bond. Surety hereby waives its right to notice of any change to the Agreement.
 4. Any claim against this Bond by a claimant shall be submitted in accordance with Section 255.05, Florida Statutes. Any suit or action by a claimant pursuant to this Bond must be commenced in accordance with the time and notice provisions of Section 255.05(2) and (10), Florida Statutes. Any suit or action pursuant to this Bond shall be instituted in the courts of Santa Rosa County, Florida. Any suit or action pursuant to this Bond, except an action for recovery of retainage, must be instituted within one (1) year after the last day of furnishing labor, services, or materials by claimant.

5. Written notice to any party shall be delivered to the party's address identified on page one (1) of this Bond.
6. This Bond is intended to be construed as a statutory bond and not a common law bond. This Bond is furnished to comply with Section 255.05, Florida Statutes, and shall be construed in accordance with the statute. The terms of this Bond are hereby amended and modified so all provisions and limitations of the statute, including conditions precedent, notice, and time limitations, are incorporated into this Bond. Any provisions of this Bond which conflict with or purport to grant coverage in excess of the minimum requirements of the statute are deemed deleted or amended such that the Bond provisions will provide the only the coverage specified in the statute. This Bond is unconditional. Consistent with Section 255.05, Florida Statutes, in any action brought to enforce a claim against this Bond, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs.
7. The date of the Bond must not be prior to date of the Agreement. If Principal is a joint venture, all venturers shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly authorized officers this _____ day of _____, 2026.

PRINCIPAL:

Witness
Name of Corporation

Printed Name
By: _____

Witness
Printed Name

Printed Name
Title

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online
notarization this _____ day of _____ 2026, by
_____, as _____ of _____, personally known _____
or produced identification _____ (type of identification provided: _____). My Commission Expires:

(AFFIX OFFICIAL SEAL)
Notary Public, State of Florida
Serial No., If Any: _____

PERFORMANCE BOND

BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS that [CONTRACTOR NAME] [Address, Phone No.], as Principal, and [SURETY NAME], [Address, Phone No.], as Surety, are held and firmly bound to Midway Fire District (OWNER), an independent special district of the State of Florida, 1322 College Parkway, Gulf Breeze, Florida 32563, as Obligee, in the sum of _____ and 00/100 Dollars (\$.00), for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

WHEREAS, Principal has agreed to perform construction services for the construction project titled Fire Station #36, located at Santa Rosa County, Florida, parcel ID 27-2S-28-0180-00B00-0050, which involves the construction of a new fire station ("Project"); and

WHEREAS, Principal entered into the Progressive-Design Build Services Agreement with Obligee ("Agreement"), which is hereby incorporated by reference and made a part hereof.

THE CONDITION OF THIS BOND is that if Principal:

- a. Promptly, fully, and completely performs the Agreement in the time and manner prescribed in the Agreement, and
 - b. Pays Obligee for any and all losses, damages, expenses, costs and fees, including direct, indirect, and consequential damages, that Obligee sustains as a result of any Principal Default, then the obligation of this Bond is void, otherwise it remains in full force.
1. Surety's obligations under this Bond shall be triggered upon Surety's receipt of Obligee's written correspondence to Principal and Surety declaring a Principal Default and terminating the Agreement.
 2. Upon Obligee's declaration of a Default, Surety shall promptly and at its sole expense, proceed with one of the following:
 - a. Arrange for the Principal to perform and complete the Agreement in the time and manner prescribed in the Agreement, but only if consented to by the Obligee;
 - b. Perform and complete the Agreement itself through an alternative contractor(s) or agent(s), that Obligee approves of, however, Surety may not use the defaulted Principal unless consented to by the Obligee;
 - c. Procure bids or proposals from contractors acceptable to Obligee for performance and completion of the Agreement; select a contractor that Obligee approves of; arrange for a contract to be executed by Obligee and contractor to be secured with payment, warranty, and performance bonds from a qualified surety in the same amounts as those issued on the Agreement; pay the completion costs and pay damages to Obligee, as provided herein; however, Surety shall complete the foregoing actions no later than thirty (30) days after Surety's receipt of Obligee's written correspondence declaring a Principal Default; or
 - d. Make payment to Obligee in an amount that Obligee and Surety mutually agree upon; if Obligee and Surety cannot agree to the amount of the payment, then Surety must proceed with a different option under this Paragraph 2.
 3. Within ten (10) days of Surety's receipt of Obligee's written notice of a Principal Default, Surety shall notify Obligee, in writing, which of the four (4) actions identified in Paragraph 2 that Surety will perform
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to remedy the Principal Default.

4. If Surety fails to promptly proceed as provided in Paragraph 2 and Paragraph 3, Obligees shall send written correspondence demanding that the Surety perform its obligations under the Bond (“Breach Correspondence”). If Surety fails to perform within seven (7) days of receipt of the Breach Correspondence, Surety shall be deemed in default under the Bond and Obligees shall be entitled to enforce any remedy available to it in law or in equity. If Surety makes payment pursuant to Paragraph 2.d and Obligees refuse the payment, Obligees shall be entitled to enforce any remedy available to it without further notice to Surety or Principal.
5. Pursuant to this Bond, Surety is responsible for the following:
 - a. Principal’s obligation to correct and replace defective work, including post completion warranty work, under the Agreement;
 - b. Principal’s obligation to complete the Agreement within the time specified in the Agreement;
 - c. Payment to the Obligees of direct damages, indirect damages, and consequential damages, including but not limited to attorney’s fees and costs and design professional fees, resulting from a Default;
 - d. Payment to Obligees of direct damages, indirect damages, and consequential damages resulting from Surety’s actions or inaction under Paragraph 4;
 - e. Liquidated damages, or if no liquidated damages are provided under the Contract or if liquidated damages have not yet accrued, Obligees’s actual delay damages resulting from Principal’s delayed performance or nonperformance.

Surety and Obligees agree that any damages waiver in the Agreement shall not bar Obligees’s recovery of the damages identified in this Paragraph.

6. If Surety chooses to perform pursuant to the Paragraphs 2(a), 2(c), or 2(d), Surety’s liability shall be limited to the amount of this Bond.
 7. Surety shall not be responsible for obligations unrelated to the Agreement. The Balance of the Contract Price shall not be reduced by any amount unrelated to the Agreement. No right of action on this Bond shall accrue to any person or corporation other than the Obligees named herein or its heirs, executors, administrators, successors, and assigns.
 8. Any changes in or under the Agreement, including changes to time or price, are binding on Surety and will not affect Surety’s obligation under this Bond. Any increase to the Contract Price shall accordingly increase the amount of this Bond. Surety hereby waives its right to notice of any change to the Agreement.
 9. Any proceeding under this Bond shall be instituted in the courts of Santa Rosa County, Florida and shall be instituted within the notice and time limitation provisions in Section 255.05, Florida Statutes.
 10. In the event any provision of this Bond conflicts with applicable legal or statutory authority, the provision shall be deemed deleted and a conforming provision shall be deemed incorporated herein.
 11. This Bond is intended to be construed as a statutory bond and not a common law bond. This Bond is furnished to comply with Section 255.05, Florida Statutes, and shall be construed in accordance with the statute. The terms of this Bond are hereby amended and modified so all provisions and limitations of the statute, including conditions precedent, notice, and time limitations, are incorporated into this Bond.
 12. This Bond shall remain in effect through the expiration of the warranty period specified in the Agreement.
 13. Written notice to any party shall be delivered to the party’s address identified on page one (1) of this Bond
 14. The following definitions govern this Bond:
 - a. Contract Price. The total amount payable by the Obligees to the Principal for complete and full performance of the Agreement.
 - b. Balance of the Contract Price. The Contract Price less all payments made on behalf of Obligees to Principal.
 - c. Principal Default. Principal’s failure to perform or comply with a term of the Agreement.
 15. The date of the Bond must not be prior to date of the Agreement. If Principal is a joint venture, all venturers
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shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

[Signatures on Following Pages]



IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly authorized officers this _____ day of _____, 2026.

PRINCIPAL:

Witness
Name of Corporation

Printed Name
By: _____

Witness
Printed Name

Printed Name
Title

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online
notarization this _____ day of _____ 2026, by
_____, as _____ of _____, personally known _
or produced identification _____ (type of identification provided: _____). My Commission Expires:

(AFFIX OFFICIAL SEAL)
Notary Public, State of Florida
Serial No., If Any: _____

WARRANTY BOND

BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS that [CONTRACTOR NAME] [Address, Phone No.], as Principal, and [SURETY NAME], [Address, Phone No.], as Surety, are held and firmly bound to Midway Fire District (OWNER), an independent special district of the State of Florida, 1322 College Parkway, Gulf Breeze, Florida 32563, as Obligee, in the sum of _____ and 00/100 Dollars (\$.00), for the payment of which Principal and Surety do bind themselves, their heirs, executors, personal representatives, administrators, successors, and assigns, jointly and severally.

WHEREAS, Principal has agreed to perform construction services for the construction project titled Fire Station #36, located at Santa Rosa County, Florida parcel ID 27-2S-28-0180-00B00-0050, which involves the construction of a new fire station ("Project"); and

WHEREAS, Principal entered into the Progressive-Design Build Services Agreement with Obligee ("Agreement"), which is hereby incorporated by reference and made a part hereof; and

WHEREAS, Principal completed the construction of the Project and a certificate of final completion for the Project was issued on _____ ("Final Completion").

THE CONDITION OF THIS BOND is that if Principal:

- a. Promptly, fully, and completely maintains the Project and corrects any defective work; and
 - b. Pays Obligee for all losses, damages, expenses, costs and fees, including direct, indirect, and consequential damages, that Obligee sustains as a result of any Principal Default, then the obligation of this Bond is void, otherwise it remains in full force.
1. This Bond shall commence on the Final Completion date and shall continue for a period of one (1) year ("Term of Bond").
 2. Obligee shall notify Principal, in writing, of any defective work for which Principal is responsible and shall specify in said notice a reasonable period of time within which Principal shall have to correct said defect. If Principal fails to perform within the time specified in said notice, then Obligee shall provide written notice to Principal and Surety of Obligee's intent to declare a Principal Default. If Principal fails to remedy the Principal Default, to Obligee's complete satisfaction, within thirty (30) days (unless extended further by Obligee) of Obligee's notice of intent to declare a Principal Default, then Obligee may provide written notice to Principal and Surety declaring a Principal Default. Surety's obligations under this Bond are triggered upon Surety's receipt of Obligee's written notice declaring a Principal Default.
 3. Obligee's failure to comply with the notice provisions in Paragraph 2 shall not constitute a failure to comply with conditions precedents or release Surety from liability, except to the extent Surety establishes actual prejudice.
 4. Within thirty (30) days of Surety's receipt of Obligee's written notice declaring a Principal Default, Surety shall, at its sole expense, remedy the Principal Default. Surety may only use the defaulted Principal to remedy the Principal Default if the Obligee consents.
 5. If Surety fails to proceed as provided in Paragraph 4, Obligee shall send written correspondence demanding that the Surety perform its obligations under the Bond ("Breach Correspondence"). If Surety fails to perform within seven (7) days of receipt of the Breach Correspondence:
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- a. Obligee shall be entitled to correct the defective work through an alternative contractor and Principal and Surety, jointly and severally, shall pay Obligee all costs incurred in correcting the defective work; and
 - b. Surety shall be deemed in default under the Bond and Obligee shall be entitled to enforce any remedy available to it in law or in equity.
6. Surety's obligations to Obligee shall not be greater than Principal's obligations to Obligee under the Contract. Obligee's obligations to Surety shall not be greater than the Obligee's obligations to Principal under the Agreement.
 7. Pursuant to this Bond, Surety is responsible for the following:
 - a. Principal's obligation to correct or replace defective work as set forth in the Agreement; and
 - b. Payment to Obligee of costs, expenses, losses, and direct, indirect, and consequential damages, including but not limited to attorney's fees and costs and design and engineering costs, incurred as a result of a Principal Default or the actions or inactions of Surety pursuant to Paragraph 5.
- Obligee, Principal, and Surety agree that costs to correct or replace defective work are not consequential damages.
8. Obligee may request an extension of this Bond. If Surety chooses to extend the Bond, it shall be considered one continuous bond. If Surety chooses not to extend the Bond, Surety shall notify Obligee within seven (7) days of Obligee's request. Surety's failure to extend this Bond shall not constitute a breach or default under this Bond.
 9. Surety's liability under this Bond shall be limited to the amount of the Bond stated on page 1.
 10. No right of action on this Bond shall accrue to any person or corporation other than the Obligee named herein or its heirs, executors, administrators, successors, and assigns.
 11. Any suit or action pursuant to this Bond shall be instituted in the courts of Santa Rosa County, Florida and shall be instituted within two (2) years after a declaration of a Principal Default.
 12. In the event any provision of this Bond conflicts with applicable legal or statutory authority, the provision shall be deemed deleted and a conforming provision shall be deemed incorporated herein.
 13. If at any time during the Term of this Bond, Obligee notifies Principal and Surety, in writing, of any defective work for which Principal is responsible, then this Bond shall continue in full force and effect until such defective work is corrected.
 14. Any changes in or under the Agreement, including changes to time or price, are binding on Surety and will not affect Surety's obligation under this Bond. Surety hereby waives its right to notice of any change to the Agreement.
 15. Written notice to any party shall be delivered to the party's address identified on page one (1) of this Bond.
 16. The phrase "Principal Default" shall mean the failure of the Principal to comply with the warranties in the Agreement.
 17. The date of the Bond must not be prior to date of the Agreement. If Principal is a joint venture, all venturers shall execute the Bond. If Principal is a partnership, all partners shall execute the Bond. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Florida, unless otherwise specifically approved in writing by Obligee. All bonds shall be originals and issued or countersigned by a local producing agent who is authorized to operate in the State of Florida. Attorneys-in-fact who sign bonds must file with such bond a certified copy of their Power of Attorney to sign such bond. Agents of surety companies must list their name, address, and telephone number on all bonds.

[Signatures on Following Pages]

EXHIBIT 11
GENERAL CONDITIONS



Article 1
General

1.1 *Mutual Obligations.*

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

1.2 *Basic Definitions.*

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder.

1.2.2 *Basis of Design Documents* are as follows: Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

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

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

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

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

1.2.7 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

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

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

1.2.10 *General Conditions of Contract* refer to these conditions.

1.2.11 *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

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

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

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

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

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

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

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

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

Article 2
Design-Builder's Services and Responsibilities

2.1 *General Services.*

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

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

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

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

2.2 *Design Professional Services.*

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

relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 *Standard of Care for Design Professional Services.*

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

2.4 *Design Development Services.*

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder

identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

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

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

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

2.5 *Legal Requirements.*

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

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

2.6 *Government Approvals and Permits.*

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

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

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

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

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

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

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

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

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

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

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

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way

to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 *Design-Builder's Warranty.*

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

2.10 *Correction of Defective Work.*

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

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

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

Article 3
Owner's Services and Responsibilities

3.1 *Duty to Cooperate.*

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

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

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 *Furnishing of Services and Information.*

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 *Financial Information.*

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

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

3.4 *Owner's Representative.*

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

3.5 *Government Approvals and Permits.*

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

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

3.6 *Owner's Separate Contractors.*

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 *Hazardous Conditions.*

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

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

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

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

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

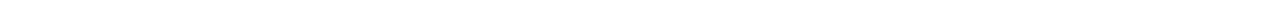
4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 *Differing Site Conditions.*

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an

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

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



Article 5
Insurance and Bonds

5.1 *Design-Builder's Insurance Requirements.*

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

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

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

5.2 *Owner's Liability Insurance.*

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

5.3 *Owner's Property Insurance.*

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

for Payment and approved by Owner. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

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

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

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

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

5.4 *Bonds and Other Performance Security.*

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

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

Payment

6.1 *Schedule of Values.*

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

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

6.2 *Monthly Progress Payments.*

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

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

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

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

6.3 *Withholding of Payments.*

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet

its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 *Right to Stop Work and Interest.*

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

6.5 *Design-Builder's Payment Obligations.*

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

6.6 *Substantial Completion.*

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

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

Certificate of Substantial Completion.

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

6.7 *Final Payment.*

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

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

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

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

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

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

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

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

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder,

provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.



Article 7
Indemnification

7.1 *Patent and Copyright Infringement.*

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

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

7.2 *Tax Claim Indemnification.*

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

7.3 *Payment Claim Indemnification.*

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

7.4 *Design-Builder's General Indemnification.*

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

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

7.5 *Owner's General Indemnification.*

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

liable.

7.6 *Limited Recourse.*

7.6.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8
Time

8.1 *Obligation to Achieve the Contract Times.*

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

8.2 *Delays to the Work.*

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

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

Article 9
Changes to the Contract Price and Time

9.1 *Change Orders.*

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

9.1.1.1 The scope of the change in the Work;

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

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

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

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

9.2 *Work Change Directives.*

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

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

9.3 *Minor Changes in the Work.*

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

9.4 *Contract Price Adjustments.*

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

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

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

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

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

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

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

9.5 *Emergencies.*

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

Article 10

Contract Adjustments and Disputes

10.1 *Requests for Contract Adjustments and Relief.*

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 *Dispute Avoidance and Resolution.*

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

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

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction

Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 *Arbitration.*

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

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

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

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

10.4 *Duty to Continue Performance.*

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 *CONSEQUENTIAL DAMAGES.*

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

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

Article 11

Stop Work and Termination

11.1 *Owner's Right to Stop Work.*

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

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

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

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

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price,

then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

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

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

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

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

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

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

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

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

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during

the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

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

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

11.5 *Bankruptcy of Owner or Design-Builder.*

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

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

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

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

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

11.6 *Termination for Convenience.*

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

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

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

11.6.1.3 The amount set forth in Article 8 of the Agreement.

11.6.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

Article 12

Electronic Data

12.1 *Electronic Data.*

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

12.2 *Transmission of Electronic Data.*

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

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

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

12.3 *Electronic Data Protocol.*

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

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

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data,

which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

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

Article 13

Miscellaneous

13.1 *Confidential Information.*

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

13.2 *Assignment.*

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

13.3 *Successorship.*

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

13.4 *Governing Law.*

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

13.5 *Severability.*

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

13.6 *No Waiver.*

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

performance.

13.7 *Headings.*

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

13.8 *Notice.*

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

13.9 *Amendments.*

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