

**TOWN OF GOLDEN BEACH**  
**Design-Build Services for New Town**

**Civic Center**

**Bid No. 2019-01**

**ADDENDUM No. 4**

**DATE OF ADDENDUM: 01-13-2020**

**DESIGN-BUILD AGREEMENT<sup>1</sup>**

**“Design & Construction Contract”**

**THIS AGREEMENT** (this “Agreement”) made and entered into the \_\_\_\_ day of February, 2020 by and between the Town of Golden Beach, Florida, a municipal corporation (the “Town”) and \_\_\_\_\_ (the “Design-Builder”).

**RECITALS**

**WHEREAS**, on October \_\_, 2019, via RFP #2019-01 (the “RFP”), Town issued its notice to design-build firms of the Town’s desire to hire a firm to perform Design/Build Services for a New Town Civic Center; and

**WHEREAS**, in response to the RFP, the Town adopted Resolution 2019-\_\_\_\_ dated \_\_\_\_\_, 2020 relating to the Design-Builder’s design and construction of a new Civic Center; and

**WHEREAS**, the Town, as outlined in the RFP, has identified certain parcels of real property located in the Town (the “Land”) and which is owned by it upon which it intends to have constructed a new Town Civic Center referred to as the “Project”; and

**WHEREAS**, the Town and the Design-Builder, in reliance on the proposals set forth in the RFP and Response to RFP submitted by the Design-Builder, now desire to enter into this Agreement respecting the Project; and

**WHEREAS**, the Town has determined that entering into this Agreement with the Design-Builder for the design and construction of the Project contemplated by this Agreement is in the best interests of the health, safety, and welfare of the residents of the Town.

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<sup>1</sup> Based in Part on AIA Copyright Document A141-2014

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**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and undertakings and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree to the following terms.

## TERMS

### ARTICLE 1 - DEFINITIONS

Wherever used in this Agreement or in the other Design-Build Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Agreement - This written agreement between the Town and the Design-Builder covering the Work to be performed and including all other Design-Build Documents that are attached to this Agreement or made a part hereof.

1.2 Architect – A person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

1.3 Building Department - The Building Department of the Town of Golden Beach, Florida, or its authorized employees.

1.4 Change Order - A document which is signed by the Design-Builder and the Town and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Contract Sum or the Contract Time, issued on or after the Effective Date of the Agreement.

1.5 Consultant - A person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

1.6 Construction Project Schedule is defined in Section 5.3.2 and is to be attached to this Agreement, as replacement for the Project Milestone Schedule set forth in **Exhibit F**, upon the Town's issuance of the Notice to Proceed.

1.7 Contract - The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Town and the Design-Builder.

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1.8 Contract Sum - the amount to be paid to the Design-Builder for performance of the Work after completion of the Final Construction Documents; the Contract Sum is comprised of all construction-related services for the Project, which includes the Permitting, Construction Administration and Total Construction Cost in the Price Proposal Form of the Design-Builder's response to the RFP, which together with the Design Development Cost shall not exceed the Total Contract Price.

1.9 Contract Time - Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, for Substantial Completion of the Work.

1.10 Contractor - A person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, as required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

1.11 Date of Commencement – The date specified in the Notice to Proceed for the Design-Builder to commence the Work.

1.12 Day - The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

1.13 Defective Work - Work that is unsatisfactory, faulty or deficient, or does not conform to the Design-Build Documents, or does not meet the requirements of the Florida Building Code, or has been damaged prior to final payment.

1.14 Design-Build Documents – The Design-Build Documents consist of this Agreement between Town and Design-Builder and its attached Exhibits listed in Section 2.1 (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement.

1.15 Design-Builder - The person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder's authorized representative.

1.16 Design Fee – The amount for all design-related services for the Project listed as the Design Development Cost in the Price Proposal Form of the Design-Builder's response to the RFP, which together with the Contract Sum shall not exceed the Total Contract Price.

1.17 Design Services – Design-Builder's provision of professional design services to be utilized to convert the Town's Program and Design Criteria into the Construction Documents that are to be utilized to build the Project.

1.18 Drawings - The drawings that show the character and scope of the Work to be performed, the basis for which is provided in the Design-Build Documents.

1.19 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.20 Field Order - A written order issued by Town Manager which orders minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time.

1.21 Final Construction Documents – The final Drawings, Specifications and other Instruments of Service submitted to and approved for construction of the Project by the authorities having jurisdiction over the Project, to be attached to this Agreement as **Exhibit A** upon the Town's issuance of the Notice to Proceed.

1.22 Instruments of Service - representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

1.23 Modification - A written amendment to the Contract signed by both parties; a Change Order; or a Work Change Directive.

1.24 Notice to Proceed - A written notice given by the Town to the Design-Builder fixing the date that the Contract Time will commence to run; with such date being the date that the Design-Builder shall start to perform the Design-Builder's obligations to obtain conformance of the Work with the Construction Documents, resulting in Substantial Completion of the Project in accordance with the Design-Build Documents.

1.25 Project - The total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Town and by separate contractors.

1.26 Project Schedule - The preliminary project milestone schedule attached hereto as Exhibit F shall be replaced with the detailed Construction Project Schedule upon the Town's issuance of the Notice to Proceed for completion of the Work in accordance with the Design-Build Documents.

1.27 Site – the lands upon which the Work is to be performed, which is legally described on **Exhibit E** of this Agreement.

1.28 Specifications - Those portions of the Design-Build Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.29 Subcontractor - An individual, firm or corporation having a direct contract with the Design-Builder or with any other subcontractor for the performance of a part of the Work at

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Design-Builder \_\_\_\_\_

the site.

1.30 Submittal - any submission to the Town for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

1.31 Substantial Completion or Substantially Complete is defined in Section 13.5 of this Agreement.

1.32 Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.33 Total Contract Price – The not to exceed amount for all Work for the Project, comprised of the sum of the Total Design Cost and Total Construction Cost as set forth in the Price Proposal Form of the Design-Builder’s response to the RFP and, equivalently, comprised of the sum of the Design Fee and Contract Sum, as set forth in this Agreement.

1.34 Town - The Town Council of the Town of Golden Beach, Florida and its designees, with whom the Design-Builder has entered into the Agreement and for whom the Work is to be provided.

1.35 Work - The design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

1.36 Work Change Directive - A written directive to the Design-Builder issued on or after the Effective Date of the Agreement and signed by the Town and recommended by Town Manager ordering an addition, deletion or revision in the Work, prior to agreement on adjustment, if any, in the Contract Sum or Contract Time. The Town may by Work Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A Work Change Directive shall not necessarily change the Contract Sum or Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

1.37 Written Amendment - A written amendment of the Design-Build Documents, signed by the Town and the Design-Builder on or after the Effective Date of the Agreement and normally dealing with the non-engineering, non-architectural, or non-technical aspects rather than strictly Work related aspects of the Design-Build Documents.

## **ARTICLE 2 - DESIGN-BUILD DOCUMENTS**

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Design-Builder \_\_\_\_\_

## 2.1 Enumeration of Design-Build Documents

The Design-Build Documents which comprise the entire agreement between the Town and the Design-Builder are made a part hereof and consist of the following:

2.1.1 This Agreement (pages 1-\_\_\_\_ )

2.1.2 Exhibit A – Construction Documents

2.1.3 Exhibit B -- Insurance Certificates and Performance and Payment Bonds.

2.1.4 Exhibit C – Design Criteria (attached as Exhibit 1 to RFP)

2.1.5 Exhibit D – Design Costs – Design Development Portion of the Price Proposal (attached as Exhibit 2 to RFP) and the Hourly Billing Rates for Design-Builder's Personnel

2.1.6 Exhibit E - Legal Description of Site(s)

2.1.7 Exhibit F - Preliminary Project Milestone Schedule allocating the total timeframe for the Project among major milestones, to be replaced by a detailed Construction Project Schedule upon the Town's issuance of the Notice to Proceed

2.1.8 Exhibit G - Notice to Proceed Form

2.1.9 Exhibit H – Forms & Executed Affidavits 2-8 from Design-Builder's RFP submission

2.1.10 All applicable provisions of State, Federal or local law.

2.1.11 Any modification, including all Change Orders, Written Amendments and Work Change Directives duly delivered after execution of Agreement.

## 2.2 Entire Agreement

The Design-Build Documents comprise the entire agreement between the Town and the Design-Builder concerning the Design Services and the Work. The Design-Build Documents are complimentary; what is called for by one is as binding as if called for by all. The Design-Build Documents will be construed in accordance with the law of the State of Florida.

## 2.3 Intent

No provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Design-Build Documents) shall be effective to change the duties and responsibilities of Town, Design-Builder, or any of their consultants, agents or employees from those set forth in the Design-Build Documents. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1)

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Design-Builder \_\_\_\_\_

between the Town and an architect, (2) between the Town and a contractor or subcontractor, or (3) between any persons or entities other than the Town and Design-Builder, including but not limited to any consultant retained by the Town to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 2.1 above.

#### 2.4 Amending and Supplementing Design-Build Documents

The Design-Build Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- a. A Change Order;
- b. A Written Amendment; or
- c. Work Change Directive.

#### 2.5 Supplements, Minor Variations or Deviations

2.5.1 The Town will not authorize any Change Orders to the Design-Build Documents, except in a manner allowed by law. The Design-Builder covenants and agrees that the Town shall not be responsible for the costs above those set forth herein unless the same are set forth in a Change Order or Written Amendment. Any and all change orders issued by the authority of an entity not a party to this Agreement shall not be compensated by the Town, and shall not constitute a Change Order.

2.5.2 The requirements of the Design-Build Documents may be supplemented, and minor variations and deviations in the Work may be authorized in one or more of the following ways:

- a. Town Manager's approval of a shop drawing or sample.
- b. Town Manager's written interpretation or clarification.
- c. A Field Order.

#### 2.6 Representation of Design-Builder

Execution of the Agreement by the Design-Builder is a representation that the Design-Builder has visited the site and become familiar with the local conditions under which the Work is to be performed.

### **ARTICLE 3 - SCOPE OF WORK**

3.1 This Agreement is based on the Town's Design Criteria set forth in the RFP, which is attached to and made a part of this Agreement as **Exhibit C**. If the Town's Design Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Town of the conflict.

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3.2 The Design-Builder shall design and construct the Project in accordance with the Design-Build Documents.

3.3 The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Town.

3.4 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

3.5 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act, which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Town, including those in the Town's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Town in writing. Upon verification by the Town that a change to the Town's Criteria is required to remedy the violation, the Town and the Design-Builder shall execute a Modification in accordance with Article 12.

3.6 Design Professional Standard of Care

The Design-Builder shall perform all Work, with respect to the design portion of the Project, in accordance with the standard of professional skill and care required for architects and other design professionals retained to design, document, coordinate, assist with and inspect from commencement to finish the design, documentation, permitting, field inspection and provide all other architectural and design professional services that may be provided for design-build projects of a similar nature.

3.7 Construction Standard of Care

Design-Builder shall construct the Project as described in the Design-Build Documents, meeting all required standards of construction as set forth in the Design-Build Documents. The Design-Builder shall perform all Work required under the Design-Build Documents, with commercially reasonable skill and care as is consistent with the orderly progress of the Project.

4 **ARTICLE 4 – TOTAL CONTRACT PRICE ALLOCATION BETWEEN DESIGN FEE & CONTRACT SUM**

4.1 Design Fee

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Design-Builder \_\_\_\_\_

The Town shall pay the Design-Builder in current funds, on a pro-rata basis based on the Design-Builder's invoices, submitted monthly over the course of the design phase of [REDACTED] months, as full compensation for the performance of all the Design Services for the design development for the public improvements, which shall consist of the new Civic Center Complex, rehabilitated Town Hall/Administration Buildings and all site design, a sum of \$ [REDACTED].

#### 4.2 Contract Sum

The Town shall pay the Design-Builder in current funds, on a pro-rata basis, based on the Applications for Payment submitted by the Design-Builder monthly over the course of the Contract Time, as full compensation for the performance of the Work, including the permitting and construction administration, for the construction of the public improvements, which shall consist of the new Civic Center Complex, rehabilitated Town Hall/Administration Buildings and all site work, the Contract Sum of \$ [REDACTED], subject to additions and deductions by Town-initiated Change Order or Written Amendment as provided in this Agreement.

The Contract Sum includes separate line items for Permitting and Construction Administration as set forth as part of the Total Design Cost of the Design-Builder's RFP response.

The Contract Sum also includes a separate line item for the Design-Builder's Contingency. The Design-Builder's Contingency is to account for the costs of unknown conditions in the estimate and the execution of the Work.

The Contract Sum may be modified only as herein provided, including possible changes as a result of additional work and improvements as may be documented in Town-initiated and Town Commission approved Change Order[s].

#### 4.3 Total Contract Price

The Total Contract Price shall in no event exceed the (1) Design Fee and (2) Contract Sum, for a Total Contract Price of \$ [REDACTED]. Costs to complete the Work that would cause the Total Contract Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Town.

### 5 ARTICLE 5 – DESIGN BUILDER'S RESPONSIBILITIES

#### 5.1 General

5.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

5.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

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5.1.3 The Design-Builder shall be responsible to the Town for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

5.1.4 Design shall be performed by qualified architects, engineers and other professionals duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida to practice architectural and/or engineering, and who are selected and paid by the Design-Builder.

5.1.5 Liability for use of Work for Intended Purpose. As an inducement for the Town to enter into this Agreement, the Design-Builder has represented an expertise in the construction of public construction projects of a similar type and scope as contemplated herein. In reliance upon those representations, The Town hired the Design-Builder to provide professional design services through licensed architects and/or engineers and construction services. The Design-Builder shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, or breach of other legal duty to the extent and in the manner as hereafter set forth.

## 5.2 Consultation – Generally

5.2.1 The Design-Builder shall schedule and conduct periodic meetings with the Town to review matters such as procedures, progress, coordination, and scheduling of the Work.

5.2.2 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Town understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

5.2.3 The Design-Builder, with the assistance of the Town, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

## 5.3 Design-Builder's Schedules

5.3.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Town's information a preliminary project milestone schedule for the Work to be attached to this Agreement as **Exhibit F**.

5.3.2 Once the Notice to Proceed is issued by the Town, then the Design-Builder

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submitted and Town-approved Construction Project Schedule shall replace the preliminary project milestone schedule as **Exhibit F**. The Construction Project Schedule shall be prepared in a detailed precedence-style, resource loaded, critical path method (CPM) type format satisfactory to the Town which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction, Temporary Certificate of Occupancy/Certificate of Completion Dates, and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents. The Construction Project Schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Town's review and for approval of submissions by authorities having jurisdiction over the Project.

- 5.3.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Town. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Construction Project Schedule and shall promptly advise the Town of any delays or potential delays. The updated Construction Project Schedule should include new start dates, new finish dates and the appropriate percent complete. No additional activities, changes to the Construction Project Schedule's logic or changes to the Construction Project Schedule's durations are to be included in the updated Construction Project Schedule. The Design-Builder may, at its option, provide fragnets with added activities and logic changes; however these changes are to be submitted in a separate documents and as a separate electronic file. With all submissions, the electronic file is to be submitted along with PDFs. In the event any progress report or Construction Project Schedule update indicates any delays or loss of time, the Design-Builder shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Town and authorized pursuant to properly executed written Change Order. Design-Builder shall maintain such Construction Project Schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by Town to substantiate actual activity, duration and completion dates. The accepted Construction Project Schedule shall be updated one time each month to reflect actual conditions and Design-Builder shall provide Town with a copy of the updated, resource loaded Construction Project Schedule, the electronic files, and a list of all changes made to the Construction Project Schedule.

5.3.4 In the event the Town determines that the performance of the Work, or any portion thereof, has not yet progressed or reached the level of completion required by the Construction Project Schedule or the Design-Build Documents due to causes within the control of Design-Builder, the Town shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation: 1) working additional shifts or overtime, 2) supplying additional manpower, equipment, and facilities, and 3) submitting a recovery schedule (in the format set forth in Paragraph 5.3.2 above) for re-sequencing performance of the Work or other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Design-Build Documents. The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the Town under or pursuant to this Section.

#### 5.4 Responsibilities - Preconstruction Phase

5.4.1 Extent of Responsibility. The Design-Builder shall be responsible for the architecture, engineering, construction and completion of the Project.

5.4.2 Consultation. The Design-Builder will schedule and attend regular meetings and will consult with the Town regarding site use and improvements, and the selection of materials, building systems, and equipment.

5.4.3 Any information submitted by the Design-Builder, and any interim decisions made by the Town, shall be for the purpose of facilitating the design process and shall not modify the Town’s Criteria unless the Town and Design-Builder execute a Modification.

5.4.4 The Design-Builder shall advise the Town on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Town with recommendations, consistent with the Town’s Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

5.4.5 Evaluation of the Town’s Criteria. The Design-Builder shall schedule and conduct meetings with the Town and any other necessary individuals or entities to discuss and review the Town’s Criteria as set forth in **Exhibit C**. The Design-Builder shall thereafter again meet with the Town to discuss a preliminary evaluation of the Town’s Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder’s recommendations, if any, with regard

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to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

5.4.6 After the Design-Builder meets with the Town and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Town, summarizing the Design-Builder's evaluation of the Town's Criteria. The report shall also include:

5.4.6.1 allocations of program functions, detailing each function and their square foot areas;

5.4.6.2 a preliminary estimate of the Contract Sum, and, if necessary, recommendations to adjust the Town's Criteria to conform to the Town's budget;

5.4.6.3 a preliminary milestone schedule, updating the milestone schedule attached hereto as **Exhibit F**, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Town; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Town; and

5.4.6.4 the following: (List additional information, if any, to be included in the Design-Builder's written report.)

5.5 The Town shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 5.6. The consent to proceed shall not be understood to modify the Town's Criteria unless the Town and Design-Builder execute a Modification.

## 5.6 Preliminary Design

Upon the Town's issuance of a written consent to proceed under Section 5.5, the Design-Builder shall prepare and submit a Preliminary Design to the Town. The Preliminary Design shall include a report identifying any deviations from the Town's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

#### 5.7 Town Review of Preliminary Design

The Town shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Construction Documents Package. The Preliminary Design shall not modify the Town's Criteria unless the Town and Design-Builder execute a Modification.

#### 5.8 Design-Builder's Construction Documents Package

Upon the Town's issuance of a written consent to proceed under Section 5.7, the Design-Builder shall prepare and submit the Design-Builder's Construction Documents Package to the Town. The Design-Builder's Construction Documents Package shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Town's Criteria, upon which the Design-Builder's Construction Documents are to be based;
- .2 A draft of the Contract Sum's Schedule of Values organized by trade categories, allowances, the Design-Builder's Contingency, the Permitting Costs, the Inspection Costs and other items that comprise the Contract Sum;
- .3 A draft of the Construction Project Schedule with the proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable; and
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers.

#### 5.9 Town Review of Design-Builder's Construction Documents Package

The Town shall review the Design-Builder's Construction Documents Package and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Construction Documents. The Construction Documents shall not modify the Town's Criteria unless the Town and Design-Builder execute a Modification.

#### 5.10 Construction Documents Phase

5.10.1 Upon the Town's approval of the Design-Builder's Construction Documents Package, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

5.10.2 The Design-Builder shall provide the Construction Documents to the Town for the Town's information at intervals appropriate to the progress of the Construction

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Design-Builder \_\_\_\_\_

Documents Phase. The Design-Builder further agrees that the Town will be allowed to review the Construction Documents at intervals no less than at the thirty percent, fifty percent, and ninety percent development stages. At each such stage, the Design-Builder shall consult with the Town and provide documents for the Town's review and comment, which will be made within [redacted] days of receipt of such interim Construction Documents so as to cause no delay to the Design-Builder, and Design-Builder shall promptly incorporate agreed changes within [redacted] days of receipt of such comments so as to cause no delay to the Project. Upon the Design-Builder's completion of the ninety percent development stage, the Design-Builder shall deliver to Owner a list of all tests, inspections, or reports that are required by the Construction Documents, including, but not limited to those to be provided by the Design-Builder. This list of tests, inspections or reports must be approved by Town, in writing, before any of them are performed.

5.10.3 If the Town discovers any deviations between the Construction Documents and the previously approved Design-Build Documents, the Town shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Town and Design-Builder execute a Modification. The failure of the Town to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

#### 5.11 Certifications

Upon the Town's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Town, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Town and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services

#### 5.12 Record Sets of Final Construction Documents

After Town's acceptance of the Construction Documents, the original set of Design-Builder's Construction Documents shall be provided to Town along with three (3) record sets and three (3) working sets of full size prints (including specifications). Design-Builder shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by Design-Builder. With the record set of prints, Design-Builder shall submit a final set of design computations. The computations shall be bound in an 8 1/2" by 11" format and shall be endorsed (seal/signature as appropriate) by Design-Builder.

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### 5.13 Instruments of Service

The Instruments of Service prepared by the Design-Builder for this Project are a work made for hire. Design-Builder hereby assigns to Town forever (including initial and extended copyright terms) all right, title and interest, including, but not limited to all rights under copyright and intellectual property laws, in any and all particular Instruments of Service, title to which shall automatically pass to the Town upon payment to Design-Builder for the Work to prepare that particular Instrument of Service. Before ownership of a particular Instrument of Service and the copyright and other intellectual property rights in same passes to Town in accordance with this Paragraph, Town shall have an exclusive, perpetual, royalty-free license to use, reproduce and distribute such Instrument of Service as Town sees fit. Notwithstanding the foregoing, the Town shall continue to identify the Design-Builder as the author of the architectural work(s) and pictorial representations contained in the Instruments of Service by the term "Designed by [REDACTED]" or similar means of identification, and the Design-Builder shall retain the exclusive right to so identify itself. The Design-Builder will furnish the Town with reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service. The Town, upon making payment to Design-Builder for the Work to prepare a particular Instrument of Service and obtaining ownership of that Instrument of Service, hereby agrees to hold harmless the Design-Builder from any and all claims arising out of future use of such Instrument of Service by Town or under Town's direction and control except to the extent that defects in the Instruments of Service exist which result in whole or in part from the acts, omissions or negligence of the Design-Builder. The Design-Builder shall be entitled to retain copies of all Instruments of Services for the Design-Builder's records. The Town acknowledges that the Instruments of Services to be provided by the Design-Builder will contain certain standard component design details from the Design-Builder's Best Practices Detail Library which standard component design details shall remain the property of the Design-Builder. These details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. The Town agrees, continued use by the Design-Builder of component design details from the Design-Builder's Best Practices Detail Library shall not infringe on the conveyance of ownership and copyright set forth in this Paragraph.

Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Town's or Design-Builder's rights.

Design-Builder represents and warrants to Town that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant Town these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by Design-Builder's consultants, Design-Builder in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the Town the same work made for hire, assignment and use provisions as are included in Section 5.13 herein.

### 5.14 Construction

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Construction shall not commence prior to the Town's issuance of the Notice to Proceed.

The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### 5.15 Labor and Materials

Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only with Town's written agreement for such substitution.

The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### 5.16 Concealed or Unknown Conditions

5.16.1 If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Town before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Town shall promptly investigate such conditions and, if the Town determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Town determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Town shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Town's determination or recommendation, the Design-Builder may proceed as provided in Article 16.

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5.16.2 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Town. Upon receipt of such notice, the Town shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Town but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 16.

### 5.17 Allowances

The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Town may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.17.1 and (2) changes in Design-Builder's costs under Section 5.17.2.

The Town shall make selections of materials and equipment with reasonable promptness for allowances requiring Town selection.

### 5.18 Key Personnel, Contractors and Suppliers

.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Town has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Builder's Construction Documents Package, the Design-Builder

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shall notify the Town and provide the name and qualifications of the new personnel, Contractor or supplier. The Town may reply within 14 days to the Design-Builder in writing, stating (1) whether the Town has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Town requires additional time to review. Failure of the Town to reply within the 14-day period shall constitute notice of no reasonable objection.

.3 Except for those persons or entities already identified or required in the Design-Builder's Construction Documents Package, the Design-Builder, as soon as practicable after the Town's issuance of the Notice to Proceed, shall furnish in writing to the Town the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Town may reply within 14 days to the Design-Builder in writing stating (1) whether the Town has reasonable objection to any such proposed person or entity or (2) that the Town requires additional time for review. Failure of the Town to reply within the 14-day period shall constitute notice of no reasonable objection.

.4 If the Town has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Town has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

#### 5.19 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Town one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Town in accordance with Section 9.10.2 as a record of the Work as constructed.

#### 5.20 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### 5.21 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Town or a separate contractor except with written consent of the Town and of such separate contractor; such consent shall not be unreasonably withheld. The

Design-Builder shall not unreasonably withhold from the Town or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### 5.22 Cleaning Up

The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Town may do so and Town shall be entitled to reimbursement from the Design-Builder.

#### 5.23 Access to Work

The Design-Builder shall provide the Town and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Town regarding Project safety criteria and programs, which the Town, and its contractors and consultants, shall comply with while at the site.

#### 5.24 Construction by Town or by Separate Contractors

##### 5.24.1 Town's Right to Perform Construction and to Award Separate Contracts

.1 The Town reserves the right to perform construction or operations related to the Project with the Town's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Town shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Town, the Design-Builder shall make a Claim as provided in Article 16.

.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Town.

.3 The Town shall provide for coordination of the activities of the Town's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Town in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Town until subsequently revised.

.4 Unless otherwise provided in the Design-Build Documents, when the Town performs construction or operations related to the Project with the Town's own forces or separate contractors, the Town shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### 5.24.2 Mutual Responsibility

.1 The Design-Builder shall afford the Town and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

.2 If part of the Design-Builder's Work depends upon construction or operations by the Town or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Town, identifying apparent discrepancies or defects in the construction or operations by the Town or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Town's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

.3 The Design-Builder shall reimburse the Town for costs the Town incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Town shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Town or separate contractors as provided in Section 10.2.5.

.5 The Town and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Town or separate contractors in Section 5.10.

#### 5.24.3 Town's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Town as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Town may clean up and will allocate the cost among those responsible.

#### 5.25 Progress Reports

The Design-Builder shall keep the Town informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Town and Design-Builder, the Design-

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Design-Builder \_\_\_\_\_

Builder shall submit written progress reports to the Town, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Construction Project Schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Town;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Town;
- .9 Status of Claims previously submitted in accordance with Article 16;
- .10 Additional information as agreed to by the Town and Design-Builder.

#### 5.26 Design-Builder's Submittals

5.26.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Town's approval. The Town's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule, (2) allow the Town reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

5.26.2 By providing Submittals the Design-Builder represents to the Town that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

5.26.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Town has approved the respective Submittal.

5.26.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Town in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Town's approval of the Submittals.

5.26.5 All professional design services or certifications to be provided by the Design-Builder, including all Drawings, calculations, Specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional

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Design-Builder \_\_\_\_\_

preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Town and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

## 5.27 Warranty

5.27.1 The Design-Builder warrants to the Town that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Town, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.27.2 Any material or equipment warranties required by the Design-Build Documents shall be issued in the name of the Town, or shall be transferable to the Town, and shall commence in accordance with the terms of this Agreement.

5.27.3 The Design-Builder represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will exceed: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon the Design-Builder's performance of the Work.

5.27.4 Design-Builder represents and warrants to Town that all labor, materials and/or services furnished, and all Work performed by the Design-Builder, will be free of defects for a period of five (5) years, unless otherwise provided herein for a longer period, from the date of Final Completion. The Contractor represents and further warrants to perform inspections every twelve (12) months and to perform any required corresponding repairs in order to maintain the warranty, at no cost to Town. These warranties are not in lieu of, but are in addition to any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers. Design-Builder shall provide to Town all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Design-Build Documents.

5.27.5 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Town, or shall be transferable to the Town, and shall commence as of the date of Final Completion.

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5.27.6 The Design-Builder shall obtain warranties, for a period of one (1) year, from all subcontractors. Design-Builder agrees that it shall secure Extended Warranties for all items having Extended Warranties from the applicable subcontractors, or equipment or material manufacturers.

5.27.7 Design-Builder shall provide to the Town a bound hard-cover book and one (1) electronic copy of same containing the following information:

- .1 All Subcontractor and manufacturers' warranties fully executed in a form approved by the Town;
- .2 The Design-Builder's warranty;
- .3 All Extended Warranties required by the Design-Build Documents;
- .4 A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities;

The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

5.27.8 If the Design-Builder fails to commence to correct defective or nonconforming Work within three (3) business days from written notice to Design-Builder, the Town may correct such defective or nonconforming Work. If the Design-Builder commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the Town may upon an additional three (3) business days' notice to Design-Builder, correct such item at Design-Builder's sole cost and expense. Town may deduct such costs from any monies due Design-Builder. If the defective or nonconforming Work is discovered after final payment, then Design-Builder shall pay such cost and expense, including attorney's fees incurred. The Design-Builder shall bear all costs of correcting such defective Work.

5.27.9 The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination. Town reserves the right to notify applicable licensing authorities regarding any failure of Contractor to perform its contractual duties.

5.27.10 In the case of an emergency, Design-Builder, within twenty four (24) hours of written notice by Town, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Design-Build Documents. Design-Builder shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Design-Builder agrees that if Design-Builder fails to diligently pursue correction of any deficiency in

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a continuous and expeditious manner until completion, Town may, correct such deficiencies at Design-Builder's sole and exclusive expense and that such action shall not invalidate any conditions of the Design-Build Documents. Design-Builder shall indemnify and hold Town harmless from any claims, loss, damage or expense due to defects in the Work.

5.27.11 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Town or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents without reimbursement from the Town.

5.27.12 If the Town prefers to accept Work which is not in accordance with the requirements of the Design-Build Documents, the Town may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

5.27.13 Prior to Substantial Completion, Design-Builder shall obtain all required inspections or other required documentation by the suppliers and Manufacturers' representatives for equipment and supplies during the course of performing the Work and during the warranty period, in order to ensure that all Manufacturer warranties will be honored thorough out the Manufacturer's entire warranty period.

## 5.28 Royalties, Patents and Copyrights

5.28.1 The Design-Builder shall pay all royalties and license fees.

5.28.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Town and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Town, or where the copyright violations are required in the Town's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Town's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Town. If the Town receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Town shall give prompt written notice to the Design-Builder.

## 5.29 Contingent Assignment of Agreements

5.29.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Town, provided that

- .1 assignment is effective only after termination of the Contract by the Town for cause, and only for those agreements that the Town accepts

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- by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.29.2 When the Town accepts the assignment of an agreement, the Town assumes the Design-Builder's rights and obligations under the agreement.

5.29.3 Upon such assignment to the Town under this Section, the Town may further assign the agreement to a successor design-builder or other entity. If the Town assigns the agreement to a successor design-builder or other entity, the Town shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

### 5.30 Construction Administration

5.30.1 Those portions of the Work that the Design-Builder does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. Town may not prohibit the Design-Builder from obtaining bids from any qualified bidders, except that the Architect may not change without the written consent of the Town, in Town's sole discretion. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection, and the Design-Builder shall not contract with anyone to whom the Town has a direct material conflict.

5.30.2 The Design-Builder shall schedule and conduct weekly meetings at which the Town and Design-Builder, and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes.

### 5.31 Shop Drawings and Samples

5.31.1 The Design-Builder shall prepare and submit any submittals or shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to the Town Manager.

5.31.2 The Design-Builder shall prepare and maintain all other shop drawings and submittals and make them available for review by the Town.

5.31.3 Review of the shop drawings by the Town shall be general and shall not relieve the Design-Builder of the responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of material or Work required by the Agreement and not indicated on the drawings.

### 5.32 Supervision and Superintendence

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The Design-Builder shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying Design-Builder's best skill, attention and expertise. The Design-Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. The Design-Builder shall be responsible to see that the finished Work complies with the Design-Build Documents.

### 5.33 Project Management

5.33.1 During the progress of on-site construction, the Design-Builder shall provide full-time (defined to be 8:00 a.m. through 5:00 p.m., Monday through Friday, legal holidays excluded) competent project supervision and any necessary assistants. The superintendent will be the Design-Builder's representative at the site. The Design-Builder may, with the permission of the Town Manager, schedule prosecution of the Work during times not otherwise allowable for construction within the Town.

5.33.2 The day-to-day management of the Project's subcontractors and vendors' contracts schedules and requests for payment shall be by a competent project manager to whom the superintendent shall report. The project manager will conduct regularly scheduled project meetings for the purpose of project coordination and communication. The cost for the project manager shall be included in the Contract Sum.

### 5.34 Labor

5.34.1 Construction services shall be performed only under the supervision of qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the Design-Builder.

5.34.2 The Design-Builder shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Design-Build Documents. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall at all times maintain good discipline and order at the site.

### 5.35 Materials

5.35.1 Unless otherwise specified herein, and excluding final hook-ups and associated fees for utilities, the Design-Builder shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

5.35.2 The Design-Builder warrants that all materials and equipment shall be of good

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quality and new, unless otherwise provided in the Design-Build Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Design-Build Documents.

5.36 Concerning Subcontractors, Suppliers, and Others

5.36.1 The Design-Builder shall be fully responsible to Town and shall indemnify and hold the Town harmless for all acts and omissions of the Design-Builder's employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect contract with the Design-Builder. Nothing in the Design-Build Documents shall create any contractual relationship between the Town and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Town to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

5.36.2 All Work performed for the Design-Builder by a Subcontractor will be pursuant to an appropriate agreement between the Design-Builder and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Design-Build Documents for the benefit of Town.

5.37 Permits

The Design-Builder shall obtain and pay for all permits and licenses except for the local Town of Golden Beach, Florida building permit fee for the Project, which will be paid by the Town. The Design-Builder shall pay all governmental charges and inspection fees necessary with the exception that the Town hereby waives its own municipal permit, impact and inspection fees relating to the Work and the Project. No waiver is given with respect to any re-inspection fees.

5.38 Laws and Regulations

The Design-Builder shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. The Town shall not be responsible for monitoring Design-Builder's compliance with any laws and regulations. The Design-Builder shall promptly notify Town if the Design-Build Documents are observed by the Design-Builder to be at variance therewith.

5.39 Risk of Loss; Title

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The risk of loss, injury or destruction shall be on Design-Builder until acceptance of the work by the Town. Title to the Work shall pass to the Town upon acceptance of the Work by the Town.

#### 5.40 Taxes

The Design-Builder shall pay all sales, consumer, use and other similar taxes required to be paid by Design-Builder in accordance with the laws and regulations of the State of Florida and its political subdivisions. Design-Builder is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

#### 5.41 Use of Premises

5.41.1 The Design-Builder shall confine equipment, the storage of materials, equipment, and the operations of workers to the project site and areas identified in and permitted by the Design-Build Documents, and shall not unreasonably encumber the premises with equipment or other materials. The Design-Builder shall assume full responsibility for any damage to any such land or area, or to the Town or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Town by any such Town or occupant because of the performance of the Work, the Design-Builder shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Agreement specifically applies to claims arising out of Design-Builder's use of the premises.

5.41.2 During the progress of the Work, the Design-Builder shall at all times keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Design-Builder shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Town. To the extent reasonably feasible, the Design-Builder shall restore to original condition all property not designated for alteration by the Design-Build Documents.

5.41.3 The Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 5.42 Access to Work

The Design-Builder shall provide the Town, the Town's consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and

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Design-Builder \_\_\_\_\_

testing. The Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's site safety procedures and programs so that they may comply therewith.

#### 5.43 Safety and Protection

5.43.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

#### 5.43.2 Safety of Persons and Property

The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

5.43.3 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

5.43.4 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify Towns and users of adjacent sites and utilities of the safeguards and protections.

5.43.5 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

5.43.6 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible; except damage or loss attributable to acts or omissions of the Town, or anyone directly or indirectly employed by the Town, or by anyone for whose acts the Town may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

5.43.7 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Town.

5.43.8 Injury or Damage to Person or Property. If the Town or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

5.44 Hazardous Materials

5.44.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Town in writing.

5.44.2 Upon receipt of the Design-Builder's written notice, the Town shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Town shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The

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Design-Builder \_\_\_\_\_

Design-Builder will promptly reply to the Town in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Town. If the Design-Builder has an objection to a person or entity proposed by the Town, the Town shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Town and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

5.44.3 To the fullest extent permitted by law, the Town shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

5.44.4 The Town shall not be responsible under this Section 6.18 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Town's Criteria. The Town shall be responsible for materials or substances required by the Town's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

5.44.5 The Design-Builder shall indemnify the Town for the cost and expense the Town incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Town's fault or negligence.

5.44.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Town shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### 5.45 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

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## 5.46 Indemnification

5.46.1 General Indemnification. The Design-Builder shall indemnify, defend, save and hold harmless the Town and the Town's elected officials, public employees, consultants and separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work. These indemnification obligations shall be limited to claims, damages, losses or expenses that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. This indemnification obligation is limited to the extent a claim, damage, loss or expense is caused by any negligence, recklessness or intentional wrongful misconduct of Design-Builder, any subcontractor, any sub-subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable. The foregoing indemnity shall be applicable up to a monetary limit of \$5 million per occurrence. [note this can be more or less than \$5 million, but not less than \$1 million].

5.46.2 Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

5.46.3 In claims against any entity indemnified under this section by an employee of the Design-Builder, its contractors and subcontractors and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation of Design-Builder under this Section 5.47 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Design-Builder or any of its contractors or subcontractors, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

5.46.4 Patent and Copyright Indemnification. The Design-Builder agrees to indemnify, defend, save and hold harmless the Town, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against the Town, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

5.46.5 The Design-Builder shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs.

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Design-Builder \_\_\_\_\_

5.46.6 Nothing contained herein is intended nor shall it be construed to waive the Town's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party described in this Paragraph and its subparts.

5.46.7 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Design-Build Documents, shall survive final payment, completion and acceptance of the work and termination or completion of this Agreement.

5.47 Uncovering of Work

The Town may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Town and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Town or a separate contractor in which event the Town shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

**ARTICLE 6 - TOWN'S RESPONSIBILITIES**

6.1 The Town shall furnish data required of the Town under the Design-Build Documents promptly.

6.2 Except for permits and fees, which are the responsibility of the Design-Builder, the Town shall secure necessary easements, assessments, and charges required for construction, use, or occupancy of permanent structures or permanent changes in existing facilities.

6.3 The Town shall designate in writing a representative who shall have express authority to bind the Town with respect to all Project matters requiring the Town's approval or authorization.

6.4 The Town shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Town.

6.5 Information and Services Required of the Town

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Design-Builder \_\_\_\_\_

6.5.1 The Town shall furnish information or services required of the Town by the Design-Build Documents with reasonable promptness.

6.5.2 The Town shall provide, to the extent under the Town's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Town shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Town's control.

6.5.3 The Town shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

6.5.4 The Town shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

6.5.5 The services, information, surveys and reports required to be provided by the Town under this Agreement, shall be furnished at the Town's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Town advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

6.5.6 If the Town observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Town shall give prompt written notice thereof to the Design-Builder.

6.5.7 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Town shall communicate with the Design-Builder through those persons or entities designated by the Design-Builder.

6.5.8 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Town shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

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Design-Builder \_\_\_\_\_

6.5.9 The Town shall purchase and maintain a Builder's Risk Insurance Policy for the Project and otherwise maintain only such insurance as is typical and customary for the Town.

## 6.6 Submittals

6.6.1 The Town shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Town's action will be taken in accordance with the submittal schedule approved by the Town or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Town's judgment to permit adequate review. The Town's review of Submittals shall not relieve the Design-Builder of any of its obligations. The Town's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Town, of any construction means, methods, techniques, sequences or procedures. The Town's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.6.2 Upon review of the Submittals required by the Design-Build Documents, the Town shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Town discovers.

6.7 Visits to the site by the Town shall not be construed to create an obligation on the part of the Town to make on-site inspections to check the quality or quantity of the Work. The Town shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

6.8 The Town shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Town shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

6.9 The Town has the authority to reject Work that does not conform to the Design-Build Documents. The Town shall have authority to require inspection or testing of the Work in accordance with Section 10.5.4, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Town nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Town to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other

persons or entities performing portions of the Work.

6.10 The Town shall determine the date or dates of Substantial Completion and the date of Final Completion.

6.11 Town's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents or fails to carry out Work in accordance with the Design-Build Documents, the Town may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Town to stop the Work shall not give rise to a duty on the part of the Town to exercise this right for the benefit of the Design-Builder or any other person or entity.

6.12 Town's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Town to commence and continue correction of such default or neglect with diligence and promptness, the Town may, without prejudice to other remedies the Town may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Town.

6.13 Town's Furniture

The Town will provide such furniture as the Town requires for the Project at the Town's expense. The Design-Builder, however, remains responsible to provide all other furnishings and equipment for the Project as required by the Design-Build Documents.

**ARTICLE 7 - TOWN MANAGER OR DESIGNEE'S RESPONSIBILITIES**

7.1 The Town Manager will be the Town's contact person during the construction period and until final payment is due to the Design-Builder.

7.2 Visits to Site

The Town Manager will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Design-Build Documents. On the basis of such visits, the Town Manager shall keep the Town informed of the progress of the work and shall endeavor to guard the Town against defects and deficiencies in the work.

7.3 Rejecting Defective Work

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If the Town Manager becomes aware of any fault or default in the Work, he shall give proper written notice thereof to the Design-Builder.

## **ARTICLE 8 - BUILDING DEPARTMENT'S RESPONSIBILITIES**

Building Department inspectors will serve as the Town's representative regarding inspection of the finished work herein as it pertains to compliance with the Florida Building Code, and the Town's Code of Ordinances.

## **ARTICLE 9 - BONDS AND INSURANCE**

### 9.1 Bonds

Prior to the Town's issuance of the Notice to Proceed, the Design-Builder shall deliver to the Town the Bonds required to be provided by Design-Builder hereunder (the bonds referenced in this Section are collectively referred to herein as the "Bonds").

Pursuant to and in accordance with Section 255.05, Florida Statutes, the Design-Builder shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work, each in an amount equal to one hundred percent (100%) of the Contract Sum and each in the form provided in the Design-Build Documents or in other form satisfactory to and approved in writing by the Town and executed by a surety of recognized standing with a rating of B plus or better. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). All associated costs of the Bonds, including, without limitation, premiums and recording fees are included in the Contract Sum.

If notice of any change affecting the Scope of the Work, the Contract Sum, Contract Time or any of the provisions of the Design-Build Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Design-Builder's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Design-Builder shall, within five (5) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to the Town.

### 9.2 Insurance

**9.2.1 UPON EXECUTION OF THE AGREEMENT, THE DESIGN-BUILDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE TOWN OF GOLDEN BEACH IS AN ADDITIONAL NAMED INSURED BY ENDORSEMENT WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE DESIGN-BUILDER UNDER THE AGREEMENT.** The certificates of insurance shall not only name the types of

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policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Article 9 and its subparts of this Agreement. Design-Builder shall not commence work under this Agreement until after Design-Builder has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by Town. Design-Builder shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, Design-Builder shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. Design-Builder shall not continue to perform the Work required by this Agreement unless all required insurance remains in full force and effect.

9.2.2 Insurance Companies selected must be acceptable to the Town. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to Town by certified mail.

9.2.3 The Design-Builder shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:

a. Professional Liability (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this Agreement in the amount of \$1,000,000 with a deductible (if applicable) not to exceed \$5,000 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this Agreement.

b. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Design-Builder agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

c. Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Design-Builder in the performance of the work with the following minimum limits of liability:

- \$1,000,000 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

d. Commercial General Liability Insurance (occurrence form) with the

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Design-Builder \_\_\_\_\_

following minimum limits of liability:

- \$1,000,000 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a form no more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- Premises and Operations;
- Independent Contractors;
- Product and Completed Operations Liability for 10 years;
- Broad Form Property Damage;
- Broad Form Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless agreement in this Agreement; and
- Personal Injury coverage with employment contractual exclusions removed and deleted.
- Explosion, collapse, underground coverage (XC-U)

e. Pollution Liability Insurance with a limit of at least \$ [REDACTED]. Coverage shall include third-party property damage and bodily injury and environmental impairment/clean-up costs. Coverage may be written on a claims-made basis and shall be maintained for a period of at least five (5) years after final payment for the Work.

9.2.4 Design-Builder shall furnish Town with evidence of continuation of product and completed operations liability insurance and pollution liability insurance at final payment.

9.2.5 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

9.2.6 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above-described insurance.

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Design-Builder \_\_\_\_\_

9.2.7 The Design-Builder shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.

9.2.8 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town. Town shall provide written notice of occurrence within fifteen (15) working days of Town's actual notice of such an event.

9.2.9 The Design-Builder shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

9.2.10 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above described insurance.

9.2.11 The Design-Builder agrees to perform the work under the Agreement as an independent contractor, and not as a subcontractor, agent or employee of Town.

9.2.12 The Design-Builder shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and Design-Builder shall provide verification thereof to Town upon request of Town.

9.2.13 Design-Builder's failure to provide and maintain the insurance required by this Contract shall be grounds for immediate termination, and Design-Builder shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

9.2.14 Except to the extent covered by and paid by insurance, Design-Builder shall be responsible for all loss or damage Design-Builder or its Subcontractors cause to the Work, including the materials delivered to site for incorporation therein and all property issued to the Design-Builder by the Town for use or incorporation in the Work.

9.2.15 The Design-Builder shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, stagings, towers and forms owned or rented by its subcontractors or agents under this Contract. Failure of the Design-Builder to secure such insurance or to maintain adequate levels of coverage shall not obligate the Town or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Design-Builder secures such insurance, the insurance policy shall include a waiver of subrogation as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the Town." The Design-Builder agrees to cooperate fully with the insurance company or companies in

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carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Design-Builder further agrees to report immediately to the Town and such insurance company or companies, in writing, notice of every accident on Site or otherwise related to the Work.

#### 9.2.16 The Town's Liability and Insurance

Except for purchasing and maintaining a Builder's Risk Insurance Policy for the Project, the Town shall not be responsible for purchasing and maintaining any other insurance to protect the interests of Design-Builder, subcontractors or others on the Work. Town specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

### **ARTICLE 10 – SPECIAL WARRANTIES AND TESTS AND INSPECTIONS**

#### 10.1 Warranty of Title

The Design-Builder warrants to the Town that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

#### 10.2 Warranty of Merchantability

The Design-Builder warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

10.3 Design-Builder warrants to the Town that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Agreement.

10.4 Design-Builder warrants to the Town that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.

10.5 Design-Builder warrants to the Town that the consummation of the Work provided for in the Design-Build Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the Design-Builder is a party.

10.6 Design-Builder warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Agreement.

10.7 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by Design-Builder. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by Town.

#### 10.8 Tests and Inspections

10.8.1 Design-Builder shall give Town timely notice of readiness of the Work for all required inspections, tests or approvals. Design-Builder shall assume full responsibility, pay all costs in connection therewith and furnish Town the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof, as specified herein or otherwise required by the Florida Building Code.

10.8.2 Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Design-Build Documents, nor to delay the Agreement by failure to inspect the materials and Work with reasonable promptness.

10.8.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Design-Builder to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the Design-Builder will constitute a breach of this Agreement.

10.8.4 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Town, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Town timely notice of when and where tests and inspections are to be made so that the Town may be present for such procedures. The Town shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Town from delegating their cost to the Design-Builder.

10.8.5 If the Town determines that portions of the Work require additional testing, inspection or approval not included under Section 10.5.1, the Town will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Town, and the Design-Builder shall give timely notice to the Town of when and where tests and inspections are to be made so that the Town may be present for such procedures. Such costs shall be at the Town's expense.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

10.8.6 If such procedures for testing, inspection or approval under Section 10.5.1 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

10.8.7 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Town.

10.8.8 If the Town is to observe tests, inspections or approvals required by the Design-Build Documents, the Town will do so promptly and, where practicable, at the normal place of testing.

10.8.9 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

## **ARTICLE 11 - CONTRACT TIME**

### **11.1 Contract Time**

The Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

The Design-Builder shall achieve Substantial Completion of the Work not later than the specified number of days from the Date of Commencement, as set forth in the Notice to Proceed, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

11.2 Time is of the Essence of this Contract. The Work shall be commenced upon the Date of Commencement as specified in the Notice to Proceed and, subject to authorized adjustments or temporary extensions, shall be Substantially Completed no later than the number of consecutive calendar days after the Date of Commencement as specified in the Notice to Proceed (the "Contract Time"). The Design-Builder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure completion of it within the time specified.

### **11.3 Progress and Completion**

Time limits stated in the Design-Build Documents are of the essence of the Contract. By acknowledging and accepting the Notice to Proceed, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

11.4 The Design-Builder shall not, except by agreement of the Town in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

11.5 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

11.6 Delays and Extensions of Time

If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Town or of a consultant or separate contractor employed by the Town; or by changes ordered in the Work by the Town; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Town pending mediation and binding dispute resolution or by other causes that the Town determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Town may determine.

11.7 Claims relating to time shall be made in accordance with applicable provisions of Article 16.

11.8 Nothing in this Agreement shall preclude recovery of damages for delay by Town under other provisions of the Design-Build Documents.

11.9 [LDs] (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

11.10 Change of Contract Time/No Damage For Delay

**ALL TIME LIMITS STATED IN THE DESIGN-BUILD DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE TOWN BY REASON OF ANY DELAYS.** Design-Builder shall not be entitled to an increase in the construction cost or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Design-Builder for hindrances or delays due solely to fraud, bad faith or active interference on the part of Town or its agents. In addition, if Design-Builder is delayed at any time in the progress of the Work by an act or neglect of the Town's employees, or by changes ordered in the Work, or by delay authorized by the Town pending arbitration, then the Contract Time shall be reasonably extended by Change Order. Furthermore, if Design-Builder is delayed at any time in the progress of the Work by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond the Design-Builder's control, or by other causes which the Town and Design-Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. Otherwise, Design-Builder shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at its Weather Station located in Miami-Dade County.

#### 11.11 No Recovery for Early Completion

If the Design-Builder submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the Town shall not be liable to the Design-Builder for any costs incurred because of delay or hindrance should the Design-Builder be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the Town to the Design-Builder shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Agreement.

11.12 Float The Town owns any and all float on the Construction Project Schedule.

### **ARTICLE 12 – MODIFICATIONS DUE TO CHANGES IN THE WORK**

12.1 Town, without invalidating this Agreement, may order additions, deletions or revisions to the Work. Such additions, deletions or revisions shall be authorized by a Modification.

12.2 Change Orders which decrease the cost of the work to Town, increase the cost of the work by an amount not in excess of ten thousand and xx/100 dollars (\$10,000.00), or which extend the time for completion may be authorized and approved by the Town Manager or his/her authorized designee prior to their issuance. All Change Orders which increase the cost of the Work to Town by an amount which exceeds ten thousand and xx/100 dollars (\$10,000.00), must be formally authorized and approved by the Town Commission prior to their issuance and before Work may begin. No claim against Town for extra Work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.

12.3 The Contract Sum and Contract Time shall be changed only by Change Order or Written Amendment approved by the Town Commission.

12.4 Design-Builder shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any work performed that is not required by the Design-Build Documents as amended, modified and supplemented.

12.5 If notice of any change affecting the general scope of the Work or the provisions of the Design-Build Documents is required by the provisions of any bond to be given, the giving of any such notice will be Design-Builder's responsibility and the amount of each applicable bond shall be adjusted accordingly.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

12.6 Any claim for adjustment in the Contract Sum or Contract Time shall be based upon written notice delivered by the party making the claim to the other parties and to the Town Manager no later than ten (10) business days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Sum or an extension of the Contract Time will be valid if not submitted in accordance with this Paragraph.

12.7 The cost or credit to Town from a change in the Work shall be determined in accordance with the provisions hereof.

12.8 A Change Order shall be based upon agreement between the Town and Design-Builder. The Town may issue a Change Directive without agreement by the Design-Builder.

12.9 If Town and Design-Builder are unable to agree as to the extent, if any, of an adjustment in the Contract Sum or an adjustment of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefor.

12.10 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### 12.11 Change Orders

A Change Order is a written instrument signed by the Town and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### 12.12 Change Directives

A Change Directive is a written order signed by the Town directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time. The Town may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted, if necessary, accordingly. A Change Directive shall be used in the absence of total agreement on the terms of a Change Order. If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon; or

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

### 12.13 Unit Prices

If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Town or Design-Builder, the applicable unit prices shall be equitably adjusted.

12.14 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Town of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

12.15 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

12.16 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Town shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Design-Builder shall keep and present, in such form as the Town may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

12.17 The amount of credit to be allowed by the Design-Builder to the Town for a deletion or change that results in a net decrease in the Contract Sum, shall be actual net cost. When

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

12.18 Pending final determination of the total cost of a Change Directive to the Town, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Town will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Town's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 16.

12.19 When the Town and Design-Builder agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Town and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

### **ARTICLE 13 - PAYMENTS TO DESIGN-BUILDER AND COMPLETION OF WORK**

Design-Builder shall receive payments over the course of the Project for Work executed, provided, however, costs for the Work that would cause the Total Contract Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Town.

#### 13.1 Design Fee Payment Terms

13.1.1 Unless otherwise agreed, payments for Work performed prior to the completion of the Final Construction Documents shall be made monthly over the [redacted] month period of the Design-Builder's performance of Work, in equal installments of \$ [redacted]. This monthly amount is due and payable by Town upon presentation of the Design-Builder's invoice.

13.1.2 The hourly billing rates for additional design-related services that may be required of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth in **Exhibit D** and may be used for calculation of those additional design fees that may be incurred as a result of Modifications requested solely by the Town for the Town's convenience or other cause completely beyond the control or reasonable anticipation of Town and Design-Builder and not due to any other causes, including, without limitation, Site constraints, budgetary considerations, or any design errors or omissions discovered during the construction phase of the Project.

#### 13.1.3 No Additional Compensation for Reimbursable Expenses

Reimbursable Expenses are included in the compensation set forth in Section 13.1.1 and include all such expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, including, without limitation:

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Town;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 All other Project-related expenditures.

### 13.2 Contract Sum Payment Terms

For the Design-Builder's performance of the Work in accordance with the Final Construction Documents, the Town shall pay to the Design-Builder the Contract Sum in current funds. The Contract Sum is based on a stipulated sum with a contingency, which shall, in no event, exceed the sum arrived at by deducting the total amount of the Design Fee paid by the Town to the Design-Builder, from the Total Contract Price.

#### 13.2.1 Schedule of Values

The Design-Builder, prior to submitting its first Application for Payment after the Town issues the Notice to Proceed, shall submit to the Town a more detailed schedule of values than was provided with the Design-Builder's Construction Documents package, allocating the entire Contract Sum to the various portions of the Work and shall include the Design-Builder's contingency, the Permitting portion of the Total Design Cost and the Construction Administration portion of the Total Design Cost as set forth in the Price Proposal Form of the Design-Builder's response to the RFP. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Town may require. This schedule, unless objected to by the Town, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. Any costs that cause the Contract Sum to be exceeded shall be paid by the Design-Builder without reimbursement by the Town.

#### 13.2.2 Progress Payments

Based upon Applications for Payment submitted to the Town by the Design-Builder, the Town shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

13.2.2.1 Provided that an Application for Payment is received not later than the [ ] day of the month, the Town shall make payment of the certified amount to the Design-Builder not later than the [ ] day of the [ ] month. If an Application for Payment is received by the Town after the application date fixed above, payment shall be made by the Town not later than [ ] ( [ ]) days after the Town receives the Application for Payment.

13.2.2.2 With each Application for Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The Design-Builder's Contingency, and compensation for Permitting and Construction Administration shall be shown separately as line items on the schedule of values. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Town may require. This schedule of values, unless objected to by the Town, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

13.2.2.3 In addition to the schedule of values, along with the Design-Builder's Application for Payment, Design-Builder shall submit to Town the following:

.1 a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Design-Builder have been paid in full as relating to all Work performed under all prior applications;

.2 partial releases of claim of lien from Contractor, and claims against the payment bond from material suppliers and subcontractors and any other potential lienors serving a Notice to Owner, and evidence of proof of payment of any indebtedness incurred with respect to the Work as may be required by Town;

.3 evidence that all Work has been fully performed as required pursuant to the Design-Build Documents up to the time of the request for payment, and the Work has been inspected and accepted by the Town and any governmental authorities required to inspect the Work;

.4 an updated Construction Project Schedule if the schedule has changed;

.5 all other requirements of this Article 13 of the Agreement; and

.6 Any other document or information required elsewhere in the Design-Build Documents as a condition precedent to payment.

13.2.2.4 In taking action on the Design-Builder's Applications for Payment, the Town shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

made a detailed examination, audit or arithmetic verification of the documentation submitted; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Town, will be performed by the Town's auditors acting in the sole interest of the Town.

13.2.2.5 Except with the Town's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

13.2.2.6 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

13.2.2.7 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%) on the Work. Pending final determination of cost to the Town of Changes in the Work, amounts not in dispute shall be included;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Town, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Town; and
- .4 Subtract amounts, if any, the Town has withheld or nullified.

13.2.2.8 The progress payment amount determined in accordance with Section 13.2.2.7 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less 150% of such amounts as the Town shall determine for incomplete Work, retainage applicable to such work and unsettled claims.

### 13.3 Retainage

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

Ten percent (10%) of all monies earned by the Design-Builder shall be retained by the Town.

### 13.4 Certificates for Payment

The Town shall, within **seven** days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Town determines is properly due, and notify the Design-Builder in writing of the Town's reasons for withholding certification in whole or in part.

#### 13.4.1 Decisions to Withhold Certification

The Town may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Town due to the Town's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Town is unable to certify payment in the amount of the Application, the Town will notify the Design-Builder as provided above. If the Design-Builder and Town cannot agree on a revised amount, the Town will promptly issue a Certificate for Payment for the amount that the Town deems to be due and owing. The Town may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Town from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Town is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Town or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

13.4.2 If the Town withholds certification for payment, the Town may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

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Design-Builder \_\_\_\_\_

### 13.5 Substantial Completion

13.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Town can occupy or utilize the Work for its intended use and obtain all permits, licenses, and certificates required for such use (unless the same are delayed for reasons other than the fault of Design-Builder). Specifically, in order to achieve Substantial Completion for this Project, Design-Builder must achieve the following minimum requirements:

1. Site cleanup and restoration of all exterior elements including ledges, gutters, windows, exterior facades (including without limitation removal of all excess materials, debris, supplies, equipment, temporary structures, ladders, scaffolding, staging and/or trailers) has been completed;
2. all exterior building finishes, all interior building finishes, all interior spaces, all structural, mechanical, and technical systems required by the Design-Build Documents, all fire and life safety systems, are completed and ready for use or occupancy;
3. The Work is ready for occupancy, completed in accordance with the Drawings and Specifications and the Contract Documents including, but not limited to: (1) low voltage system, if any; (2) MEP trim out; (3) security systems; (4) finish painting; (5) designated flooring; (6) millwork; and (7) cabinets; all as applicable, are complete.
4. The Design-Builder's and Town's agreed list of items needed to achieve Substantial Completion as set forth below in Sections 13.5.1 and 13.5.2, have been completed, inspected and approved by the Town as to scope, number, quality and content;
5. The Work is ready for occupancy, completed in accordance with the Final Construction Documents and the Design-Build Documents and all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Work and the Work has received a temporary or final Certificate of Occupancy; and
6. Design-Builder has complied with the turnover obligations set forth in Article 14 below.

13.5.2 When the Design-Builder considers that the Work, or a portion thereof which the Town agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the Town a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

13.5.3 Upon receipt of the Design-Builder's list, the Town shall make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Town's inspection discloses any item, whether or not included on the Design-Builder's

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Town can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Town. In such case, the Design-Builder shall then submit a request for another inspection by the Town to determine Substantial Completion.

13.5.4 Prior to issuance of the Certificate of Substantial Completion, the Town and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

13.5.5 When the Work or designated portion thereof is Substantially Complete, the Design-Builder will prepare for the Town's signature a Certificate of Substantial Completion that shall, upon the Town's signature, establish the date of Substantial Completion; establish responsibilities of the Town and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

13.5.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Town for written acceptance of responsibilities assigned to it in the Certificate. Upon the Town's acceptance, and consent of surety, if any, the Town shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

### 13.6 Partial Occupancy or Use

13.6.1 The Town may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Town and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion Substantially Complete, the Design-Builder shall prepare and submit a list to the Town as provided under Section 13.6.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Town and Design-Builder.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

13.6.2 Immediately prior to such partial occupancy or use, the Town and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

13.6.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

### 13.7 Final Inspection

Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Town will make a final inspection and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is not in accordance with the Design-Build Documents. Design-Builder shall immediately take such measures as are necessary to remedy such deficiencies.

### 13.8 Final Application for Payment

After Design-Builder has completed all such corrections to the satisfaction of Town Manager and delivered all maintenance and operating instructions as required by Article 14, schedules, certificates of inspection and all other documents required by the Design-Build Documents, and after Town Manager has indicated that the Work is acceptable, Design-Builder may make application for final payment. The final application for payment shall be accompanied by:

(1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the Work;

(2) Design-Builder's receipts in full covering all labor, materials and equipment for which a lien could be filed;

(3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for Design-Builder under this Agreement have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, Design-Builder may furnish a bond satisfactory to Town to indemnify Town against any lien; and

(4) a complete set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by the appropriate professional licensed by the State of Florida. Prior to approval, if necessary, the drawings may be returned to Design-Builder for changes if in the opinion of Town Manager they do not represent correct or accurate "As-built" drawings.

### 13.9 Final Acceptance

If, on the basis of Town Manager's observation of the Work during construction and final inspection, and Town Manager's review of the final Application for Payment and accompanying documentation, Town Manager is satisfied that the Work has been completed in accordance with the Design-Build Documents and Design-Builder's other

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

obligations under the Design-Build Documents have been fulfilled, Town Manager will, within ten (10) days after receipt of the final Application for Payment, indicate in writing Town Manager's recommendation of payment and present the Application to Town for payment. Thereupon Town Manager will give written notice to Town and Design-Builder that the Work is acceptable. Otherwise, Town Manager will return the Application to Design-Builder, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application. Fifteen (15) days after presentation to Town of the Application and accompanying documentation, in appropriate form and substance, the amount recommended by Town Manager will become due and will be paid by Town to Design-Builder.

If, through no fault of Design-Builder, Final Completion of the Work is significantly delayed and if Town Manager so confirms, Town shall, upon receipt of Design-Builder's final Application for Payment and recommendation of Town Manager, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.

### 13.10 Final Payment

13.10.1 Final payment, constituting the entire unpaid balance of the Contract Sum including any retainage, shall be paid by the Town to the Design-Builder when the following express conditions precedent to Final Payment have been met:

- .1 the Town has issued a Certificate of Final Completion;
- .2 all "punch list" items have been fully completed to the reasonable satisfaction of Town;
- .3 the final certificate of occupancy and all final governmental and utility authority permits have been issued, unless the final certificate of occupancy is delayed for reasons that are beyond the control of the Design-Builder and those for whom the Design-Builder is responsible;
- .4 Design-Builder has fully cleaned and restored the site with respect to all of the final punch list work; and
- .5 all temporary utilities are disconnected;

13.10.2 In addition to the above, Design-Builder shall have performed and or submitted (as applicable) to the Town the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Town or the Town's property might be responsible or encumbered (less amounts withheld by Town) have been paid or otherwise satisfied, or shall be paid out of Design-Builder's final payment;

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

- .2 consent of surety, if any, to final payment;
- .3 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties;
- .4 all previously undelivered manufacturer and Subcontractor guarantees, warranties and manuals and documents;
- .5 final and or conditional releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Town; Where Design-Builder is in a dispute with a Subcontractor and or supplier, consent of surety, if any, to Final Payment is acceptable.
- .6 To the extent Town is missing any shop drawings and or submittals, Design-Builder will provide any such items requested in writing;
- .7 evidence that all temporary utilities have been disconnected;
- .8 the Design-Builder has fully cleaned and restored the site, including removal of all rubbish and construction debris;
- .9 all final governmental permits for which Design-Builder is responsible under the Design-Build Documents have been issued and all permits have been closed out,
- .10 Design-Builder has complied with all partial occupancy or Turnover obligations set forth in Article 14; and
- .11 Design-Builder has complied with all other requirements of the Design-Build Documents

13.10.3 The making of final payment shall constitute a waiver of claims by Town except those arising from:

- .1 Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.
- .2 Faulty or defective Work and latent defects discovered after acceptance.
- .3 Failure of the Work to comply with the requirements of the Design-Build Documents.
- .4 Terms of special warranties required by the Design-Build Documents.
- .5 Any of Design-Builder's continuing obligations under this Agreement.

The acceptance of final payment by Design-Builder or the Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

#### 13.11 Town's Right to Withhold Payment

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

The Town may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

- .1 Defective designs or Work not remedied
- .2 Failure of the Design-Builder to make payment to Subcontractors or Suppliers for materials or labor.
- .3 Damage not remedied.
- .4 Failure to carry out the Work in accordance with the Design-Build Documents.

When the above grounds are removed or resolved or the Design-Builder provides a letter of credit satisfactory to the Town which will protect the Town in the amount withheld, payment may be made in whole or in part.

#### **ARTICLE 14 – TURNOVER OF THE PROJECT – OPERATION & MAINTENANCE INSTRUCTIONS**

Upon Substantial Completion of the Project and prior to Final Acceptance and Final Payment by the Town, the Design-Builder shall meet the following minimum requirements regarding operation and maintenance instruction for the Town:

##### 14.1 Instruction and Training

Design-Builder's installers and operation and regular maintenance personnel shall have met with the Town Manager and other individuals as may be designated by Town, at the Project Site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of those parts of the Work requiring such maintenance. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Design-Build Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds.

14.2 Design-Builder shall have provided Town with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project:

1. Training, maintenance and operating manual information;
2. emergency instructions;
3. spare part listings;
4. wiring diagrams;

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

5. recommended "turn around" cycles;
6. inspections procedures;
7. shop drawings, product data, and any other applicable information;
8. detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Design-Builder prior to Final Completion.

14.3 Design-Builder shall have provided Town with one (1) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:

1. All Subcontractor warranties fully executed in the form approved by the Town;
2. All Extended Warranties required by the Design-Build Documents;
3. The Design-Builder's warranty; and
4. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.

The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

## **ARTICLE 15 - TERMINATION OF THE AGREEMENT**

### **15.1 Town's Right to Terminate for Cause**

Upon the occurrence of any one or more of the following events:

15.1.1 If Design-Builder commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if Design-Builder takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

15.1.2 If a petition is filed against Design-Builder under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Design-Builder under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

15.1.3 If Design-Builder makes a general assignment for the benefit of creditors.

15.1.4 If a trustee, receiver, custodian or agent of Design-Builder is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Design-Builder is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Design-Builder's creditors.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

15.1.5 If Design-Builder admits in writing an inability to pay its debts generally, as they become due.

15.1.6 If Design-Builder disregards laws or regulations of any public body having jurisdiction.

15.1.7 If Design-Builder otherwise violates in any substantial way any provisions of the Design-Build Documents.

Town may, after giving Design-Builder written notice of a material default under this Agreement and thirty (30) days in which to cure such material default, and provided Design-Builder has not begun to diligently prosecute a cure of the default, terminate the Work of Design-Builder, exclude Design-Builder from the site and take possession of the Work and of all Design-Builder's tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by Design-Builder (without liability to Design-Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Town has paid Design-Builder but which are stored elsewhere, and finish the Work as Town may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Town and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Town. The obligation for such payments shall survive termination of the Contract.

#### 15.2 Termination by Design-Builder

If Town fails to make undisputed payment for a period of sixty (60) calendar days after it is due, Design-Builder may, upon thirty (30) additional days written notice to Town, terminate the Agreement and recover from the Town payment for Design Services for Design Development or Work executed, as the case may be, through the date of termination and for proven loss, if any, with respect to materials, equipment, tools and construction equipment and machinery.

#### 15.3 Suspension by the Town for Convenience

The Town may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Town may determine. The Contract Time shall be adjusted for increases in the time caused by suspension, delay or interruption. No adjustment shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible.

#### 15.4 Termination by the Town for Convenience

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

The Town may, at any time, terminate the Contract for the Town's convenience and without cause.

Upon receipt of written notice from the Town of such termination for the Town's convenience, the Design-Builder shall

- .1 cease operations as directed by the Town in the notice;
- .2 take actions necessary, or that the Town may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

In case of such termination for the Town's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

## **ARTICLE 16 - CLAIMS AND DISPUTE RESOLUTION**

### **Claims**

16.1 **Definition**. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Town and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

16.2 **Time Limits on Claims**. The Town and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Town and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

### 16.3 **Notice of Claims**

16.3.1 **Prior To Final Payment**. Prior to Final Payment, Claims by either the Town or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

16.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Town or Design-Builder that have not otherwise been waived, must be initiated by prompt written notice to the other party.

16.3.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing, the Design-Builder shall proceed diligently with performance of the Contract and the Town shall continue to make payments in accordance with the Design-Build Documents.

16.3.4 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property.

16.3.5 Claims for Additional Time. If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

16.3.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### 16.4 Procedure

16.4.1 Claims Initiated by the Town. If the Town initiates a Claim, the Design-Builder shall provide a written response to Town within ten days after receipt of the notice of such a Claim. Thereafter, the Town shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

16.4.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Town will take one or more of the following actions within ten days after receipt of the required notice: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Town lacks sufficient information to evaluate the merits of the Claim.

16.4.3 In evaluating Claims, the Town may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Town in rendering a decision. The retention of such persons shall be at the Town's expense.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

16.4.4 If the Town requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Town when the response or supporting data will be furnished or (3) advise the Town that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Town will either reject or approve the Claim in whole or in part.

16.4.5 The Town's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

16.4.6 Either party may file for mediation of an initial decision at any time.

16.4.7 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

16.4.8 In the event of a Claim against the Design-Builder or a Claim that relates to a possibility of a Design-Builder's default, the Town shall notify the surety with a copy to the Design-Builder and request the surety's assistance in resolving the controversy.

## 16.5 Mediation

16.5.1 Binding Decision. Unless the parties agree in writing at the conclusion of the mediation, any decision reached under this section shall not be final and binding upon the parties participating in it. Unless otherwise agreed in writing, the parties shall continue and proceed diligently to complete portions of the Project not affected by the claim(s) during dispute resolution proceedings.

16.5.2 Scope of Dispute Review. Any controversy or claim arising out of or relating to this Agreement or any breach of it shall be, at the election of either party, subject to review under these dispute resolution procedures as a condition precedent to the commencement of litigation.

16.5.3 Mediator. At the election of either party, the parties agree that any dispute or claim arising out of or relating to performance of this Agreement shall be submitted to a Florida Supreme Court Certified mediator who is also a construction lawyer, jointly selected by Town and Design-Builder. The proposed mediator shall disclose any past or present affiliation, relationship or any other potential conflicts of interest to both parties and either party may use such disclosure to disqualify that proposed

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

mediator.

**16.5.4 Time of Claim.** Claims must be brought within the applicable statute of limitations by notice of a claim to the other party or parties affected thereby. Failure to bring the claim within the specified time shall constitute a waiver of the party's right to assert the claim. The statute of limitations shall be tolled during the mediation process. The notice of claim shall provide reasonably sufficient detail of the nature of the claim and the basis for it. The mediator shall be selected by the parties within twenty (20) days following the date that a party requests that the selection process commence. Each mediation hearing shall be held at a location mutually approved by the parties. Unless the parties otherwise agree in writing, mediation may be commenced on or after the thirtieth (30th) calendar day after the mediator is selected. Each party agrees that it will designate a representative, having authority to bind that party, who will attend all mediation hearings. Both parties shall endeavor, in good faith, to reach a resolution of the claim during the mediation.

**16.5.5 Documentation.** If the parties cannot agree on the production of documents or exchange of other information (including rules relating thereto), then the mediator shall make a determination as to the scope and nature of the exchange at the initial hearing or at such later time as a party may request, but in no event later than fifteen days before the mediation.

**16.5.6 Proceeding Costs and Fees.** All parties participating in the mediation shall be responsible for their own costs, expenses and attorney fees necessary to pursue or defend against claim(s) raised under these provisions; however, the parties shall equally share the costs of any meeting or hearing place and the fees of the mediator.

**16.5.7 Enforceability and Form of Decision.** The outcome resulting from mediation is not binding on any party participating in the mediation unless and until all the parties agree to it in writing.

**16.5.8 Litigation.** If informal settlement discussions are unsuccessful, and the mediation has reached an impasse, the parties may then proceed to litigation.

## **ARTICLE 17 - NOTICE, COMPUTATION OF TIME**

### **17.1 Giving Notice.**

All notices required by any of the Design-Build Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

**DESIGN-BUILDER:**

**TOWN:**

Alexander Diaz, Town Manager  
1 Golden Beach Drive  
Golden Beach, FL 33160

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

Email:  
Fax:  
Tele:

**COPY TO:**

**COPY TO:**  
Stephen J. Helfman, Esq.  
Town Attorney  
Weiss Serota Helfman  
Cole & Bierman, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134  
Email: [SHelfman@wsh-law.com](mailto:SHelfman@wsh-law.com)  
Fax: 305-854-2323  
Telephone: 305-854-0800

17.2 Computation of Time

When any period of time is referred to in the Design-Build Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

**ARTICLE 18 - MISCELLANEOUS**

18.1 The duties and obligations imposed by the Design-Build Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon Design-Builder and all of the rights and remedies available to Town thereunder, 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 to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Design-Build Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Design-Build Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

18.2 Design-Builder shall not assign or transfer the Agreement or its rights, title or interests therein without Town's prior written approval, such approval not to be unreasonably withheld or delayed. Violation of the terms of this Paragraph shall constitute a breach of Agreement by Design-Builder and the Town may, at its discretion, cancel the Agreement and all rights, title and interest of Design-Builder shall thereupon cease and terminate.

18.3 Design-Builder and its partners, employees, volunteers and agents shall be and remain independent contractors and not agents or employees of Town with respect to all of the Work, acts and services performed by and under the terms of this Agreement. This

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

18.4 The remedies expressly provided in this Agreement to Town shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of Town now or hereafter existing at law or in equity.

18.5 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Venue for litigation of any claim, objection or dispute arising out of this Agreement shall be in a court of competent jurisdiction in Miami-Dade County, Florida.

18.6 In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees, paralegals' fees and experts' fees through all trial and appellate levels.

18.7 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

#### **ARTICLE 19 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT**

19.1 During the performance of this Agreement, Design-Builder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Design-Builder will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design-Builder shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

19.2 Design-Builder shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

19.3 Design-Builder shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

19.4 Design-Builder shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

19.5 Design-Builder shall comply with the Florida Trench Safety Act.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

19.6 Design-Builder shall comply with the OSHA Safety Act.

(Intentionally Left Blank -Signature on Next Page)

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

**IN WITNESS WHEREOF**, Town and Design-Builder have signed this Agreement in triplicate.

ATTEST:

TOWN OF GOLDEN BEACH, FLORIDA

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

DESIGN-BUILDER

\_\_\_\_\_, a Florida limited liability company

State of Florida )

)ss:

County of Miami-Dade )

On this, the \_\_\_\_\_ day of February, 2020, before me, [add new remote /in person notarial provision here] the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by \_\_\_\_\_ (name of officer), \_\_\_\_\_ (title), of \_\_\_\_\_, a Florida liability, on behalf of the corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:

\_\_\_\_\_  
Printed, typed or stamped name  
of Notary Public

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

## **ENUMERATION OF DESIGN-BUILD DOCUMENTS**

This page is attached to the Design Build Agreement for the New Town Civic Center between the Town of Golden Beach, Florida and \_\_\_\_\_.

Article 2.1 lists certain Design-Build Documents which are attached to the Agreement, and this page constitutes the attachment as follows:

This Agreement (pages 1-\_\_\_\_ )

Exhibit A – Final Construction Documents

Exhibit B - Insurance Certificates and Performance and Payment Bonds.

Exhibit C – Design Criteria (attached as Exhibit 1 to RFP)

Exhibit D – Design Costs – Design Development Portion of the Price Proposal (attached as Exhibit 2 to RFP) and the Hourly Billing Rates for Design-Builder’s Personnel

Exhibit E - Legal Description of Site(s)

Exhibit F - Preliminary Project Milestone Schedule allocating the total timeframe for the Project among major milestones, to be replaced by a detailed Construction Project Schedule upon the Town’s issuance of the Notice to Proceed

Exhibit G - Notice to Proceed Form

Exhibit H – Forms & Executed Affidavits 2-8 from Design-Builder’s RFP submission.

All applicable provisions of State, Federal or local law.

Any modification, including all Change Orders, Written Amendments and Work Change Directives duly delivered after execution of Agreement.

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT A

[Final Construction Documents to be attached upon Town's approval and acceptance of them]

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT B

[Insert Insurance Certificates and include Executed Payment and Performance Bonds  
prior to Town's issuance of Notice to Proceed]

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT C

[Insert Design Criteria from RFP Exhibit 1]



EXHIBIT D

[Insert Not to Exceed Design Development Cost for Project from RFP Price Proposal]

[Insert Hourly Billing Rates for Design-Builder's Personnel]



EXHIBIT E

[Insert Legal Description of Site(s)]



Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT F

[Preliminary Project Schedule to be replaced by Construction Project Schedule Upon Town's Issuance of Notice to Proceed]

Design Phase Milestone Dates:

Submission of Design-Builder Proposal:

Phased Completion Dates:

Substantial Completion Date:

Other Milestone Dates:

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT G

[Insert Notice to Proceed Form]

Town \_\_\_\_\_

Design-Builder \_\_\_\_\_

EXHIBIT H

[Insert

Design-Builder's Executed Forms and Affidavits from RFP Response]



Town \_\_\_\_\_

Design-Builder \_\_\_\_\_