

## **CONSTRUCTION AGREEMENT**

THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, ("Owner") hereby contracts with 32 ("Contractor") of 33, a 34, authorized to do business in the State of Florida, to perform all work ("Work") in connection with 35, Bid No. 36 ("Project"), as said Work is set forth in the Plans and Specifications prepared by 37, the Engineer and/or Architect of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Contractor, for the consideration herein set forth, agree as follows:

### **Section 1. Contract Documents.**

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the Legal Advertisement, the Bidding Documents and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement" and sometimes as the "Contract"). A copy of the Contract Documents shall be maintained by Contractor at the Project site at all times during the performance of the Work.

B. Owner shall furnish to the Contractor one reproducible set of the Contract Documents and the appropriate number of sets of the Construction Documents, signed and sealed by the Design Professional, as are reasonably necessary for permitting.

### **Section 2. Scope of Work.**

Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by the Contract Documents.

### **Section 3. Contract Amount.**

In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Contractor the following amount (herein "Contract Amount"), in accordance with the terms of this Agreement: Amount of Dollars Described in Words (Dollars in Numbers) 38

### **Section 4. Bonds.**

A. Contractor shall provide Performance and Payment Bonds, in the form prescribed in Exhibit B-1 and B-2, in the amount of 100% of the Contract Amount, the costs of which are to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall meet the requirements of the Department of the Treasury Fiscal Service, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies" circular. This circular may be accessed via the web at [www.fms.treas.gov/c570/c570.html#certified](http://www.fms.treas.gov/c570/c570.html#certified). Should the Contract Amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

B. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute at its cost and expense another bond and surety, both of which shall be subject to the Owner's approval.

## **Section 5. Contract Time and Liquidated Damages.**

### **A. Time of Performance.**

Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the written Notice to Proceed to be issued by the Project Manager, as hereinafter defined. Contractor shall commence the Work within five (5) calendar days from the Commencement Date. No Work shall be performed at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. Contractor shall achieve Substantial Completion within **39 (39)** calendar days from the Commencement Date (herein "Contract Time"). The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. Contractor shall achieve Final Completion within **40 (40)** calendar days after the date of Substantial Completion. Final Completion shall occur when the Agreement is completed in its entirety, is accepted by the Owner as complete and is so stated by the Owner as completed. As used herein and throughout the Contract Documents, the phrase "Project Manager" refers to the Owner's duly authorized representative and shall mean the Division Administrator or Department Director, as applicable, acting directly or through duly authorized representatives.

### **B. Liquidated Damages in General.**

Owner and Contractor recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if Contractor fails to achieve Substantial Completion within the time specified above, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify. Should Contractor fail to achieve Substantial Completion within the number of calendar days established herein, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, **41** Amount of Dollars Described in Words (Dollars in Numbers) for each calendar day thereafter until Substantial Completion is achieved. Further, in the event Substantial Completion is reached, but the Contractor fails to reach Final Completion within the required time period, Owner shall also be entitled to assess and Contractor shall be liable for all actual damages incurred by Owner as a result of Contractor failing to timely achieve Final Completion. The Project shall be deemed to be substantially completed on the date the Project Manager (or at his/her direction, the Design Professional) issues a Certificate of Substantial Completion pursuant to the terms hereof. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Contractor fails to Substantially or Finally Complete the Work within the required time periods.

### **C. Computation of Time Periods.**

When any period of time is referenced by days herein, it shall be computed to exclude the first day 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 shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

**D. Determination of Number of Days of Default.**

For all contracts, regardless of whether the Contract Time is stipulated in calendar days or working days, the Owner will count default days in calendar days.

**E. Right of Collection.**

The Owner has the right to apply any amounts due Contractor under this Agreement or any other agreement between Owner and Contractor, as payment on such liquidated damages due under this Agreement in Owner's sole discretion. Notwithstanding anything herein to the contrary, Owner retains its right to liquidated damages due under this Agreement even if Contractor, at Owner's election and in its sole discretion, is allowed to continue and to finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.

**F. Completion of Work by Owner.**

In the event Contractor defaults on any of its obligations under the Agreement and Owner elects to complete the Work, in whole or in part, through another contractor or its own forces, the Contractor and its surety shall continue to be liable for the liquidated damages under the Agreement until Owner achieves Substantial and Final Completion of the Work. Owner will not charge liquidated damages for any delay in achieving Substantial or Final Completion as a result of any unreasonable action or delay on the part of the Owner.

**G. Final Acceptance by Owner.**

The Owner shall consider the Agreement complete when the Contractor has completed in its entirety all of the Work and the Owner has accepted all of the Work and notified the Contractor in writing that the Work is complete. Once the Owner has approved and accepted the Work, Contractor shall be entitled to final payment in accordance with the terms of the Contract Documents.

**H. Recovery of Damages Suffered by Third Parties.**

Contractor shall be liable to Owner to the extent Owner incurs damages from a third party as a result of Contractor's failure to fulfill all of its obligations under the Contract Documents. Owner's recovery of any delay related damages under this Agreement through the liquidated damages does not preclude Owner from recovering from Contractor any other non-delay related damages that may be owed to it arising out of or relating to this Agreement.

**Section 6. Exhibits Incorporated.**

Exhibits Incorporated: The following documents are expressly agreed upon, attached hereto and made a part of this Agreement for Solicitation Insert ITB # and Name.

- Exhibit A-1: Contractor's Bid Schedule
- Exhibit A-2: Contractor's Bid Submittal Forms and Addendums
- Exhibit A-3: Contractor's List of Key Personnel
- Exhibit B-1: Payment Bond Forms
- Exhibit B-2: Performance Bond Forms
- Exhibit B-3: Insurance Requirements
- Exhibit C: Release and Affidavit Form
- Exhibit D: Contractor Application for Payment Form
- Exhibit E: Change Order Form
- Exhibit F: Certificate of Substantial Completion Form
- Exhibit G: Final Payment Checklist
- Exhibit H: General Terms and Conditions
- Exhibit I: Supplemental Terms and Conditions

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement for Solicitation Insert ITB # and Name. The complete contract documents, including Addendum with attachments, are available on the County's on-line bidding system: <https://www.bidsync.com/bidsync-cas/>, which the parties agree comprise the final integrated agreement executed by the parties.

Sections corresponding to any checked box (  ) expressly apply to the terms of this Agreement and available through the County's on-line bidding system.

- Exhibit J: Technical Specifications
- Exhibit K: Permits
- Exhibit L: Standard Details
- Exhibit M: Plans and Specifications prepared by 42 and identified as follows: 42a as shown on Plan Sheets 1 through 43.

## **Section 7. Notices**

A. All notices required or made pursuant to this Agreement by the Contractor to the Owner shall be deemed duly served if delivered by U.S. Mail, E-mail or Facsimile, addressed to the following:

**44**

B. All notices required or made pursuant to this Agreement by Owner to Contractor shall be made in writing and shall be deemed duly served if delivered by U.S. Mail, E-mail or Facsimile, addressed to the following:

**45**

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

## **Section 8. PUBLIC ENTITY CRIMES.**

8.1 By its execution of this Contract, Construction Contractor acknowledges that it has been informed by Owner of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

**Section 9. Modification.**

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**Section 10. Successors and Assigns.**

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

**Section 11. Governing Law.**

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.

**Section 12. No Waiver.**

The failure of the Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

**Section 13. Entire Agreement.**

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

**Section 14. Severability.**

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

**Section 15. Change Order Authorization.**

The Project Manager shall have the authority on behalf of the Owner to execute all Change Orders and Work Directive Changes to the Agreement to the extent provided for under the Owner's procurement ordinance and policies and accompanying administrative procedures.

**Section 16. Construction.**

Any doubtful or ambiguous language contained in this Agreement shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "fortius contra proferentum" (pursuant to which ambiguities in a contractual term which appears on its face to have been inserted for the benefit of one of the parties shall be construed against the benefited party) shall not be applied to the construction of this Agreement.

**Section 17. Order of Precedence**

In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Construction Agreement and the General Terms and Conditions. To the extent any conflict in the terms of the Contract Documents including the Owner's Board approved Executive Summary cannot be resolved by application of the Supplemental Conditions, if any, or the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.

\*\*\*\*

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

TWO WITNESSES:

\_\_\_\_\_  
FIRST WITNESS

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
SECOND WITNESS

\_\_\_\_\_  
Print Name

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

ATTEST:

Dwight E. Brock, Clerk

BY: \_\_\_\_\_

Approved as to Form and Legality:

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Print Name

CONTRACTOR:

46

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

OWNER:

BOARD OF COUNTY COMMISSIONERS  
OF COLLIER COUNTY FLORIDA

BY: \_\_\_\_\_

Andy Solis  
Chairman

\_\_\_\_\_  
Date

**EXHIBIT A-1: CONTRACTOR'S BID SCHEDULE**

**(FOLLOWING THIS PAGE)**

**EXHIBIT A-1: CONTRACTOR'S BID SUBMITTAL FORMS AND ADDENDUM**

**(FOLLOWING THIS PAGE)**

**EXHIBIT A-2: CONTRACTOR'S KEY PERSONNEL ASSIGNED TO THE PROJECT**

Name

Personnel Category

Construction Superintendent

Project Manager

**EXHIBIT B 1: PUBLIC PAYMENT BOND**

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Bond No.  
Contract No. \_\_\_\_\_ 47a

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_ (Business Address) are held and firmly bound to \_\_\_\_\_ as Obligee in the sum of \_\_\_\_\_ (\$) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, with Obligee for \_\_\_\_\_ in \_\_\_\_\_ accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to herein as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the name of each party being affixed and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

PRINCIPAL

\_\_\_\_\_

\_\_\_\_\_

Witnesses as to Principal

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the  
corporation. He/she is personally known to me OR has produced \_\_\_\_\_ as identification  
and did (did not) take an oath.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

NAME: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_

ATTEST:

SURETY:  
\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature)

Witnesses to Surety

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

OR

\_\_\_\_\_

\_\_\_\_\_  
As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
Witnesses

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_ of \_\_\_\_\_ Surety, on  
behalf of Surety. He/She is personally known to me OR has produced  
\_\_\_\_\_ as identification and who did (did not) take an  
oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

**EXHIBIT B 2: PUBLIC PERFORMANCE BOND**

48

Bond No. \_\_\_\_\_  
Contract No. 48a

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
\_\_\_\_\_, as Principal, and \_\_\_\_\_  
\_\_\_\_\_, as Surety, located at  
\_\_\_\_\_  
(Business Address) are held and firmly bound to  
\_\_\_\_\_, as Obligee in the sum of  
\_\_\_\_\_  
(\$\_\_\_\_\_) for the payment whereof we bond ourselves, our heirs, executors, personal  
representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, with Obligee \_\_\_\_\_ for  
\_\_\_\_\_ in  
accordance with drawings and specifications, which contract is incorporated by reference and  
made a part hereof, and is referred to herein as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

PRINCIPAL

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY: \_\_\_\_\_

Witnesses as to Principal

NAME: \_\_\_\_\_  
ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known  
to me OR has produced \_\_\_\_\_ as  
identification and did (did not) take an oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

ATTEST:

SURETY:

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

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Witnesses as to Surety

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

OR

\_\_\_\_\_  
As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
Witnesses

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

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ Surety, on behalf of  
\_\_\_\_\_ Surety. He/She is personally known to me OR has produced  
\_\_\_\_\_ as identification and who did (did not) take an oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

### **EXHIBIT B-3: INSURANCE REQUIREMENTS**

The Contractor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in EXHIBIT B of this solicitation. The Contractor shall procure and maintain property insurance upon the entire project, if required, to the full insurable value of the scope of work.

The County and the Contractor waive against each other and the County's separate Contractors, Contractors, Design Consultant, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Contractor and County shall, where appropriate, require similar waivers of subrogation from the County's separate Contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

Collier County shall be responsible for purchasing and maintaining its own liability insurance.

Certificates issued as a result of the award of this solicitation must identify "For any and all work performed on behalf of Collier County", or, the specific solicitation number/contract number and title.

The General Liability Policy provided by Contractor to meet the requirements of this solicitation shall name Collier County, Florida, as an additional insured as to the operations of Contractor under this solicitation and shall contain a severability of interests provisions.

The Certificate Holder shall be named as Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR Collier County Government, OR Collier County. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: For any and all work performed on behalf of Collier County.

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in EXHIBIT B with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Contractor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Contractor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Contractor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the Work until the date of completion and acceptance of the scope of work by the County or as specified in this solicitation, whichever is longer.

The Contractor and/or its insurance carrier shall provide thirty (30) days written notice to the County of policy cancellation or non-renewal on the part of the insurance carrier or the Contractor. The Contractor shall also notify the County, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Contractor from its insurer and nothing contained herein shall relieve Contractor of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by Contractor hereunder, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

Should at any time the Contractor not maintain the insurance coverage(s) required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Contractor for such coverage(s) purchased. If Contractor fails to reimburse the County for such costs within thirty (30) days after demand, the County has the right to offset these costs from any amount due Contractor under this Agreement or any other agreement between the County and Contractor. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Contractor shall furnish to the County renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Contractor to provide the County with such renewal certificate(s) shall be considered justification for the County to terminate any and all contracts.

## Collier County Florida Insurance and Bonding Requirements

Insurance / Bond Type	Required Limits
1. <input type="checkbox"/> Worker's Compensation	<p>Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements</p> <p>Evidence of Workers' Compensation coverage or a Certificate of Exemption issued by the State of Florida is required. Entities that are formed as Sole Proprietorships shall not be required to provide a proof of exemption. An application for exemption can be obtained online at <a href="https://apps.fldfs.com/boce exempt/">https://apps.fldfs.com/boce exempt/</a></p>
2. <input type="checkbox"/> Employer's Liability	\$ _____ single limit per occurrence
3. <input type="checkbox"/> Commercial General Liability (Occurrence Form) patterned after the current ISO form	<p>Bodily Injury and Property Damage</p> <p>\$ _____ single limit per occurrence, \$2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.</p>
4. <input type="checkbox"/> Indemnification	To the maximum extent permitted by Florida law, the Contractor/Vendor/Consultant shall defend, indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor/Vendor/Consultant or anyone employed or utilized by the Contractor/Vendor/Consultant in the performance of this Agreement.
5. <input type="checkbox"/> Automobile Liability	\$ _____ Each Occurrence; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included
6. <input type="checkbox"/> Other insurance as noted:	<p><input type="checkbox"/> Watercraft \$ _____ Per Occurrence</p> <p><input type="checkbox"/> United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence</p> <p><input type="checkbox"/> Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence</p> <p><input type="checkbox"/> Aircraft Liability coverage shall be carried in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement. \$ _____ Per Occurrence</p> <p><input type="checkbox"/> Pollution \$ _____ Per Occurrence</p> <p><input type="checkbox"/> Professional Liability \$ _____ Per claim &amp; in the aggregate</p> <ul style="list-style-type: none"> <li>• \$1,000,000 per claim and in the aggregate</li> <li>• \$2,000,000 per claim and in the aggregate</li> </ul> <p><input type="checkbox"/> Project Professional Liability \$ _____ Per Occurrence</p> <p><input type="checkbox"/> Valuable Papers Insurance \$ _____ Per Occurrence</p>

Cyber Liability \$ \_\_\_\_\_ Per Occurrence

Technology Errors & Omissions \$ \_\_\_\_\_ Per Occurrence

7.  Bid bond Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the County Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the Collier County Board of County Commissioners on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.

8.  Performance and Payment Bonds For projects in excess of \$200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holders' surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038.

9.  Consultant shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Consultant shall provide County with certificates of insurance meeting the required insurance provisions.

10.  Collier County must be named as "**ADDITIONAL INSURED**" on the Insurance Certificate for Commercial General Liability where required. This insurance shall be primary and non-contributory with respect to any other insurance maintained by, or available for the benefit of, the Additional Insured and the Contractor's policy shall be endorsed accordingly.

11.  The Certificate Holder shall be named as Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR Collier County Government, OR Collier County. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: For any and all work performed on behalf of Collier County.

12.  **Thirty (30) Days Cancellation Notice** required.

#### Consultant's Insurance Statement

We understand the insurance requirements of these specifications and that the evidence of insurability may be required within five (5) days of the award of this solicitation.

Name of Firm \_\_\_\_\_ Date \_\_\_\_\_

Consultant Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Insurance Agency \_\_\_\_\_

Agent Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

**EXHIBIT C: RELEASE AND AFFIDAVIT FORM**

COUNTY OF (COLLIER)  
STATE OF (FLORIDA)

Before me, the undersigned authority, personally appeared \_\_\_\_\_  
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ to be received, \_\_\_\_\_ ("Contractor") releases and waives for itself and it's subcontractors, material-men, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against the Board of County Commissioners of Collier County, Florida, relating in any way to the performance of the Agreement between Contractor and Owner, dated \_\_\_\_\_, 20\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_. This partial waiver and release is conditioned upon payment of the consideration described above. It is not effective until said payment is received in paid funds.

(2) Contractor certifies for itself and its subcontractors, material-men, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, shall be fully satisfied and paid upon Owner's payment to Contractor.

(3) Contractor agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against the Owner arising out of the performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] Application for Payment No. \_\_\_\_\_.

CONTRACTOR

\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

[Corporate Seal]

\_\_\_\_\_  
Witness  
President

\_\_\_\_\_  
Witness

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: \_\_\_\_\_  
(Signature of Notary)

NAME: \_\_\_\_\_  
(Legibly Printed)

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

(AFFIX OFFICIAL SEAL)

Commissioner No.: \_\_\_\_\_

**EXHIBIT D  
FORM OF CONTRACT APPLICATION FOR PAYMENT**

Collier County Board of County Commissioners (the OWNER) or Collier County Water-Sewer			
Owner's Project Manager's Name:		Bid No.	
County's Division Name		Project No.	
Submitted by Contractor Representative: Name		Application Date:	
Contractor's Name & Address:		Payment Application No.	
Original Contract Time:		Original Contract Price:	\$
Revised Contract Time:		Total Change Orders to Date:	\$
		Revised Contract Amount:	\$
		Total Value of Work Completed & Stored to Date:	\$
Retainage @10% through [Insert Date] _____	\$	Retainage @ 10% through [Insert date] _____	\$
Retainage @ _____% after [Insert date] _____	\$	Less Retainage	\$
		Total Earned Less Retainage	\$
		Less previous payment(s)	
Percent Work Completed to Date:	%	<b>AMOUNT DUE THIS APPLICATION:</b>	\$
Percent Contract Time Completed to Date:	%		
Liquidated Damages to Be Accrued	\$	Remaining Contract Balance	\$

ATTACH SCHEDULE OF VALUES AND ACCOMPANYING DOCUMENTATION TO THIS APPLICATION CONTRACTOR'S CERTIFICATION:

The undersigned CONTRACTOR certifies that: (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_\_\_ inclusive; (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to OWNER); (3) all amounts have been paid for work which previous payments were issued and received from the OWNER and that current payment is now due; and (4) CONTRACTOR has only included amounts in this Application for Payment properly due and owing and CONTRACTOR has not included within the above referenced amount any claims for unauthorized or changed Work that has not been properly approved by Owner in writing and in advance of such Work.

Contractor's Name			
Contractor's Signature:		Date:	
Type Title:		<i>Shall be signed by an authorized representative of the Contractor.</i>	
<b>Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is recommended by:</b>			
Design Professional's Name:		Date:	
Signature:		Date:	
<b>Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is recommended by:</b>			
Owner's Project Manager Name:		Date:	
Signature:		Date:	





## EXHIBIT E: CHANGE ORDER

An electronic data entry form may be found at:  
<http://bccsp01/SiteDirectory/ASD/Purchasing/Forms1/Forms/Default.aspx>

### Change Order Form

Contract #:  Change #:  Purchase Order #:  Project #:

Contractor/Firm Name:  Project Name:

Project Manager Name:  Department:

Original Contract/Work Order Amount		Original BCC Approval Date; Agenda Item #
Current BCC Approved Amount		Last BCC Approval Date; Agenda Item #
Current Contract/Work Order Amount		SAP Contract Expiration Date (Master)
Dollar Amount of this Change	#DIV/0!	Total Change from Original Amount
Revised Contract/Work Order Total	\$ 0.00	Change from Current BCC Approved Amount
Cumulative Changes	\$ 0.00	Change from Current Amount

#### Completion Date, Description of the Task(s) Change, and Rationale for the Change

Notice to Proceed Date:  Original Completion Date:  Last Approved Date:  Revised Date:  (Includes this change)

# of Days Added:  Select Tasks:  Add new task(s)  Delete task(s)  Change task(s)  Other (see below)

Provide a response to the following: 1.) detailed and specific explanation/rationale of the requested change(s) to the task(s) and / or the additional days added (if requested); 2.) why this change was not included in the original contract; and, 3.) describe the impact if this change is not processed. Attach additional information from the Design Professional and/or Contractor if needed.

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Project Manager Name and Department)

Acceptance of this Change Order shall constitute a modification to contract / work order identified above and will be subject to all the same terms and conditions as contained in the contract / work order indicated above, as fully as if the same were stated in this acceptance. The adjustment, if any, to the Contract shall constitute a full and final settlement of any and all claims of the Contractor / Vendor / Consultant / Design Professional arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Contractor / Vendor / Consultant / Design Professional and Name of Firm, if project applicable)

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Design Professional and Name of Firm, if project applicable)

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Procurement Professional)

(Divisions who may require additional signatures may include on separate sheet.)

Revised: 10/28/2014

**EXHIBIT F: CERTIFICATE OF SUBSTANTIAL COMPLETION**

OWNER'S Project No. \_\_\_\_\_ Design Professional's Project No. \_\_\_\_\_  
PROJECT:

---

CONTRACTOR

Contract For  
Contract Date

---

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

To \_\_\_\_\_  
**OWNER**

And  
To \_\_\_\_\_

---

**Substantial Completion is the state in the progress of the Work when the Work (or designated portion) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.** The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR AND DESIGN PROFESSIONAL, and that Work is hereby declared to be substantially complete in accordance with the requirements of the Contract Documents on:

**DATE OF SUBSTANTIAL COMPLETION**

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

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

RESPONSIBILITIES:

OWNER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

The following documents are attached to and made a part of this Certificate:

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

---

Executed by Design Professional on \_\_\_\_\_, 20

\_\_\_\_\_  
Design Professional

By: \_\_\_\_\_  
Type Name and Title

CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_,  
20

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Type Name and Title

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20

\_\_\_\_\_  
OWNER

By: \_\_\_\_\_  
Type Name and Title

**EXHIBIT G: FINAL PAYMENT CHECKLIST**

Bid No.: \_\_\_\_\_ Project No.: \_\_\_\_\_ Date: \_\_\_\_\_, 20

Contractor:

The following items have been secured by the \_\_\_\_\_  
for the Project known as \_\_\_\_\_

and have been reviewed and found to comply with the requirements of the Contract Documents.

Original Contract Amount: \_\_\_\_\_ Final Contract Amount: \_\_\_\_\_

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

Substantial Completion Time as set forth in the Agreement: \_\_\_\_\_ Calendar Days.

Actual Date of Substantial Completion: \_\_\_\_\_.

Final Completion Time as set forth in the Agreement: \_\_\_\_\_ Calendar Days.

Actual Final Completion Date: \_\_\_\_\_.

YES	NO	
_____	_____	1. All Punch List items completed on _____
_____	_____	2. Warranties and Guarantees assigned to Owner (attach to this form).
_____	_____	3. Effective date of General one year warranty from Contractor is: _____
_____	_____	4. 2 copies of Operation and Maintenance manuals for equipment and system submitted (list manuals in attachment to this form).
_____	_____	5. As-Built drawings obtained and dated: _____
_____	_____	6. Owner personnel trained on system and equipment operation.
_____	_____	7. Certificate of Occupancy No.: _____ issued on _____ (attach to this form).
_____	_____	8. Certificate of Substantial Completion issued on _____
_____	_____	9. Final Payment Application and Affidavits received from Contractor on: _____
_____	_____	10. Consent of Surety received on _____
_____	_____	11. Operating Department personnel notified Project is in operating phase.
_____	_____	12. All Spare Parts or Special Tools provided to Owner: _____
_____	_____	13. Finished Floor Elevation Certificate provided to Owner: _____
_____	_____	14. Other: _____

If any of the above is not applicable, indicate by N/A. If NO is checked for any of the above, attach explanation.

Acknowledgments:

By Contractor: \_\_\_\_\_ (Company Name)  
 \_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Typed Name & Title)

By Design Professional: \_\_\_\_\_ (Firm Name)  
 \_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Typed Name & Title)

By Owner: \_\_\_\_\_ (Department Name)  
 \_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Name & Title)

## **EXHIBIT H: GENERAL TERMS AND CONDITIONS**

### **1. INTENT OF CONTRACT DOCUMENTS.**

1.1 It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2 If before or during the performance of the Work Contractor discovers a conflict, error or discrepancy in the Contract Documents, Contractor immediately shall report same to the Project Manager in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Project Manager; said interpretation or clarification from the Project Manager may require Contractor to consult directly with Design Professional or some other third party, as directed by Project Manager. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the Project Manager. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

### **2. INVESTIGATION AND UTILITIES.**

2.1 Subject to Section 2.3 below, Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Sub-Section 2.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. The Contractor is responsible for coordinating all other utility work so as to not interfere with the prosecution of the Work (except those utilities to be coordinated by the Owner as may be expressly described elsewhere in the Contract Documents).

2.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Contractor as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Contractor shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than three (3) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to Contractor's compensation or time for performance, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Contractor as part of its investigative services, and that no change in the terms of the Agreement is justified, Owner shall so notify Contractor in writing, stating its reasons. Claims by Contractor in opposition to such determination by Owner must be made within seven (7) calendar days after Contractor's receipt of Owner's written determination notice. If Owner and Contractor cannot agree on an adjustment to Contractor's cost or time of performance, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

### **3. SCHEDULE.**

3.1 The Contractor, within ten (10) calendar days after receipt of the Notice of Award, shall prepare and submit to Project Manager, for their review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents, and shall utilize the Critical Path method of scheduling and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.

3.2 The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Project Manager's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Project Manager's review and approval of the submitted Progress Schedule updates shall be a condition precedent to the Owner's obligation to pay Contractor.

3.3 All work under this Agreement shall be performed in accordance with the requirements of all Collier County Noise Ordinances then in effect. Unless otherwise specified, work will generally be

limited to the hours of 50 a.m. to 50 p.m., Monday through 51. No work shall be performed outside the specified hours without the prior approval of the Project Manager.

#### **4. PROGRESS PAYMENTS.**

4.1 Prior to submitting its first monthly Application for Payment, Contractor shall submit to Project Manager, for their review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the Project Manager, this schedule of values shall be used as the basis for the Contractor's monthly Applications for Payment. This schedule shall be updated and submitted each month along with a completed copy of the Application for Payment form signed by the Contractor's authorized representative and attached to the Agreement as Exhibit D.

4.2 Prior to submitting its first monthly Application for Payment, Contractor shall provide to the Project Manager the list of its Subcontractors and materialmen submitted with its Bid showing the work and materials involved and the dollar amount of each subcontract and purchase order. Contractor acknowledges and agrees that any modifications to the list of Subcontractors submitted with Contractor's Bid and any subsequently identified Subcontractors are subject to Owner's prior written approval. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Commencement Date. Notwithstanding anything herein to the contrary, if approved by Owner in its sole discretion, Contractor may submit its invoice for any required Payment and Performance Bonds prior to the first Application of Payment provided that Contractor has furnished Owner certified copies of the receipts evidencing the premium paid by Contractor for the bonds.

4.3 Unless expressly approved by Owner in advance and in writing, said approval at Owner's sole discretion, Owner is not required to make any payment for materials or equipment that have not been incorporated into the Project. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location, and such payment and storage have been agreed to by Owner in writing, the Application for Payment also shall be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to the Owner's satisfaction. Thereafter, with each Application for Payment, Contractor also shall complete and submit to Owner as part of its Application for Payment, the Stored Materials Record attached hereto and made a part hereof as Exhibit D.

4.4 Contractor shall submit its monthly Application for Payment to the Project Manager or his or her designee, as directed by Owner (which designee may include the Design Professional). After the date of each Application for Payment is stamped as received and within the timeframes set forth in Section 218.735 F.S., the Project Manager, or Design Professional, shall either: (1) Indicate its approval of the requested payment; (2) indicate its approval of only a portion of the requested payment, stating in writing its reasons therefore; or (3) return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment. Payments of proper invoices in the amounts approved shall be processed and paid in accordance with Section 218.735, F.S. and the administrative procedures established by the County's Procurement Services Division and the Clerk of Court's Finance Department respectively.

4.5 In the event of a total denial by Owner and return of the Application for Payment by the Project Manager, the Contractor may make the necessary corrections and re-submit the Application for Payment. The Owner shall, within ten (10) business days after the Application for Payment is

stamped and received and after Project Manager approval of an Application for Payment, pay the Contractor the amounts so approved.

4.6 Owner shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the Project Manager for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until final payment is due unless otherwise agreed to by the Owner in accordance with Florida Statute 255.078. The Project Manager shall have the discretion to establish, in writing, a schedule to periodically reduce the percentage of cumulative retainage held throughout the course of the Project schedule. Owner shall reduce the amount of the retainage withheld on each payment request subsequent to fifty percent (50%) completion subject to the guidelines set forth in Florida Statute 255.078 and as set forth in the Owner's procurement ordinance and policies.

4.7 Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's Work.

4.8 Each Application for Payment, subsequent to the first pay application, shall be accompanied by a Release and Affidavit, in the form attached as Exhibit C, acknowledging Contractor's receipt of payment in full for all materials, labor, equipment and other bills that are then due and payable by Owner with respect to the current Application for Payment. Further, to the extent directed by Owner and in Owner's sole discretion, Contractor shall also submit a Release and Affidavit from each Subcontractor, sub-subcontractor, or supplier in the form attached as Exhibit C acknowledging that each Subcontractor, sub-subcontractor or supplier has been paid in full through the previous month's Application for Payment. The Owner shall not be required to make payment until and unless these affidavits are furnished by Contractor.

4.9 Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule. Accordingly, prior to submitting its first monthly Application for Payment, Contractor shall prepare and submit for Project Manager's review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by Owner to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Project Funding Schedule.

4.10 Notwithstanding anything in the Contract Documents to the contrary, Contractor acknowledges and agrees that in the event of a dispute concerning payments for Work performed under this Agreement, Contractor shall continue to perform the Work required of it under this Agreement pending resolution of the dispute provided that Owner continues to pay Contractor all amounts that Owner does not dispute are due and payable.

4.11 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this agreement.

4.12 The County may, at its discretion, use VISA/MASTER card credit network as a payment vehicle for goods and/or services purchased as a part of this contract. The County may not accept any additional surcharges (credit card transaction fees) as a result of using the County's credit card for transactions relating to this solicitation

## **5. PAYMENTS WITHHELD.**

5.1 The Project Manager may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections that reveal non-compliance with the Contract Documents. The Project Manager may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of:

(a) Defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents by Contractor.

5.2 If any conditions described in 5.1. are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense. Provided however, in the event of an emergency, Owner shall not be required to provide Contractor any written notice prior to rectifying the situation at Contractor's expense. Owner also may offset against any sums due Contractor the amount of any liquidated or non-liquidated obligations of Contractor to Owner, whether relating to or arising out of this Agreement or any other agreement between Contractor and Owner.

5.3 In instances where the successful contractor may owe debts (including, but not limited to taxes or other fees) to Collier County and the contractor has not satisfied nor made arrangement to satisfy these debts, the County reserves the right to off-set the amount owed to the County by applying the amount owed to the vendor or contractor for services performed or for materials delivered in association with a contract.

## **6. FINAL PAYMENT.**

6.1 Owner shall make final payment to Contractor in accordance with Section 218.735, F.S. and the administrative procedures established by the County's Procurement Services Division and the Clerk of Court's Finance Department after the Work is finally inspected and accepted by Project Manager as set forth with Section 20.1 herein, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit attached as Exhibit C, as well as, a duly executed copy of the Surety's consent to final payment and such other documentation that may be required by the Contract Documents and the Owner. Prior to release of final payment and final retainage, the Contractor's Representative and the Project Manager shall jointly complete the Final Payment Checklist, a representative copy of which is attached to this Agreement as Exhibit G.

6.2 Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing in accordance with the requirements of the Contract Documents and identified by Contractor as unsettled in its final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Design Professional or Project Manager at the time of final inspection.

## **7. SUBMITTALS AND SUBSTITUTIONS.**

7.1 Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner if sufficient information is submitted by Contractor to allow the Owner to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Contractor and all such requests must be submitted by Contractor to Project Manager within thirty (30) calendar days after Notice of Award is received by Contractor, unless otherwise mutually agreed in writing by Owner and Contractor.

7.3 If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Project Manager for acceptance thereof, certifying that the proposed substitute shall adequately perform the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager in evaluating the proposed substitute. The Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if Contractor submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager shall be the same as those provided herein for substitute materials and equipment.

7.5 The Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute and, if need be, to consult with the Design Professional. No substitute will be ordered, installed or utilized without the Project Manager's prior written acceptance which shall be evidenced by a Change Order, a Work Directive Change, a Field Order or an approved Shop Drawing. The Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Project Manager will

record time required by the Project Manager and the Project Manager's consultants in evaluating substitutions proposed by Contractor and making changes in the Contract Documents occasioned thereby. Whether or not the Owner accepts a proposed substitute, Contractor shall reimburse Owner for the charges of the Design Professional and the Design Professional's consultants for evaluating each proposed substitute.

## **8. DAILY REPORTS, SIGNED AND SEALED AS-BUILTS AND MEETINGS.**

8.1 Unless waived in writing by Owner, Contractor shall complete and submit to Project Manager on a weekly basis a daily log of the Contractor's work for the preceding week in a format approved by the Project Manager. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

8.1.1 Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;

8.1.2 Soil conditions which adversely affect the Work;

8.1.3 The hours of operation by Contractor's and Sub-Contractor's personnel;

8.1.4 The number of Contractor's and Sub-Contractor's personnel present and working at the Project site, by subcontract and trade;

8.1.5 All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);

8.1.6 Description of Work being performed at the Project site;

8.1.7 Any unusual or special occurrences at the Project site;

8.1.8 Materials received at the Project site;

8.1.9 A list of all visitors to the Project

8.1.10 Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Contractor to Owner pursuant to the Contract Documents.

8.2 Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Design Professional, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features

(e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the Project Manager or Design Professional for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to Project Manager by Contractor for Owner.

8.3 Contractor shall keep all records and supporting documentation, which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed or such longer period as may be required by law, whichever is later, pursuant to Florida Public Records Law Chapter 119 and comply with specifically those contractual requirements in 119.0701(2)(a)-(b) as follows:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Communication and Customer Relations Division  
3299 Tamiami Trail East, Suite 102  
Naples, FL 34112-5746  
Telephone: (239) 252-8383**

The Contractor must specifically comply with the Florida Public Records Law to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

## **9. CONTRACT TIME AND TIME EXTENSIONS.**

9.1 Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and material-men, as well as coordinating its Work with all

work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Paragraph 12.2. herein.

9.2 Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of Nature or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the Owner in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

9.3 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

9.4 In no event shall any approval by Owner authorizing Contractor to continue performing Work under this Agreement or any payment issued by Owner to Contractor be deemed a waiver of any right or claim Owner may have against Contractor for delay damages hereunder.

## **10. CHANGES IN THE WORK.**

10.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to the Contractor for any increased compensation without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Any alleged changes must be approved by Owner in writing prior to starting such items. Owner will not be responsible for the costs of any changes commenced without Owner's express prior written approval. Failure to obtain such prior written approval for any changes will be deemed: (i) a waiver of any claim by Contractor for such items and (ii) an admission by Contractor that such items are in fact not a change but rather are part of the Work required of Contractor hereunder.

10.2 A Change Order, in the form attached as Exhibit E to this Agreement, shall be issued and executed promptly after an agreement is reached between Contractor and Owner concerning the requested changes. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Contractor shall mutually agree.

10.3 If Owner and Contractor are unable to agree on a Change Order for the requested change, Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Work

Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Contractor disagrees with the Owner's adjustment determination, Contractor must make a claim pursuant to Section 11 of these General Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

10.4 In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Contractor for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Contractor and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above. Contractor's and Sub-Contractor's bond costs associated with any change order shall be included in the overhead and profit expenses and shall not be paid as a separate line item. No markup shall be placed on sales tax, shipping or subcontractor markup.

10.5 Owner shall have the right to conduct an audit of Contractor's books and records to verify the accuracy of the Contractor's claim with respect to Contractor's costs associated with any Change Order or Work Directive Change.

10.6 The Project Manager shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the Contractor.

10.7 Any modifications to this Contract shall be in compliance with the County procurement ordinance and policies and Administrative Procedures in effect at the time such modifications are authorized.

## **11. CLAIMS AND DISPUTES.**

11.1 Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2 Claims by the Contractor shall be made in writing to the Project Manager within forty-eight (48) hours from when the Contractor knew or should have known of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the Project Manager within fifteen (15) calendar days after the occurrence of the event, unless the Owner grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Subsection 10.4.

11.3 The Contractor shall proceed diligently with its performance as directed by the Owner, regardless of any pending Claim, action, suit or administrative proceeding, unless otherwise agreed

to by the Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

## **12. OTHER WORK.**

12.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to Owner and Design Professional within forty-eight (48) hours of being notified of the other work. If the Contractor fails to send the above required forty-eight (48) hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

12.2 Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Project Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

12.3 If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Project Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

## **13. INDEMNIFICATION AND INSURANCE.**

13.1 To the maximum extent permitted by Florida law, the Contractor/Vendor/Consultant shall defend, indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor/Vendor/Consultant or anyone employed or utilized by the Contractor/Vendor/Consultant in the performance of this Agreement.

13.2 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

13.3 Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B-3 to the Agreement. Further, the Contractor shall at all times comply with all of the terms, conditions, requirements and obligations set forth under Exhibit B-3.

#### 14. COMPLIANCE WITH LAWS.

14.1 Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Project Manager in writing. To the extent any law, rule, regulation, code, statute, or ordinance requires the inclusion of certain terms in this Agreement in order for this Agreement to be enforceable, such terms shall be deemed included in this Agreement. Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules or regulations subsequent to the date this Agreement was executed that increases the Contractor's time or cost of performance of the Work, Contractor is entitled to a Change Order for such increases, except to the extent Contractor knew or should have known of such changes prior to the date of this Agreement.

14.2 By executing and entering into this agreement, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this agreement and the County shall have the discretion to unilaterally terminate this agreement immediately.

14.3 Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States.

The Employment Eligibility Verification System (E-Verify) operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements. The program will be used for Collier County formal Invitations to Bid (ITB) and Request for Proposals (RFP) including professional services and construction services.

Exceptions to the program:

- Commodity based procurement where no services are provided.
- Where the requirement for the affidavit is waived by the Board of County Commissioners

Contractors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the Contractor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Contractors are also required to provide the Collier County Procurement Services Division an executed affidavit certifying they shall comply with the E-Verify Program. The affidavit is attached to the solicitation documents.

**If the Bidder/Contractor does not comply with providing both the acceptable E-Verify evidence and the executed affidavit the bidder's / Contractor's proposal may be deemed non-responsive.**

Additionally, Contractors shall require all subcontracted Contractors to use the E-Verify system for all purchases not covered under the "Exceptions to the program" clause above.

For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>. It shall be the Contractor's responsibility to familiarize themselves with all rules and regulations governing this program.

Contractor acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended and with the provisions contained within this affidavit. Failure by the awarded firm(s) to comply with the laws referenced herein or the provisions of this affidavit shall constitute a breach of the award agreement and the County shall have the discretion to unilaterally terminate said agreement immediately.

## **15. CLEANUP AND PROTECTIONS.**

15.1 Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project site clean and ready for occupancy by Owner.

15.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Subject to the Section 2.3 above, any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

## **16. ASSIGNMENT.**

16.1 Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the Owner's consent, shall be void. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward Owner.

## **17. PERMITS, LICENSES AND TAXES.**

17.1 Pursuant to Section 218.80, F.S., Owner will pay for all Collier County permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the Work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by Collier County, but Contractor is responsible for acquiring all permits. Owner may require the Contractor to deliver internal budget transfer documents to applicable Collier County agencies when the Contractor is acquiring permits. Owner will not be obligated to pay for any permits obtained by Subcontractors.

17.2 All permits, fees and licenses necessary for the prosecution of the Work which are not issued by Collier County shall be acquired and paid for by the Contractor.

17.3 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

## **18. TERMINATION FOR DEFAULT.**

18.1 Contractor shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the Project Manager or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

18.2 Owner shall notify Contractor in writing of Contractor's default(s). If Owner determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice or such longer period of time as may be consented to by Owner in writing and in its sole discretion, then Owner, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

18.3 If Owner deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All moneys expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the Owner to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor or Owner, as the case may be, shall be approved by the Project Manager, upon application, and this obligation for payment shall survive termination of the Agreement.

18.4 The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

18.5 If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Contractor provided herein, then the termination will be deemed a termination for convenience and Contractor's remedies against Owner shall be the same as and limited to those afforded Contractor under Section 19 below.

18.6 In the event (i) Owner fails to make any undisputed payment to Contractor within thirty (30) days after such payment is due or Owner otherwise persistently fails to fulfill some material obligation owed by Owner to Contractor under this Agreement, and (ii) Owner has failed to cure such default within fourteen (14) days of receiving written notice of same from Contractor, then Contractor may stop its performance under this Agreement until such default is cured, after giving Owner a second fourteen (14) days written notice of Contractor's intention to stop performance under the Agreement. If the Work is so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the Contractor or its Subcontractors or their agents or employees or any other persons performing portions of the Work under contract with the Contractor or any Subcontractor, the Contractor may terminate this Agreement by giving written notice to Owner of Contractor's intent to terminate this Agreement. If Owner does not cure its default within fourteen (14) days after receipt of Contractor's written notice, Contractor may, upon fourteen (14) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work performed through the termination date, but in no event shall Contractor be entitled to payment for Work not performed or any other damages from Owner.

## **19. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.**

19.1 Owner shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

19.2 Owner shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

## **20. COMPLETION.**

20.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Contractor shall notify Project Manager in writing that the entire Work (or such designated portion) is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner, after conferring with the Design Professional, does not consider the Work (or designated portion) substantially complete, Project Manager shall notify Contractor in writing giving the reasons therefore. If Owner, after conferring with the Design Professional, considers the Work (or designated portion) substantially complete, Project Manager

shall prepare and deliver to Contractor a Certificate of Substantial Completion which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punch-list of items to be completed or corrected by Contractor before final payment. Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative punch-list. The Project Manager, shall coordinate with the Contractor the return of any surplus assets, including materials, supplies, and equipment.

20.2 Upon receipt of written certification by Contractor that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance, Project Manager and Design Professional will make such inspection and, if they find the Work acceptable and fully performed under the Contract Documents shall promptly approve payment, recommending that, on the basis of their observations and inspections, and the Contractor's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Contractor is due and payable. Neither the final payment nor the retainage shall become due and payable until Contractor submits:

- (1) Receipt of Contractor's Final Application for Payment.
- (2) The Release and Affidavit in the form attached as Exhibit C.
- (3) Consent of surety to final payment.
- (4) Receipt of the final payment check list.
- (5) If required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner.

Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Design Professional may have issued its recommendations. Unless and until the Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

## **21. WARRANTY.**

21.1 Contractor shall obtain and assign to Owner all express warranties given to Contractor or any subcontractors by any subcontractor or material men supplying materials, equipment or fixtures to be incorporated into the Project. Contractor warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after Substantial Completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. Further, in the event of an emergency, Owner may commence to correct any defective Work, without prior notice to Contractor, at Contractor's expense. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law.

21.2 No later than 30 days prior to expiration of the warranty, the Project Manager, or another representative of the Owner, shall conduct an inspection of the warranted work to verify compliance with the requirements of the Agreement. The Contractor's Representative shall be present at the time of inspection and shall take remedial actions to correct any deficiencies noted in the inspection. Failure of the Contractor to correct the cited deficiencies shall be grounds for the Owner to disqualify the Contractor from future bid opportunities with the Owner, in addition to any other rights and remedies available to Owner.

## **22. TESTS AND INSPECTIONS.**

22.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide Project Manager with timely notice of readiness of the Work for all required inspections, tests or approvals.

22.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Project Manager the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Project Manager.

22.3 Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Contractor.

22.4 If any Work that is to be inspected, tested or approved is covered without written concurrence from the Project Manager, such work must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover the same and Project Manager has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to written directions from Project Manager, such Work must, if requested by Project Manager, be uncovered for Project Manager's observation and be replaced at Contractor's sole expense.

22.5 The Owner shall charge to Contractor and may deduct from any payments due Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

22.6 Neither observations nor other actions by the Project Manager or Design Professional nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

## **23. DEFECTIVE WORK.**

23.1 Work not conforming to the requirements of the Contract Documents or any warranties made or assigned by Contractor to Owner shall be deemed defective Work. If required by Project Manager, Contractor shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or if the defective Work has been rejected by Project Manager, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential

costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner harmless for same.

23.2 If the Project Manager considers it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others and such Work is not otherwise required to be inspected or tested, Contractor, at Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

23.3 If any portion of the Work is defective, or if Contractor fails to supply sufficient skilled workers, suitable materials or equipment or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Project Manager may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Project Manager to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating the Project Manager to exercise this right for the benefit of Design Engineer, Contractor, or any other person.

23.4 Should the Owner determine, at its sole opinion, it is in the Owner's best interest to accept defective Work, the Owner may do so. Contractor shall bear all direct, indirect and consequential costs attributable to the Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the Owner accepts such defective Work after final payment, Contractor shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

23.5 If Contractor fails, within a reasonable time after the written notice from Project Manager, to correct defective Work or to remove and replace rejected defective Work as required by Project Manager or Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. Provided, however, Owner shall not be required to give notice to Contractor in the event of an emergency. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall

include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **24. SUPERVISION AND SUPERINTENDENTS.**

24.1 Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall be subject to Owner's approval and not be replaced without prior written notice to Project Manager except under extraordinary circumstances. The superintendent shall be employed by the Contractor and be the Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. Owner shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause. Attached to the Agreement as Exhibit A-1 is a list identifying Contractor's Project Superintendent and all of Contractor's key personnel who are assigned to the Project; such identified personnel shall not be removed without Owner's prior written approval, and if so removed must be immediately replaced with a person acceptable to Owner.

24.2 Contractor shall have a competent superintendent on the project at all times whenever contractor's work crews, or work crews of other parties authorized by the Project Manager are engaged in any activity whatsoever associated with the Project. Should the Contractor fail to comply with the above condition, the Project Manager shall, at his discretion, deduct from the Contractor's monthly pay estimate, sufficient moneys to account for the Owner's loss of adequate project supervision, not as a penalty, but as liquidated damages, separate from the liquidated damages described in Section 5.B, for services not rendered.

## **25. PROTECTION OF WORK.**

25.1 Contractor shall immediately notify Project Manager and Design Professional. The Owner or Design Professional shall re-establish the benchmarks and Contractor shall be liable for all costs incurred by Owner associated therewith.

## **26. EMERGENCIES.**

26.1 In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager written notice within forty-eight (48) hours after Contractor knew or should have known of the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Project Manager determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

## **27. USE OF PREMISES.**

27.1 Contractor shall maintain all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

## **28. SAFETY.**

28.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

28.1.1 All employees on or about the project site and other persons and/or organizations who may be affected thereby;

28.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and

28.1.3 Other property on Project site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

28.2 Contractor shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

All new electrical installations shall incorporate NFPA 70E Short Circuit Protective Device Coordination and Arc Flash Studies where relevant as determined by the engineer.

All electrical installations shall be labeled with appropriate NFPA 70E arc flash boundary and PPE Protective labels.

28.3. Contractor shall designate a responsible representative located on a full time basis at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

28.4 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Contractor, as well as those of all subcontractors and those of any other person or entity for whom Contractor is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further,

Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

28.5 Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Contractor shall comply with the following:

28.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

28.5.2 All Employees shall be provided an identification badge by Contractor. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must log in and out with the Contractor each day;

28.5.3 Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

28.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

28.5.5 All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

28.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

28.5.7 When requested, Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

28.5.8 The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

28.5.9 At all times, Contractor shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

## **29. PROJECT MEETINGS.**

Prior to the commencement of Work, the Contractor shall attend a pre-construction conference with the Project Manager, Design Professional and others as appropriate to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the Project Manager with respect to the Project, when directed to do so by Project Manager or

Design Professional. The Contractor shall have its subcontractors and suppliers attend all such meetings (including the pre-construction conference) as may be directed by the Project Manager.

### **30. VENDOR PERFORMANCE EVALUATION.**

Owner has implemented a Vendor Performance Evaluation System for all contracts awarded in excess of \$25,000. To this end, vendors will be evaluated on their performance upon completion/termination of this Agreement.

### **31. MAINTENANCE OF TRAFFIC POLICY.**

For all projects that are conducted within a Collier County Right-of-Way, the Contractor shall provide and erect Traffic Control Devices as prescribed in the current edition of the Manual On Uniform Traffic Control Devices (MUTCD), where applicable on local roadways and as prescribed in the Florida Department of Transportation's Design Standards (DS), where applicable on state roadways. These projects shall also comply with Collier County's Maintenance of Traffic Policy, #5807, incorporated herein by reference. Copies are available through Risk Management and/or Procurement Services Division, and is available on-line at [colliergov.net/purchasing](http://colliergov.net/purchasing).

The Contractor will be responsible for obtaining copies of all required manuals, MUTCD, FDOT Roadway & Traffic Design Standards Indexes, or other related documents, so to become familiar with their requirements. Strict adherence to the requirements of the Maintenance of Traffic ("MOT") policy will be enforced under this Contract.

All costs associated with the Maintenance of Traffic shall be included on the line item on the bid page. If MOT is required, MOT is to be provided within ten (10) days of receipt of Notice of Award.

### **32. SALES TAX SAVINGS AND DIRECT PURCHASE.**

32.1 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. No markup shall be applied to sales tax. Additionally, as directed by Owner and at no additional cost to Owner, Contractor shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth in section 32.2 below:

32.2 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and may wish to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work ("Direct Purchase"). Contractor shall prepare purchase orders to vendors selected by Contractor, for execution by Owner, on forms provided by Owner. Contractor shall allow two weeks for execution of all such purchase orders by Owner. Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. Adjustments to the Contract Amount will be made by appropriate Change Orders for the amounts of each Owner Direct Purchase, plus the saved sales taxes. A Change Order shall be processed promptly after each Direct Purchase, or group of similar or related Direct Purchases, unless otherwise mutually agreed upon between Owner and Contractor. With respect to all Direct Purchases by Owner, Contractor shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all Direct Purchases. Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that all Direct Purchases shall be included within and covered by Contractor's warranty to Owner to the same extent as all other warranties provided by Contractor pursuant to the terms of

the Contract Documents. In the event Owner makes a demand against Contractor with respect to any Direct Purchase and Contractor wishes to make claim against the manufacturer or supplier of such Direct Purchase, upon request from Contractor Owner shall assign to Contractor any and all warranties and Contract rights Owner may have from any manufacturer or supplier of any such Direct Purchase by Owner.

32.3 Bidder represents and warrants that it is aware of its statutory responsibilities for sale tax under Chapter 212, Florida Statutes, and for its responsibilities for Federal excise taxes.

### **33. SUBCONTRACTS.**

33.1 Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Project Milestone Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval prior to submitting its first Application for Payment. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

33.2 A Subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Contractor. Contractor shall be solely responsible for and have control over the Subcontractors. Contractor shall negotiate all Change Orders, Work Directive Changes, Field Orders and Requests for Proposal, with all affected Subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of any Change Order from Owner. All Subcontractors performing any portion of the Work on this Project must be "qualified" as defined in Collier County Ordinance 2013-69, meaning a person or entity that has the capability in all respects to perform fully the Agreement requirements with respect to its portion of the Work and has the integrity and reliability to assure good faith performance.

33.3 In addition to those Subcontractors identified in Contractor's bid that were approved by Owner, Contractor also shall identify any other Subcontractors, including their addresses, licensing information and phone numbers, it intends to utilize for the Project prior to entering into any subcontract or purchase order and prior to the Subcontractor commencing any work on the Project. The list identifying each Subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all Subcontractor work to be self-performed by Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Contractor shall continuously update that Subcontractor list, so that it remains current and accurate throughout the entire performance of the Work.

33.4 Contractor shall not enter into a subcontract or purchase order with any Subcontractor, if Owner reasonably objects to that Subcontractor. Contractor shall not be required to contract with anyone it reasonably objects to. Contractor shall keep on file a copy of the license for every Subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts and purchase orders between Contractor and its Subcontractors shall be in writing and are subject to Owner's approval. Further, unless expressly waived in writing by Owner, all subcontracts and purchase orders shall (1) require each Subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor, (2) provide for the assignment of the subcontract or purchase order from Contractor to Owner at the election of

Owner upon termination of Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract or purchase order, (4) provide that Owner, Collier County Government, will be an additional insured on all liability insurance policies required to be provided by the Subcontractor except workman's compensation and business automobile policies, (5) assign all warranties directly to Owner, and (6) identify Owner as an intended third-party beneficiary of the subcontract or purchase order. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound. Each Subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

33.5 Each Subcontractor performing work at the Project Site must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in its subcontract or purchase order. In addition, the Subcontractor shall assign and name a qualified employee for scheduling direction for its portion of the Work. The supervisory employees of the Subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The Subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

33.6 Unless otherwise expressly waived by Owner in writing, all subcontracts and purchase orders shall provide:

33.6.1 That the Subcontractor's exclusive remedy for delays in the performance of the subcontract or purchase order caused by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

33.6.2 In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit.

33.6.3 The subcontract or purchase order, as applicable, shall require the Subcontractor to expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation. Further, Contractor shall require all Subcontractors to similarly incorporate the terms of this Section 33.6 into their sub-subcontracts and purchase orders.

33.6.4 Each subcontract and purchase order shall require that any claims by Subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which Contractor must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

#### 34. **CONSTRUCTION SERVICES.**

34.1 Contractor shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 34.1.1 Subcontracts and Purchase Orders
- 34.1.2 Subcontractor Licenses

34.1.3	Shop Drawing Submittal/Approval Logs
34.1.4	Equipment Purchase/Delivery Logs
34.1.5	Contract Drawings and Specifications with Addenda
34.1.6	Warranties and Guarantees
34.1.7	Cost Accounting Records
34.1.8	Labor Costs
34.1.9	Material Costs
34.1.10	Equipment Costs
34.1.11	Cost Proposal Request
34.1.12	Payment Request Records
34.1.13	Meeting Minutes
34.1.14	Cost-Estimates
34.1.15	Bulletin Quotations
34.1.16	Lab Test Reports
34.1.17	Insurance Certificates and Bonds
34.1.18	Contract Changes
34.1.19	Permits
34.1.20	Material Purchase Delivery Logs
34.1.21	Technical Standards
34.1.22	Design Handbooks
34.1.23	"As-Built" Marked Prints
34.1.24	Operating & Maintenance Instruction
34.1.25	Daily Progress Reports
34.1.26	Monthly Progress Reports
34.1.27	Correspondence Files
34.1.28	Transmittal Records
34.1.29	Inspection Reports
34.1.30	Punch Lists
34.1.31	PMIS Schedule and Updates
34.1.32	Suspense (Tickler) Files of Outstanding Requirements

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

#### 34.2 Contractor Presentations

At the discretion of the County, the Contractor may be required to provide a brief update on the Project to the Collier County Board of County Commissioners, "Board", up to two (2) times per contract term. Presentations shall be made in a properly advertised Public Meeting on a schedule to be determined by the County Manager or his designee. Prior to the scheduled presentation date, the Contractor shall meet with appropriate County staff to discuss the presentation requirements and format. Presentations may include, but not be limited to, the following information: Original contract amount, project schedule, project completion date and any changes to the aforementioned since Notice to Proceed was issued.

### 35. SECURITY.

The Contractor is required to comply with County Ordinance 2004-52, as amended. Background checks are valid for five (5) years and the Contractor shall be responsible for all associated costs. If required, Contractor shall be responsible for the costs of providing background checks by the Collier County Facilities Management Division for all employees that shall provide services to the County

under this Agreement. This may include, but not be limited to, checking federal, state and local law enforcement records, including a state and FBI fingerprint check, credit reports, education, residence and employment verifications and other related records. Contractor shall be required to maintain records on each employee and make them available to the County for at least four (4) years.

All of Contractor's employees and subcontractors must wear Collier County Government Identification badges at all times while performing services on County facilities and properties. Contractor ID badges are valid for one (1) year from the date of issuance and can be renewed each year at no cost to the Contractor during the time period in which their background check is valid, as discussed below. All technicians shall have on their shirts the name of the contractor's business.

The Contractor shall immediately notify the Collier County Facilities Management Division via e-mail ([DL-FMOPS@colliergov.net](mailto:DL-FMOPS@colliergov.net)) whenever an employee assigned to Collier County separates from their employment. This notification is critical to ensure the continued security of Collier County facilities and systems. Failure to notify within four (4) hours of separation may result in a deduction of \$500 per incident.

CCSO requires separate fingerprinting prior to work being performed in any of their locations. This will be coordinated upon award of the contract. If there are additional fees for this process, the Contractor is responsible for all costs.

### **36. VENUE.**

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

### **37. VALUE ENGINEERING.**

All projects with an estimated cost of \$10 million or more shall be reviewed for consideration of a Value Engineering (VE) study conducted during project development. A "project" shall be defined as the collective contracts, which may include but not be limited to: design, construction, and construction, engineering and inspection (CEI) services. Additionally, any project with an estimated construction value of \$2 million or more may be reviewed for VE at the discretion of the County.

### **38. ABOVEGROUND/UNDERGROUND TANKS.**

38.1 The contractor shall ensure compliance with all NFPA regulations: specifically 110 & 30/30A; FDEP chapter 62 regulations: specifically 761, 762, 777, and 780; 376 & 403 Florida Statutes; and STI, UL, PEI, ASME, NACE, NLPA, NIST & API referenced standards pertaining to the storage of hazardous materials and petroleum products.

38.2 The contractor shall notify the Solid & Hazardous Waste Management Department (SHWMD) prior to the installation, removal, or maintenance of any storage tank, including day tanks for generators, storing / will be storing petroleum products or hazardous materials. The contractor shall provide a 10 day and 48-hour notice to SHWMD 239-252-2508 prior to commencement.

The contractor shall provide the plans pertaining to the storage tank systems containing hazardous materials / petroleum products to the SHWMD prior to plans submittal to a permitting entity and then SHWMD must approve the plans prior to contractor's submittal for permitting.

**39. STANDARDS OF CONDUCT: PROJECT MANAGER, SUPERVISOR, EMPLOYEES.**

The Contractor shall employ people to work on Owner's projects who are neat, clean, well-groomed and courteous. Subject to the Americans with Disabilities Act, Contractor shall supply competent employees who are physically capable of performing their employment duties. The Owner may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on Owner's projects is not in the best interest of the County.

**40. DISPUTE RESOLUTION.**

Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by Owner's staff person who would make the presentation of any settlement reached during negotiations to Owner for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by Owner's staff person or designee who would make the presentation of any settlement reached at mediation to Owner's Board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Section 44.102, Fla. Stat.

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.