

**CONTRACT NO. 21174
BETWEEN CITY OF DAYTONA BEACH AND WHARTON-SMITH, INC.
FOR DESIGN/BUILD SERVICES FOR THE
WESTSIDE REGIONAL WATER RECLAMATION FACILITY IN-PLANT
PUMP STATION AND HEADWORKS DESIGN-BUILD PROJECT**

This DESIGN-BUILD CONTRACT ("Contract") is made and entered into this ____ day of _____, 2021, between City of Daytona Beach, a Florida municipal corporation, (hereinafter "CITY "), and Wharton-Smith, Inc., a Florida corporation, (hereinafter "DESIGN-BUILDER").

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RECITALS

WHEREAS, the CITY has determined that it is necessary to retain a Designer-Builder to provide profession engineering design and construction services;

WHEREAS, the DESIGN-BUILDER has reviewed RFP No. 21174 and Addenda required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with its terms.

WHEREAS, the CITY, through a selection process conducted in accordance with the requirements of law and CITY policy, has determined that it would be in the best interest of the CITY to award a contract to DESIGN-BUILDER for the rendering of those services described in the Scope of Services.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and DESIGN-BUILDER agree as follows:

ARTICLE 1 INCORPORATION OF RECITALS

1.1 RECITALS. The foregoing Recitals are true and correct, and the recitals and instruments referred to therein are hereby incorporated herein by reference.

1.2 RFP No. 21174 consisting of pages 1 through 10, and including Addendum 1 dated 1/13/2021 and the Proposal submitted by the DESIGN-BUILDER on 2/11/2021, all filed with the Clerk the CITY, as "RFP No. 21174" is hereby specifically made a part of this Contract as if the same had been set forth at length herein.

Unless addressed in paragraph 3.1 below, in the event of any conflict between the documents constituting this Contract, the documents shall be given precedence in the following order:

- 1) Permits from Agencies as required by law;
- 2) Change Orders;
- 3) This Contract;
- 4) Any Exhibits attached hereto;
- 5) Construction Plans;
- 6) RFP No. 21174 and any addenda thereto; and
- 7) The Proposal submitted by DESIGN-BUILDER on December 19, 2019

ARTICLE 2 DEFINITIONS

2.1 The following words and expressions shall, wherever they appear in the Contract, be construed as follows:

2.1.1 Contract. Contract means this document executed by the DESIGN- BUILDER and CITY and any and all documents referenced herein and any Attachments or Exhibits attached hereto as well as all subsequent Change Orders or Amendments.

2.1.2 Application for Payment. Application for Payment means the form which is to be used by DESIGN-BUILDER in requesting a progress or final payment and which shall include such supporting documentation as is required by this Contract.

2.1.3 Approval. When applied to approval from the CITY, this term shall mean approval which is, at a minimum, evidenced by a written document authored or initialed by the CITY and subject to the formalities imposed by specific provisions in this Contract.

2.1.4 Change Order. Change Order shall mean a written order authorizing an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price (defined in 2.1.18) or the Contract Time issued after execution of the Contract.

2.1.5 CITY. CITY shall mean Daytona Beach, a municipal corporation of the State of Florida and its authorized designees, agents and employees.

2.1.6 Contract Time. Contract Time means the number of calendar days stated in the Contract for completion of the Construction Phase of Work as amended by approved Change Order(s). The commencement date of the Contract Time shall be the Notice to Proceed Date shown in the Notice to Proceed with Phase I.

2.1.7 Cost of the Work or Cost of Work means the direct or indirect field costs to perform the Services, which DESIGN-BUILDER must necessarily incur to properly perform in strict compliance with the Contract Documents. Cost of the Work includes any additional costs due to acceleration of the Work to overcome delays, only to the extent such delays were not caused or contributed to, in whole or in part, by the negligence of the DESIGN-BUILDER, or its Subcontractors or other persons over whom DESIGN-BUILDER or any Subcontractor exercise control is legally responsible. Cost of the Work excludes all items covered by the Phase I – Design Services, Design-Build Fees and all markups on payments to Subcontractors. Cost of the Work includes all items within the scope of General Conditions as defined herein, unless such items are expressly excluded from Cost of Work in Section 8.4.6.

2.1.8 Day. One (1) calendar day when used in the Contract, measured from midnight to the next midnight.

2.1.9 Defective. Defective is an adjective which refers to Work that is faulty, deficient or otherwise does not conform to the Final Construction Documents or the requirements of this Contract.

2.1.10 Design-Build Documents. Design-Build Documents means all documents, from preliminary to as-builts, including, but not limited to design documents, design drawings, plans, construction drawings, specifications, data, studies, surveys, calculations, permit applications, estimates, photographs, reports, memoranda, letters, sketches, renderings, approved submittals, and other documents prepared by DESIGN-BUILDER and/or its Professionals, Subconsultants, and/or Subcontractors, that fix, depict and/or describe the size, quality and character of the entire Project or any portion of the Project.

2.1.11 Design-Build Fee. Design-Build Fee is included within the Guaranteed Maximum Price (defined in 2.1.18) and shall mean all fees, costs and expenses to be paid to members of the DESIGN-BUILDER's team (e.g. architects, engineers, Subcontractors, Subconsultants, professionals etc.) to manage, design and construct the Project,

excluding materials and labor for actual construction. Design-Build Fee shall include all, overhead, profits and corporate administrative costs.

2.1.12 Engineer of Record. Engineer of Record means Hazen and Sawyer. Engineer of Record is also included in the definition of "Professional" below.

2.1.13 Equal/Equivalent. Equal or Equivalent means a product, service, component or system which is demonstrated, to the satisfaction of the CITY, to be equal or equivalent to the product, service, component or system specified. The CITY shall be the sole judge of acceptability of an Equal or Equivalent.

2.1.14 Final Completion. Final Completion means the date the Work, including but not limited to all Punch List items (as defined herein below), has been completed to the CITY's satisfaction.

2.1.15 Final Construction Documents. Final Construction Documents means the approved and permitted Design-Build Documents, which are developed, prepared and created by the DESIGN-BUILDER and reviewed and approved in writing by the CITY, setting forth in detail all Work, including, but not limited to, all labor, materials, equipment, and services necessary to construct the Project. Final Construction Documents shall be prepared by DESIGN-BUILDER in accordance with the following:

- (i) The Project Schedule;
- (ii) The Guaranteed Maximum Price (GMP);
- (iii) The DESIGN-BUILDER's Proposal submitted in response to the RFP;
- (iv) All documents and requirements of this Contract; and
- (v) Any and all other document(s) agreed to by CITY and DESIGN-BUILDER.

Once the Final Construction Documents for the Project have been approved in writing by the CITY, no changes shall be made thereto without the express written consent of the CITY.

2.1.16 General Conditions. Cost of General Conditions is included within the Guaranteed Maximum Price (defined in 2.1.18) and shall include general DESIGN- BUILDER Project expenses during construction. General Conditions include mobilization, field offices, superintendent(s), construction lay-out and as-built surveying, temporary utilities, temporary security fences, temporary safety-related protection, dust control, pest control, temporary hoists, scaffolding, project sign etc.

2.1.17 Guaranteed Maximum Price (GMP). Guaranteed Maximum Price means the maximum compensation to be paid hereunder by the CITY to DESIGN-BUILDER for all salaries and fees including but not limited to the Design-Build Fee, costs, expenses, taxes, reimbursable costs and expenses, general conditions, profits and costs of all labor, services, equipment, tools, supplies, fixtures and materials incurred or used by DESIGN-BUILDER in providing and performing all the Work required to complete the Project.

2.1.18 Nonconformance Report. A written notice from the Project Manager to the DESIGN-BUILDER reporting on an aspect of Defective Work which requires the immediate correction of same by the DESIGN-BUILDER.

2.1.19 Notice to Proceed with Phase I – Design Services. Notice to Proceed with Design Services means CITY’s written authorization to DESIGN-BUILDER to commence professional design and consulting services for the Work under this Contract.

2.1.20 Notice to Proceed with Phase II – Construction Services. Notice to Proceed with Construction Services means CITY’s written authorization to DESIGN-BUILDER to commence with construction of the Project, including mobilization.

2.1.21 Professional, means any individual, firm or entity, which provides design or professional services, whether architectural, engineering or surveying, and which is engaged by DESIGN-BUILDER in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable to provide and perform under this Contract. Each Professional shall possess all applicable, valid and current licenses necessary to do business in the State of Florida and the CITY for the performance of the Work. The CITY expressly disclaims any responsibility, liability or obligations whatsoever for or under any Contract entered into between DESIGN- BUILDER and the Professional and further states that CITY shall not be responsible for any payments or any other obligations due or owing to the Professional.

2.1.22 Project. Project means the design and construction of the Westside Regional Water Reclamation Facility In-Plant Pump Station and Headworks Design-Build Project and shall mean and include, but not be limited to, each and everything included in the Final Construction Documents, together with all design, permitting, regulatory compliance and other "soft costs" associated with the Project.

2.1.23 Project Manager. An individual employed by the CITY and assigned under the supervision of the City Manager to manage and administer the Project which is the subject of this Contract. The Project Manager will provide direct contact and communication between the CITY and DESIGN-BUILDER with respect to providing information, assistance, guidance, coordination, and review of the DESIGN-BUILDER’s Work pursuant to this Contract and any authorized Change Order(s). The Project Manager shall not be authorized to, and shall not, issue any verbal or written request or instruction or approval to DESIGN-BUILDER that might have the effect, or that might be interpreted to have the effect, of modifying or changing this Contract in any respect.

2.1.24 Project Schedule. The Project Schedule means the schedule, showing the sequence and schedule of the DESIGN-BUILDER’s furnishing of all labor, services, equipment and materials for the Project. The Project Schedule consists of Project Schedule Summaries which establish major milestones for the project, and the Project Schedule Detail (to be prepared by DESIGN-BUILDER and accepted by the CITY) showing in detail the sequence and schedule of the DESIGN-BUILDER’s Work for the Project. The Project Schedule Summaries will be prepared, accepted and approved by the parties after the completion of the Design Phase of the Project and will be attached and incorporated herein as an Exhibit to this Contract at a later date. The Project Schedule Detail shall be submitted by DESIGN-BUILDER for review and approval of CITY prior to the Notice to Proceed with Phase II – Construction Services. The Project Schedule may be amended, modified or revised only in accordance with the terms of this Contract.

2.1.25 Punch List. Punch List means the approved list(s) of incomplete and/or deficient Work that shall be completed by DESIGN-BUILDER after Substantial Completion or beneficial occupancy but before Final Completion can be achieved.

2.1.26 Site. Site shall mean the area on which the DESIGN-BUILDER's construction Work is to be performed and such other areas that may be designated as such by the Final Construction Documents, and upon which the Project and associated improvements are to be constructed by DESIGN-BUILDER.

2.1.27 Subconsultant. Subconsultant means any person, firm or entity offering or providing professional and/or consulting services which is not included in the definition of Professional and which has a direct contract with DESIGN-BUILDER or with any other Subconsultant for the performance of any part of the DESIGN-BUILDER's obligations in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable under the Contract. Each Subconsultant shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

2.1.28 Subcontractor. Subcontractor means any person, firm or entity providing services, other than professional or consulting services which has a direct contract with DESIGN-BUILDER or with any other subcontractor for the performance of any part of the DESIGN-BUILDER'S obligations in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable under the Contract. Each subcontractor shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

2.1.29 Submittals. Submittals mean all drawings, diagrams, illustrations, schedules, samples, test results, and other data which are specifically prepared by DESIGN-BUILDER, its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by DESIGN-BUILDER to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by DESIGN-BUILDER, and/or its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by DESIGN-BUILDER to illustrate material or equipment for some portion of the Work, at no additional cost to the CITY.

2.1.30 Substantial Completion. Substantial Completion means the date the Work is complete, with the exception of Punch List items, and the Project is available for its intended use by CITY as evidenced by a fully executed Certificate of Substantial Completion which has been prepared and certified by the Engineer of Record after approved by, and at the discretion of, the Project Manager for full compliance with the pertinent requirements of this Contract.

2.1.31 Substitution. Substitution means a product, service, component or system which is not Equal or Equivalent to that specified but is proposed by DESIGN-BUILDER in lieu of that specified. The acceptability of a substitute shall be based on the data submitted and the benefit to the CITY. The CITY shall be the sole judge of acceptability.

2.1.32 Work. Work means any and all authorized and approved work, materials supplies, tools, fixtures, labor, services, equipment, design, professional, construction management and contract administration services for the design, Site development and construction of the Project performed and provided by DESIGN-BUILDER (and its agents, employees, Subconsultants, Professionals, and Subcontractors) pursuant to this Contract.

**ARTICLE 3
PRELIMINARY MATTERS/NOTICES TO
PROCEED/ASSUMPTION
OF RISKS BY DESIGN-BUILDER**

3.1 ENTIRE CONTRACT/PRECEDENCE. The Contract consists of this document executed by the parties and any and all documents referenced herein and Attachments and Exhibits attached hereto as well as all Change Orders and Amendments. It is the intent of the Contract to describe the total Work. The documents of the Contract are complementary; what is called for by one is as binding as if called for by all. If the DESIGN-BUILDER finds a conflict, error or discrepancy within this Contract regarding the Work or other documents of the RFP, or between any of them, the DESIGN-BUILDER shall promptly notify the Project Manager in writing upon discovery of such conflict, error or discrepancy. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in terms of the most stringent requirements as determined by the CITY and agreed to by all parties. Enforcement of the most stringent requirements shall be at the CITY's option. Any Work that may reasonably be inferred from the Contract as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials, or equipment described in words which, so applied, have a well-known technical or trade meaning shall be deemed to have such recognized meaning.

3.2 SCOPE OF WORK - The Work on the Project shall be conducted in two Phases. Phase I shall be the Design Services Phase. Phase II shall be the Construction Phase. The Scope of Work and Fee Schedule for Phase II shall be negotiated by the parties and attached to and made a part of this Contract at a later date.

3.2.1 DESIGN-BUILDER shall provide and perform all Work necessary for the completion of the entire Project commensurate with the intended high quality of design and construction and low maintenance cost for the Project. The Scope of Work shall include, but is not limited to, providing and performing all Work necessary:

- (i) for the design and construction of the Project; and
- (ii) to furnish efficient design and construction administration, supervision and superintendence; and
- (iii) for Site development tasks, permitting, regulatory matters, approvals, testing, surveying, environmental mitigation, geotechnical, traffic, architectural, engineering, landscaping, security, interior design, acoustical, lighting, construction, post-construction, accounting and control, coordination and efficient management to facilitate completion of the Project.

3.2.2 Quality of Scope of Work. The Project, as designed and constructed, shall be functionally sound, technically proficient, developed with structural integrity, exhibit high quality engineering principles, and be in compliance with all governing laws, regulations, building codes, and requirements in effect as of the date of the issuance of the building permit.

3.3 PHASE I – Design Services. The Phase I – Design Services Scope of Work and Fee Schedule for the Project is attached hereto as **Exhibit A**. This Phase of the Contract shall consist of the design and permitting of the Project. CITY agrees to pay to DESIGN-BUILDER an amount not to exceed Two Million One Hundred, Sixty Seven Thousand, Five Hundred Twenty Dollars and Seven Cents (\$2,167,520.07) for completion of the above Phase I services.

3.4 COMMENCEMENT OF WORK AND NOTICES TO PROCEED

3.4.1 The Contract Time shall commence on the notice to proceed date indicated in the Notice to Proceed with Phase I – Design Services. Notice to Proceed with Phase I – Design Services shall be issued by the Project Manager within thirty (30) days after the City Commission has approved the contract and the DESIGN-BUILDER has delivered to the CITY Insurance Certificates in accordance with the Contract.

3.4.2 The DESIGN-BUILDER shall begin the Work on the date the Contract Time commences. No Work shall be performed by the DESIGN-BUILDER or its Professionals, Subconsultants, or Subcontractors, and no irrevocable commitments to vendors shall be made, until issuance of Notice to Proceed with Phase I – Design Services, at which time DESIGN-BUILDER may commence to perform design services in accordance with the requirements of this Contract.

3.4.3 A separate Notice to Proceed with Phase II – Construction Services shall be issued by the Project Manager upon receipt of the required Payment Bond and Performance Bond. In the absence of written authorization from the Project Manager, no construction Work shall be performed by the DESIGN-BUILDER and no irrevocable commitments to vendors for Phase II related services shall be made until a separate Notice to Proceed with Phase II – Construction Services is issued by the Project Manager.

3.4.4 PRE-DESIGN CONFERENCE(S). Before the Notice to Proceed with Phase I – Design Services is issued, conference(s) shall be held for review and acceptance of DESIGN-BUILDER's initial Submittals, to establish procedures for handling Submittals and processing Applications for Payment and Change Orders, and to establish a working understanding among the parties as to the Work.

3.4.5 PRECONSTRUCTION CONFERENCE(S). Prior to the Notice to Proceed with Construction being issued, conference(s) shall be held for review and acceptance of the DESIGN-BUILDER's Critical Path Method (CPM) Schedule, Final Schedule of Values, personnel and Subcontractor list, to review mobilization requirements, to establish procedures for handling shop drawings and other Submittals and Applications for Payment, and to establish a working understanding among the parties as to the Work.

3.5 ASSUMPTION OF RISKS BY DESIGN-BUILDER

3.5.1 Except as otherwise provided in this Contract, DESIGN-BUILDER shall have a duty to anticipate and provide adequate contingencies for risks associated with the Work for the Project. DESIGN-BUILDER shall take into consideration, and factor into its Project Schedule and GMP, all Site conditions and difficulties involved in the completion of the Work, the variations in permitting time frames, and the time frames available to CITY for reviewing deliverables, schedules, and Applications for Payment. Given this duty, DESIGN-BUILDER should not request additional compensation or time to complete, if delays and complicating factors should have reasonably been anticipated.

3.5.2 DESIGN-BUILDER shall become familiar with and prepare for the continuing operations of the water reclamation facility during the course of construction. DESIGN-BUILDER's GMP and Project Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include work delays due to plant operations.

3.5.3 DESIGN-BUILDER has ascertained such Site conditions as may be readily determined by inspection and inquiry, such as the location, accessibility and general character of the Site prior to executing this Contract.

3.5.4 The DESIGN-BUILDER assumes the risk for all costs associated with Site conditions which are foreseeable through the exercise of normal due diligence. It shall be the obligation of the DESIGN-BUILDER to fully investigate the Site and provide sufficient contingency amounts for conditions which are foreseeable and which may differ from those suggested by inspections and reports provided with the RFP, or any addenda thereto. Provided, however, this Section 3.5.4 is subject to the terms of Section 10.8 below.

ARTICLE 4 DESIGN-BUILDER's DUTIES AND RESPONSIBILITIES

4.1 GENERAL DUTIES AND OBLIGATIONS OF DESIGN-BUILDER RELATED TO ENTIRE WORK.

4.1.1 CITY has retained DESIGN-BUILDER to provide the Work described herein. Since CITY has entrusted the Work to the DESIGN-BUILDER, DESIGN-BUILDER shall use its professional expertise to protect the interest of the CITY at all times. The quality of DESIGN-BUILDER's work shall be consistent with the requirements of this Contract and with prevailing industry standards. DESIGN-BUILDER shall ensure that its fees charged for the Work are fair, reasonable and consistent with fees charged locally for similar work.

4.1.2 **COMPLY WITH ALL LAWS AND REGULATIONS.** The DESIGN-BUILDER shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the DESIGN-BUILDER observes that any part of the Contract is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the DESIGN-BUILDER performs any work that it knows or should know to be contrary to such laws, ordinances, rules, and regulations, DESIGN-BUILDER shall bear the cost for any such work performed.

4.1.3 **FURNISH ALL WORK, LABOR AND MATERIALS.** DESIGN-BUILDER shall provide or cause to be provided all design and construction services, and shall furnish and pay for, all labor, materials, equipment, tools, construction equipment and machinery, appliances, transportation, heat, fuel, light, telephone, and sanitary utilities, and all other

utilities, facilities, services, and incidentals necessary for providing, performing and completing the Work, whether temporary or permanent, incorporated or to be incorporated in the Work, and necessary for the execution, testing, initial operation, and completion of the Work.

4.1.4 DESIGN-BUILDER understands and acknowledges that all documents and materials provided with the RFP, and any addenda, are general and preliminary, and that DESIGN-BUILDER shall not rely on the accuracy or completeness thereof. DESIGN-BUILDER acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

4.1.5 DUTY TO DESIGN AND CONSTRUCT WITHIN GMP. DESIGN-BUILDER shall design and construct the Project within the GMP. If CITY requests the DESIGN-BUILDER to revise or modify the Design-Build Documents at any time for compliance with the Contract, then such requests shall not relieve the DESIGN-BUILDER from its responsibility to deliver the Project within the GMP. In addition, DESIGN-BUILDER shall monitor its costs during the design and construction of the Project and immediately advise the Project Manager of any deviations. DESIGN-BUILDER shall submit a written explanation for such deviations, all of which are subject to CITY's approval as set forth herein.

4.1.5.1 Should the DESIGN-BUILDER produce Final Construction Documents which cause the total cost of the Project to exceed the GMP, said excess costs shall be born exclusively by the DESIGN-BUILDER.

4.1.6 PERFORMANCE SPECIFICATIONS AND REQUIREMENTS FOR PROJECT. In developing and creating the Final Construction Documents and other Design-Build Documents and in performing the Work generally, DESIGN-BUILDER shall, among other things:

4.1.6.1 Incorporate the requirements and criteria set forth in the RFP and any modifications, revisions and addenda to any of them. However, notwithstanding the foregoing, inaccurate provisions of the RFP, if any, shall not be incorporated into or considered a part of the Final Construction Documents, but shall be governed by the provisions of Article 3.1 above, and

4.1.6.2 Comply with all governing laws, codes, regulations and ordinances of any governmental agency having or claiming to have jurisdiction over the Project; and

4.1.6.3 Develop in greater detail the intent of DESIGN-BUILDER's RFP Proposal, as submitted in response to the RFP and as accepted by the CITY; and

4.1.6.4 Include all documents required for regulatory agency approvals.

4.1.7 ALTERNATIVE APPROACHES. DESIGN-BUILDER shall review with the CITY alternative approaches to design and construction of the Project to save time and costs whenever possible.

4.1.8 PROGRESS REPORTS. During design and construction, DESIGN-BUILDER shall keep CITY regularly advised of the progress and quality of all Work by providing Progress Reports every month in a form and content acceptable to Project Manager,

advising CITY, among other things, of DESIGN-BUILDER's adherence to or deviation from the Project Schedule. DESIGN-BUILDER shall advise CITY of any and all identified causes for deviating from the Project Schedule as soon as those causes become evident.

4.1.8.1 Each monthly Progress Report shall include, but shall not be limited to, reports on:

- (i) progress of Work during the previous thirty (30) days; the status of design, permitting, Site development and construction activities; an analysis of overall progress and budget compliance with cash flow analysis and an affirmation that deliverables will be on time and within the GMP; and an overall percentage of completion estimate;
- (ii) if behind the Project Schedule, a proposed recovery plan;
- (iii) list of problems and anticipated problems with corrective action planned or needed;
- (iv) an outline of proposed activities and key tasks during the coming month in a "30 Day Look Ahead" schedule;
- (v) any changes in personnel of the DESIGN-BUILDER or of its Professionals, Subconsultants or Subcontractors;
- (vi) results of any inspections, tests or Site visits;
- (vii) any major deliveries of materials or large equipment, (also to be included in "30 Day Look Ahead" schedule); and
- (viii) any other reasonable information covering DESIGN-BUILDER's performance hereunder.

4.1.8.2 Each Progress Report shall be received by the CITY by the 10th day of the following month. If the 10th day falls on a Saturday or Sunday, the progress report must be received on the first Monday following the 10th day.

4.1.9 The Project Manager shall monitor DESIGN-BUILDER's Work for compliance with Project standards and criteria, and may make recommendations and comments regarding the Work, solely for the protection of the CITY. However, DESIGN-BUILDER acknowledges that any such monitoring or recommendations by the Project Manager, or any failure of the Project Manager to monitor or make recommendations, shall not relieve the DESIGN-BUILDER of any of its obligations under this Contract. Any comments or suggestions to the DESIGN-BUILDER by the Project Manager, if adopted and followed by the DESIGN-BUILDER, shall not relieve the DESIGN-BUILDER of its sole authority and responsibility for the adequacy and accuracy of its professional, design, development, management and/or construction services, in accordance with generally accepted architectural, engineering, development and/or construction practices, and this Contract.

4.1.10 CUMULATIVE RESPONSIBILITIES, DUTIES AND OBLIGATIONS. The responsibilities, duties and obligations imposed upon DESIGN-BUILDER by this Contract, and the rights and remedies available to the CITY hereunder, shall be in addition

to, and not a limitation of, any otherwise imposed or available by law, statute, regulation, code or ordinance.

4.1.11 DESIGN-BUILDER'S PERSONNEL

4.1.11.1 Qualified Personnel. All professional and design services shall be performed by qualified engineers and other professionals selected and retained and paid by DESIGN-BUILDER. All professional and consulting services shall be performed by the Professionals and qualified Subconsultants selected and paid and retained by DESIGN-BUILDER. All construction services shall be performed by DESIGN-BUILDER's qualified personnel or qualified Subcontractors selected and paid and retained by DESIGN-BUILDER or by its Subcontractors. DESIGN-BUILDER agrees, with respect to all Work to be provided and performed relating to professional services which, under Florida Statutes, require a license, certificate of authorization or other form of legal entitlement to practice such services, that it, its Subconsultants and Professionals shall employ and/or retain only personnel who are experienced, licensed, certified or otherwise legally entitled as aforesaid, to be responsible for all professional and consulting services to be provided pursuant to this Contract.

4.1.11.2 Responsibility for Personnel's Performance. DESIGN-BUILDER shall be responsible to the CITY for acts and omissions of DESIGN-BUILDER and DESIGN-BUILDER'S agents, employees, Professionals, Subconsultants, Subcontractors, and all other parties in privity of Contract with DESIGN-BUILDER and/or its Professionals, Subconsultants, or Subcontractors, which provide and/or perform any portion of the Work, including their agents and employees.

4.1.11.3 DESIGN-BUILDER's Project Director. DESIGN-BUILDER agrees to employ and designate, in writing, a qualified (and, if required by law, a licensed) Professional to serve as DESIGN-BUILDER's Project Director, who shall be approved by the CITY. The Project Director shall be authorized and responsible to act on behalf of DESIGN-BUILDER and shall have full authority to bind and obligate DESIGN-BUILDER on any matter arising under this Contract, unless substitute arrangements or individuals have been furnished to and approved by the CITY in writing. The Project Director shall be responsible for acting on DESIGN-BUILDER's behalf to administer, coordinate and to interpret all aspects of the Work to be provided and performed under this Contract and to otherwise manage the contractual provisions and requirements set forth in this Contract, and all Change Order(s) issued hereunder. DESIGN-BUILDER agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Work provided and performed by DESIGN-BUILDER under this Contract.

4.1.11.4 Removal of Personnel. The DESIGN-BUILDER shall not change any of those persons named in its Proposal unless mutually agreed to by the CITY and DESIGN-BUILDER. In such case, the CITY shall have the right of approval of the qualifications of replacement personnel. DESIGN-BUILDER agrees that, within fourteen (14) days of receipt of a written request from CITY, which is based upon grounds of nonperformance or illegal activity, to promptly remove and replace DESIGN-BUILDER's Project Director, or any other personnel employed or retained by DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors engaged by DESIGN-BUILDER to provide and/or

perform the Work, or any portion thereof. Any proposed substitution shall be subject to CITY's prior written consent and said substitution shall be at no additional cost to the CITY. Notwithstanding the foregoing, nothing herein shall interfere nor be deemed to interfere with the right of DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors to terminate its or their employees, or with any employee's employment or right to terminate his or her employment with DESIGN- BUILDER or its Professionals, Subconsultants, or Subcontractors. DESIGN-BUILDER further agrees not to remove or reassign any members of its "Proposed Team" identified in its Proposal submitted in response to the RFP during the term of this Contract without first presenting explanations therefore and obtaining the CITY's prior written consent.

4.1.11.5 Adequate Staffing for Timely Accomplishment of Work. DESIGN-BUILDER agrees to employ, engage, retain and/or assign an adequate number of personnel, and work additional shifts if necessary, throughout the period of this Contract so that all Work will be provided, performed and completed in a timely and diligent manner in accordance with the Project Schedule and this Contract.

4.1.12 PERMITS. DESIGN-BUILDER agrees to prepare all applications and other supporting documentation and information necessary to submit for, and obtain all reviews, approvals, permits, licenses and inspections needed, with respect to the design, Site development and Work necessary for completion of the Project, including the Final Construction Documents and further agrees to secure said reviews, approvals, permits, licenses and inspections. Any fees required to be paid for such reviews, approvals, permits, licenses or inspections shall be paid by CITY to each respective governmental agency. All CITY impact fees and sewer capacity fees shall be paid for by the CITY. DESIGN-BUILDER shall be similarly responsible for preparing all required applications and other required and supporting documentation and information necessary to submit and obtain any renewals and/or extensions of reviews, approvals, permits, licenses or inspections that may be required while this Contract is in effect.

4.1.13 COORDINATION. DESIGN-BUILDER shall be responsible for the management, coordination and supervision of all design, permitting, and construction means, methods, techniques, sequences and procedures for completion of the Work.

4.1.14 TESTS AND INSPECTIONS. DESIGN-BUILDER shall procure and furnish, at its sole cost and expense, all required tests and inspections for the Project, including but not limited to, structural, mechanical, chemical, electrical, geotechnical, construction, materials and other laboratory or on-Site tests, inspections and reports obtained and necessary for completion of design and construction. Such testing services shall be provided by qualified testing subconsultants independent of DESIGN-BUILDER and acceptable to the CITY. A testing program meeting the requirements for all Construction Work shall be clearly described in the Final Construction Documents.

4.1.14.1 If the Contract or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the DESIGN-BUILDER, the DESIGN-BUILDER shall coordinate and secure same.

4.1.14.2 DESIGN-BUILDER shall furnish the Project Manager with all test and inspection reports regardless of who ordered or the reason. For all inspections, tests, and

approvals on any Work prepared, performed, or assembled away from the Site, the DESIGN-BUILDER shall furnish the Project Manager with the required certificates of inspection, testing, or approval. All tests will be in accordance with the methods prescribed by the American Society for Testing and Materials (ASTM) or such other organization(s) as may be appropriate to the particular requirement of the law or the Contract.

4.1.14.3 The CITY will be responsible for obtaining independent testing of materials. The CITY may at any time, at its option, obtain independent testing and inspections of the Work or any portion thereof. In such event, the DESIGN-BUILDER shall provide 48-hours' notice to the Project Manager of readiness of the Work to be so tested and/or inspected and shall provide the testing agency prompt and full access to the Work. If the CITY's independent testing and inspection indicates materials or Work in place that fail to pass acceptability tests, then DESIGN-BUILDER shall correct such materials or Work until acceptable test results are obtained. The costs to correct said materials or Work, as well as the costs of all such failed tests and re-tests, shall be borne solely by the DESIGN-BUILDER.

4.1.14.4 Neither observations by the Project Manager nor inspections, tests, or approvals by persons other than the DESIGN-BUILDER shall relieve the DESIGN-BUILDER of its obligations to perform the Work in accordance with the requirements of the Contract.

4.1.15 UNCOVERING THE WORK

4.1.15.1 If any Work required to be inspected, tested or approved is covered contrary to the request of the Project Manager, the Work shall, if requested by the Project Manager, be uncovered for observation, inspection, testing or approval and replaced at the DESIGN-BUILDER's expense.

4.1.15.2 If any Work has been covered in accordance with the Final Construction Documents which the Project Manager has not specifically requested to observe, and if the Project Manager considers it necessary or advisable that the covered Work be inspected or tested by others, the DESIGN-BUILDER, upon written request of the Project Manager, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective, the DESIGN-BUILDER shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be Defective, the DESIGN-BUILDER may be allowed an adjustment in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, if it makes a claim in accordance with the requirements of this Contract.

4.1.16 PATENT FEES AND ROYALTIES. The DESIGN-BUILDER shall pay all license fees and royalties and assume all costs associated with any invention, design, process, or device which is the subject of patent rights or copyrights held by others and is necessary for completion of the Work required by this Contract.

4.1.17 PROTECTION OF PERSONS AND PROPERTY

4.1.17.1 DESIGN-BUILDER shall be solely responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work. DESIGN-BUILDER shall take precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (i) employees of the DESIGN-BUILDER and its Professionals, Subconsultants, and Subcontractors, and any other persons on or about the Site, including but not limited to agents, employees and independent contractors of CITY, and of any other governmental authority or agency;
- (ii) the Work and the Project, including any and all materials and equipment to be incorporated therein; and
- (iii) other property at or adjacent to the Site, or any portion thereof.

4.1.17.2 Reserved.

4.1.17.3 The DESIGN-BUILDER shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property. DESIGN-BUILDER shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. DESIGN-BUILDER shall notify owners of adjacent property and utilities when execution of Work may affect them prior to start of Work. All damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the DESIGN-BUILDER, any Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by the DESIGN-BUILDER.

4.1.17.4 Reserved.

4.1.17.5 The DESIGN-BUILDER shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the Site. During construction, this person shall be the DESIGN-BUILDER's on-site superintendent unless otherwise designated in writing by the DESIGN-BUILDER to the Project Manager.

4.1.17.6 The DESIGN-BUILDER shall immediately notify the Project Manager of all events involving personal injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, or resulting in property damage of any amount, and shall file a written report on such injury or property damage with the Project Manager within five (5) days of the occurrence.

4.1.17.7 In emergencies affecting the safety of persons, the Work, or property at the Site or adjacent thereto, the DESIGN-BUILDER, is obligated to prevent or mitigate threatened damage, injury, or loss. DESIGN-BUILDER shall give the Project Manager written notice of the emergency situation and actions taken within 24 hours of the incident.

4.1.18 SECURITY. During Construction Work and through the Substantial Completion date, DESIGN-BUILDER shall be responsible for keeping the Site and the Project, as well as all materials located on or off the Site, secure from damage or theft. DESIGN-BUILDER agrees to repair any damage to the Site or the Project and to replace any materials damaged, lost or stolen from the Site or Project at its sole expense.

4.1.19 SUBSTITUTE MATERIALS AND EQUIPMENT. If the DESIGN-BUILDER wishes to furnish or use a proposed substitute of materials or equipment after the GMP has been established, it shall make written application to the Project Manager for consideration of such substitute. Requests for substitutions shall be subject to review and approval by the CITY and the Project Manager. No substitute shall be incorporated into the Design-Build Documents or ordered or installed without the prior written approval from the Project Manager. In addition to the information described below, the application shall contain an itemized estimate of all costs or credits that may result directly or indirectly from acceptance of such substitute, including costs of redesign, delays and maintenance all of which shall be considered by the Project Manager in evaluating the proposed substitute. Approval of any change in costs as a result of acceptance of the substitute by the Project Manager shall be by adjustment within the GMP or by Change Order.

4.1.19.1 All applications for substitution by the DESIGN-BUILDER shall be reviewed and approved by the Engineer of Record prior to its submittal to the Project Manager.

4.1.19.2 For proposed substitutions during construction, the DESIGN-BUILDER and Engineer of Record shall certify in writing that the proposed substitute will perform the duties imposed by the Final Construction Documents and shall be equal or equivalent to that specified.

4.1.20 USE OF THE SITE

4.1.20.1 The DESIGN-BUILDER shall confine its equipment, the storage of materials and equipment, and the operations of its workers to the areas permitted by law, ordinances, permits, or the requirements of the Contract. The DESIGN-BUILDER shall not unreasonably encumber the Site with materials and equipment. Any loss or damage to any equipment or materials of DESIGN-BUILDER or any Subcontractor is solely at the risk of the DESIGN-BUILDER.

4.1.20.2 The DESIGN-BUILDER shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The DESIGN-BUILDER shall not subject any part of the Project or adjacent property to stresses or pressures that will endanger them. Prior to beginning Work on the Project, DESIGN-BUILDER shall supply to the Project Manager a list of all employees, Subcontractors, and Subconsultants who will be working on the Site and shall state the anticipated duration of each individual's Work on the Site. DESIGN-BUILDER shall update this list from time to time, as necessary, to reflect any changes to the list during the course of the Work. DESIGN-BUILDER shall be responsible for securing the Site prior to departure each day.

4.1.21 SUBMITTALS AND SAMPLES

4.1.21.1 The DESIGN-BUILDER shall provide Submittals at a time sufficiently early enough to allow review, and to accommodate the rate of construction progress as indicated in the Project Schedule.

4.1.21.2 After checking and verifying all field measurements, the DESIGN-BUILDER shall stamp with verification approval and promptly submit to the Project Manager for review, who shall review and either reject or provide stamped approval of all Submittals and samples required by the Contract. The DESIGN-BUILDER shall stamp the Submittal to certify in writing that the Submittal will perform the duties imposed by the Final

Construction Documents. If rejected by the Project Manager, the Submittal shall be corrected, with the revisions to the former Submittal highlighted prior to resubmittal. The Project Manager shall review the resubmittal and either reject or provide stamped approval. The data shown on or with the Submittals shall be complete with respect to dimensions, materials and any other information necessary to enable the Project Manager to review the Submittal as required. At the time of each submission, the DESIGN-BUILDER shall give notice to the Project Manager of all deviations that the Submittal or sample may have from the requirements of the Contract.

4.1.21.3 The Project Manager will review and either approve or reject each Submittal and sample. The Project Manager's approval will not relieve the DESIGN-BUILDER of its responsibility for any deviations from the requirements of the Final Construction Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The DESIGN-BUILDER shall make any corrections required by the Project Manager and resubmit the required number of corrected copies until approved. Except as otherwise provided within the Contract, the Project Manager will return prints of each Submittal to the DESIGN-BUILDER, with comments noted thereon, within 14 days following their receipt by the Project Manager.

4.1.21.4 The Project Manager shall review and either approve or reject all Submittals and samples. The Project Manager's approval shall not relieve the DESIGN-BUILDER of its responsibility to secure separate approvals of applicable Professional(s), or for any deviations from the requirements of the Final Construction Documents.

4.1.21.5 No Work requiring a Submittal or sample submission shall commence until the submission has been approved by the Project Manager. Rejection of Submittals by the Project Manager shall not relieve the DESIGN-BUILDER of its responsibility to meet the milestones within the Project Schedule. A copy of each approved Submittal and each approved sample shall be kept in good order by the DESIGN-BUILDER at the Site and shall be available to the Project Manager.

4.1.21.6 To facilitate review, the DESIGN-BUILDER shall number consecutively each Submittal. This numbering system shall be in order of Submittal. Any resubmittal required shall have the same number as the original Submittal followed by a notation signifying that this is a second or third Submittal (e.g. #14 2nd Submittal). All Submittals shall provide a space for the DESIGN-BUILDER's and Project Manager's review stamp, preferably on the first page. The review of a particular Submittal will be undertaken only if the proper form is attached.

4.1.22 WORK BY OTHERS

4.1.22.1 The CITY may perform additional work related to the Project with its own forces or may authorize additional work by others directly contracting with DESIGN-BUILDER. The DESIGN-BUILDER shall provide the other contractors who are parties to such direct contracts, including, but not limited to, the other contractor's employees, agents, subcontractors, and suppliers (or the CITY's forces performing the additional Work), access to the Site and reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs. The DESIGN-BUILDER is not entitled to exclusive use of

the Site. The DESIGN-BUILDER is not responsible for any actions of other contractors which may compromise the security or safety on the Site.

If any part of the DESIGN-BUILDER's Work depends (for proper execution or results) upon the Work of any such other contractor (or the CITY), the DESIGN-BUILDER will inspect and promptly report to the Project Manager in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. DESIGN-BUILDER's failure to so report shall constitute an acceptance of the other Work, except as to defects and deficiencies which may appear in the other Work after the execution of DESIGN-BUILDER's Work. DESIGN-BUILDER may be entitled to an extension of time and/or reasonable additional compensation as agreed upon by the DESIGN-BUILDER and the CITY.

4.1.22.2 DESIGN-BUILDER shall perform all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by the Work of other contractors or the CITY. DESIGN-BUILDER shall not endanger any Work of others by cutting, excavating, or otherwise altering such other Work and will only cut or alter such other Work with the written consent of the Project Manager, and only if such alteration will not increase the GMP or extend the Project Schedule.

4.1.23 BINDING THE PROFESSIONALS, SUBCONSULTANTS AND SUBCONTRACTORS. The DESIGN-BUILDER agrees to bind specifically every Professional, Subconsultant and Subcontractor to the applicable terms and conditions of the Contract for the benefit of the CITY. All Work performed for the DESIGN-BUILDER by a Professional, Subconsultant or Subcontractor shall be pursuant to an appropriate written Contract between the DESIGN-BUILDER and the Professional, Subconsultant or Subcontractor as applicable. The CITY shall be expressly named as a third-party beneficiary to any Contract between the DESIGN-BUILDER and its Professional and Subconsultant.

4.2 DUTIES AND OBLIGATIONS OF DESIGN-BUILDER SPECIFICALLY RELATED TO PROFESSIONAL SERVICES.

4.2.1 The Professional owes a duty to the CITY to meet the Project's intended quality and scope and to serve the best interest of the CITY in meeting the CITY's needs. The Professional shall provide input at all stages of the Project and shall be involved in the decision-making process in order to provide the highest and best value to the CITY within the requirements of the Contract.

4.2.2 RULES OF THE BOARD OF PROFESSIONAL REGULATION AND DUTY TO PROVIDE SIGNED AND SEALED DOCUMENTS. DESIGN-BUILDER's Professional shall sign and seal all design documents prepared by DESIGN-BUILDER per the requirements of all laws, rules and regulations of any governmental authority with jurisdiction over the Project, and DESIGN-BUILDER shall assume all responsibility for such plans and design documents. All Final Construction Documents prepared by DESIGN-BUILDER shall be signed and sealed per the requirements of Chapters 471 and

481, Florida Statutes, and the related Rules of the Florida Department of Business and Professional Regulation.

4.2.3 DOCUMENTATION RELATED TO PROPOSED MODIFICATIONS TO DESIGN-BUILD DOCUMENTS AND CONSTRUCTION. During this Project, the DESIGN-BUILDER, through the appropriate Professional, shall maintain a detailed log and documentation of all communications between DESIGN-BUILDER and CITY related to any and all actual and proposed changes and modifications to any aspect of the Design-Build Documents and construction of the Project. Copies of the above shall be transmitted to the Project Manager as part of DESIGN-BUILDER's monthly Progress Reports.

4.2.4 DESIGN REVIEWS/APPROVALS. As set forth below, there shall be at least the following formal design reviews and approvals by the CITY for Design of the Project:

- (i) Plans at 30, 60, and 90 percent completion; and
- (ii) Approval of Final Construction Documents by CITY following incorporation of any changes necessitated by former design reviews or the permitting process (which changes shall be highlighted for CITY's review).

4.2.5 TIME FRAMES FOR DESIGN APPROVALS/REFLECTION ON PROJECT SCHEDULE. DESIGN-BUILDER shall reflect the foregoing design reviews and approvals on the Project Schedule and shall allow the following times from date of submittal for the CITY to receive the Design-Build Documents submitted for each design approval, and review them, and for the CITY to approve, approve with conditions, or disapprove the submitted Design-Build Documents:

For approval of Final Construction Documents: 14 days (provided DESIGN-BUILDER shall highlight those changes to the Construction Documents that were necessitated by the permitting process).

DESIGN-BUILDER shall also be responsible for taking any actions necessary to maintain its Project Schedule, including any acceleration necessary for subsequent resubmittal of the aforementioned by DESIGN-BUILDER and re-review by CITY, in the event of initial disapproval.

4.2.6 DESIGNATION OF PROFESSIONAL(S) OF RECORD AND PROVISION OF BASIC SERVICES. Prior to beginning Work, DESIGN-BUILDER shall designate in writing the name of its Engineer of Record and other Professionals who will be responsible for signing and sealing Design-Build Documents. DESIGN-BUILDER shall indicate the specific tasks and areas of responsibilities for these individuals and firms. The DESIGN-BUILDER shall provide Basic Design and Construction Administration services under this Contract as outlined below.

4.2.7 PROFESSIONAL SERVICES AT DESIGN SERVICES - PHASE AND PREPARATION OF FINAL CONSTRUCTION DOCUMENTS

4.2.7.1 DESIGN-BUILDER agrees to perform all the design services and provide all the materials requested by RFP No. 21174 and described in the Scope of Work which is attached hereto as **Exhibit A** and incorporated herein by this reference, which are hereinafter collectively referred to as the "Scope of Services."

4.2.7.2 Based upon review by the CITY, and obtaining all permits and regulatory approvals, DESIGN-BUILDER shall incorporate any review comments into all the Construction Documents and resubmit them for CITY's approval. When approved, the revised documents shall then constitute the Final Construction Documents.

4.2.8 PROFESSIONAL SERVICES for CONSTRUCTION ADMINISTRATION.

4.2.8.1 The Construction Phase shall commence upon issuance of Notice to Proceed with Phase II – Construction Services by CITY. The DESIGN-BUILDER and each appropriate Professional shall provide Construction Administration services as provided herein, as required by the Final Construction Documents, and as required by authorities having jurisdiction over the Project.

4.2.8.2 The DESIGN-BUILDER shall visit the Site at intervals appropriate to the stage of construction, or as otherwise required by CITY and the Final Construction Documents, to become generally familiar with the progress and quality of the Work during the Construction Phase, and to determine in general if the Work is proceeding in accordance with the Final Construction Documents. On the basis of such on-Site observations, the DESIGN-BUILDER shall keep the CITY informed by means of regular written status reports of the progress and quality of the Work and shall guard the CITY against defects and deficiencies in the execution of the Work.

4.2.8.3 The submission of an Application for Payment by the DESIGN-BUILDER shall constitute a representation by the DESIGN-BUILDER that the construction Work has progressed to the point indicated and that the construction Work is in accordance with the Final Construction Documents.

4.2.8.4 The DESIGN-BUILDER shall be required to identify Work that is not in accordance with the Final Construction Documents and to give written notice thereof to the Project Manager. Whenever, in the opinion of the Project Manager, it is necessary or advisable to ensure the Work's conformance with the intent of the Final Construction Documents, the DESIGN-BUILDER shall have a duty to require a special inspection or testing of the Work at no additional cost to the CITY and at no delay to the Project Schedule.

4.2.8.5 Prior to incorporation into the Work, and prior to approval by the CITY, the appropriate Professional(s) shall review and approve all Submittals (including shop drawings, samples and test reports), substitutions, and Change of Work proposals for compliance with the design intent and governing laws, codes, regulations and ordinances, and if applicable, shall perform activities necessary for DESIGN-BUILDER to obtain approvals for such from authorities having jurisdiction over the Project.

4.2.8.6 The Engineer of Record shall approve certifications of Substantial Completion, subject to acceptance by the CITY.

4.2.8.7 Prior to Final Completion, the appropriate Professional(s) shall review the completed Punch List Work for conformance with the Final Construction Documents, and the DESIGN-BUILDER shall certify to CITY in writing that the Work, including all Punch List items, has been completed in accordance with the Final Construction Documents, the Contract, all Change Orders, and all applicable laws, codes, regulations and ordinances. Such certification shall be subject to acceptance by CITY.

4.2.8.8 The appropriate Professional(s) shall review warranty Work provided by the DESIGN-BUILDER for compliance with the Final Construction Documents during the term of this Contract, including any warranty periods set forth herein.

4.2.8.9 The appropriate Professional(s) shall review and approve the DESIGN-BUILDER'S record documents and Final As-Built Construction Documents prior to submittal to the CITY. In addition to other deliverables required during the Construction Phase as described in other portions of this Contract, the DESIGN-BUILDER shall submit the following deliverables with the assistance of the appropriate Professional(s), as required by this Contract and the Final Construction Documents:

- (i) Project meeting minutes which are required for each meeting attended, to include a listing of attachments and attendees.
- (ii) Reports of all field meetings and visits.
- (iii) Monthly construction status reports indicating progress of the Work, deficiencies observed, and actions taken or required.
- (iv) Shop drawings, Substitutions and other Submittals.
- (v) Monthly logs of all Requests for Information, shop drawing logs, and action item lists.
- (vi) Monthly logs indicating the status of all Proposed Change Requests and Change Orders.
- (vii) Monthly schedule of all tests and inspections, and copies of all resulting reports.
- (viii) Safety meeting minutes.

4.3 DUTIES AND OBLIGATIONS OF DESIGN-BUILDER SPECIFICALLY RELATED TO CONSTRUCTION SERVICE

4.3.1 CRITICAL PATH METHOD (CPM) CONSTRUCTION SCHEDULE. The Construction Phase shall commence with issuance of Notice to Proceed with Construction Services by CITY. Subsequent to approval of Final Construction Documents and prior to the commencement of construction, DESIGN-BUILDER shall provide a CPM construction schedule illustrating the construction portion(s) of the Project Schedule. The CPM Schedule shall be prepared in accordance with the standards outlined in the Associated General Contractors of America's publication, "The Use of CPM in Construction," and shall reflect timely completion in accordance with the Contract. During the Construction Phase, the CPM Schedule shall be updated on a monthly basis and submitted with the monthly Progress Report.

4.3.2 FINAL SCHEDULE OF VALUES. Prior to Issuance of Notice to Proceed with Construction Services, DESIGN-BUILDER shall submit a Final Schedule of Values, in CSI format, for review and approval by CITY.

4.3.3 TEMPORARY UTILITIES. DESIGN-BUILDER shall provide all facilities and equipment that are necessary and adequate for the performance of the Work, and which conform to the requirements of all applicable codes and authorities having or claiming

jurisdiction, including but not limited to, power and lighting, water supply, sanitation and communications.

4.3.4 SUPERVISION AND SUPERINTENDENCE

4.3.4.1 The DESIGN-BUILDER shall supervise and direct the Work efficiently and with its best skill and attention. The DESIGN-BUILDER shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction unless specifically addressed otherwise in the Contract. The DESIGN-BUILDER shall be responsible for seeing that the finished Work complies with the Contract. The DESIGN-BUILDER shall cooperate with, and be responsible for coordination of the Work with, other contractors and/or utilities at the Site. The DESIGN-BUILDER shall attend meetings as requested by the Project Manager, in addition to those required by this Contract.

4.3.4.2 The DESIGN-BUILDER shall designate a competent English-speaking resident superintendent to supervise the Work at all times during its progress and who shall not be replaced without written notice to the Project Manager except under extraordinary circumstances. The superintendent shall be the DESIGN-BUILDER's representative at the Site and shall have authority to act on behalf of the DESIGN-BUILDER. All written communications given to the superintendent shall be as binding as if given to the DESIGN-BUILDER.

4.3.4.3 The DESIGN-BUILDER shall designate a 24-hour contact person to be on call for 24-hour emergencies. DESIGN-BUILDER shall provide contact information for the contact person and shall keep the information current upon any changes.

4.3.5 LABOR, MATERIALS AND EQUIPMENT. The DESIGN-BUILDER shall provide and pay for competent, suitable, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The DESIGN-BUILDER shall at all times maintain good discipline and order on the Site.

4.3.6 DIVISION OF SUBCONTRACTS. The divisions and sections of the specifications and the identifications of any drawings that make up the Final Construction Documents shall not control the DESIGN-BUILDER in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

4.3.7 IDENTIFICATION OF SUBCONTRACTORS, VENDORS AND SUPPLIERS. After receipt of the Notice to Proceed with Construction Services by CITY, the DESIGN-BUILDER shall submit to the Project Manager a list of all Subcontractors and all such other persons and organizations whom the DESIGN-BUILDER intends to utilize in performing portions of the Work. The DESIGN-BUILDER shall indicate the corresponding line item as shown on the Final Schedule of Values that each Subcontractor will be working under.

4.3.8 Reserved.

4.3.9 EXISTING UTILITIES. Prior to commencing the Construction Phase, the DESIGN-BUILDER shall be responsible for verification and location of all utilities to the extent that the utilities can be reasonably located. The DESIGN-BUILDER shall, at a minimum, contact all utility companies for the purpose of determining all utilities located by the utility companies. Furthermore, the DESIGN-BUILDER shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting

all local utilities, and by prospecting to ascertain that the utilities shown or otherwise identified are in the area shown. The CITY shall not be liable for any damage or delay caused by any utility line that was or should have been identified by the DESIGN-BUILDER using reasonable means. If DESIGN-BUILDER fully performs its due diligence investigation with respect to existing utilities prior to the commencement of Work, and DESIGN-BUILDER is subsequently delayed by an unknown existing utility conflict, the DESIGN-BUILDER may make a claim in accordance with the requirements of the Contract for an extension of time and reasonable compensation or both but in no event will the DESIGN-BUILDER be entitled to any damages from the CITY.

4.3.10 INSPECTION OF CONSTRUCTION. In accordance with the DESIGN-BUILDER'S Site Safety Plan, DESIGN-BUILDER shall permit the CITY, its agents, employees, representatives and subconsultants, and any interested governmental authority or regulatory agency, to enter upon the Site at any time to inspect the Work, the Project and all materials used or to be used in the construction of the Project that may be stored on the Site. The DESIGN-BUILDER shall provide proper facilities for such access and observation of the Work and also for any inspection or testing.

4.3.11 DUTY TO RESPOND. DESIGN- BUILDER shall promptly prepare and submit to the CITY, at CITY's request, reasonable Change of Work Proposals.

4.3.12 PROTECTION OF EXISTING FACILITIES. Project work will take place at an active Water Reclamation Facility that is to remain in operation at all times. Construction activities may require work around active facilities not associated with this Project. As such, DESIGN-BUILDER shall protect all existing utilities, and any portions of the Project, at or adjacent to the Site which are not designated for removal. Any damage to existing facilities that impacts the operation of the treatment plant, as determined by the Project Manager, shall be immediately fixed under an emergency basis by the DESIGN-BUILDER. The DESIGN-BUILDER shall restore damaged or temporarily relocated utilities and affected areas to a condition equal to or better than they were prior to such damage or temporary relocation. The CITY shall maintain permanent property insurance on all the existing facilities.

4.3.13 QUALITY OF MATERIALS AND EQUIPMENT. All materials and equipment shall be new and of good quality, unless otherwise provided in the Contract. If required by the Project Manager, the DESIGN-BUILDER shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.3.14 COMPLY WITH MANUFACTURER INSTRUCTIONS. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors.

4.3.15 CLEANING UP. The DESIGN-BUILDER shall maintain the Site free from accumulations of waste materials, rubbish, and other debris resulting from the Work, on a daily basis or as required. At the completion of the Work, the DESIGN-BUILDER shall remove all waste materials, rubbish, and debris from the Site, as well as all tools, construction equipment and machinery, and surplus materials, and will leave the Site clean and ready for occupancy by the CITY. In addition to any other rights available to CITY under the Contract, the DESIGN-BUILDER's failure to maintain the Site may result in withholding of any amounts due DESIGN-BUILDER. The DESIGN-BUILDER will

restore to original condition those portions of the Site not designated for alteration by the Contract.

4.3.16 RECORD DOCUMENTS. The DESIGN-BUILDER shall keep at the Site and in good order one record copy of the Final Construction Documents and all Shop Drawings. These documents shall be annotated on a continuing basis to show all changes made during the construction process. DESIGN-BUILDER shall provide record documents whenever requested. These shall be available to the Project Manager for inspection during the Construction Phase and shall be submitted to the CITY prior to acceptance of Final Completion by the CITY.

4.3.17 FIELD OFFICE. The DESIGN-BUILDER shall provide a field office at the job site fully equipped with facilities including but not limited to the following: power, water, internet, and bathroom facilities.

4.4 RESPONSIBILITY OF DESIGN-BUILDER FOR QUALITY AND CONFORMANCE OF WORK. DESIGN-BUILDER represents that it shall be responsible for:

- (i) the functional soundness and structural integrity of the Work, the Project and the Final Construction Documents,
- (ii) the professional quality, technical adequacy, accuracy and legal sufficiency and compliance of the Work, the Project and the Final Construction Documents,
- (iii) timely completion and coordination of the Project and the Final Construction Documents, and
- (iv) other Work and materials performed, provided, and/or furnished by DESIGN-BUILDER or its Professionals, Subconsultants, and/or Subcontractors.

4.4.1 CORRECTION OF WORK AFTER FINAL COMPLETION. CITY agrees to promptly provide DESIGN-BUILDER with written notice of its discovery of defective or non-conforming Work after the Final Completion provided the discovery falls within the time frames identified in paragraph 11.1.15. The DESIGN-BUILDER shall promptly, without cost to the CITY and in accordance with the CITY's written instructions, either correct such Defective or non-conforming Work, or remove it from the Site and replace it with non-Defective Work. If the DESIGN-BUILDER does not promptly comply with the terms of such instructions, the CITY may have the Defective Work corrected, removed, or replaced. The DESIGN-BUILDER will pay the actual cost of correction, removal or replacement of the Defective Work.

4.4.2 ACCEPTANCE OF DEFECTIVE WORK. If, instead of requiring correction or removal and replacement of Defective Work the CITY prefers to accept it, the CITY may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order incorporating the necessary revisions in the Contract, including an appropriate reduction in the GMP, shall be issued. If the acceptance occurs after approval of final payment, the DESIGN-BUILDER shall pay to the CITY an appropriate sum to compensate for the defect in the Work.

4.4.3 DESIGN-BUILDER's DUTY TO PROCEED WITH WORK IN THE EVENT OF DISPUTE. In the event of a dispute as to the character, quality, amount or value of the Work, the CITY shall have the right to decide such issues and the DESIGN-BUILDER shall proceed diligently with performance of the Work as directed by the CITY, provided DESIGN-BUILDER may reserve its rights to object to CITY's decision and directive by so notifying the CITY in writing.

4.4.4 CITY's REVIEW AND APPROVAL OF DESIGN-BUILD DOCUMENTS SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY's receipt, review, and approval of the Final Construction Documents, including all Design-Build Documents, and any incidental professional services, Work and materials furnished hereunder by DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors, shall not in any way relieve DESIGN-BUILDER of its responsibility for the adequacy, sufficiency, efficacy, completeness and/or accuracy of the Design-Build Documents.

4.4.5 CITY's INSPECTION AND OBSERVATION OF CONSTRUCTION SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY's inspection and observation of Defective Work, absent an express written waiver of such defect in clear and unambiguous terms, shall not relieve DESIGN-BUILDER of responsibility for the adequacy, sufficiency, efficacy, completeness and/or accuracy of the Work, or any portion thereof.

4.4.6 CITY's PAYMENT SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY's payment for any of DESIGN-BUILDER's Work shall not be intended, and shall not be construed, to operate as a waiver of any of the CITY's rights under this Contract, or any cause of action it may have arising out of DESIGN-BUILDER's performance or non-performance under this Contract.

ARTICLE 5 CITY's DUTIES AND RESPONSIBILITIES PROJECT MANAGER'S STATUS/ DESIGNATION OF PROJECT MANAGER

5.1 CITY'S Project Manager

5.1.1 CITY agrees after the execution of this Contract to advise DESIGN-BUILDER, in writing, of the person designated to serve and act as Project Manager. The CITY shall issue all communications to the DESIGN-BUILDER and take all actions through the Project Manager except for authorization required by Change Order pursuant to Article 10 – Changes to the Work and other limitations expressly provided for in this Contract.

5.1.2 The Project Manager shall be available within a reasonable period of time, with reasonable prior written notice given by DESIGN-BUILDER, to meet and/or consult with DESIGN-BUILDER on matters pertaining to the Work provided and performed by DESIGN-BUILDER.

5.1.3 The Project Manager shall have the authority to manage and administer the Project, unless the DESIGN-BUILDER is otherwise notified by the CITY Manager or appropriate designee. The Project Manager will provide direct contact and communication between CITY and DESIGN-BUILDER with respect to providing information, assistance, guidance, coordination, and review of the DESIGN-BUILDER's Work pursuant to this Contract and any authorized Change Order(s). The Project Manager shall not be

authorized to, and shall not, issue any verbal or written request or instruction or approval to DESIGN-BUILDER that might have the effect, or that might be interpreted to have the effect, of modifying or changing this Contract in any respect.

5.2 RESIDENT ENGINEER AND OTHER PERSONNEL. The CITY may furnish a full or part-time Resident Engineer and other personnel to assist the Project Manager in carrying out his/her duties pertaining to the Project.

5.3 FURNISHING OF SITE. The CITY shall furnish the Site upon which the construction Work is to be done, rights-of-way for access thereto, and such other lands which are designated for use by the DESIGN-BUILDER. The DESIGN-BUILDER shall provide for all additional lands and access thereto that may be required for temporary construction facilities, or storage of materials and equipment.

5.4 MAKING PAYMENTS. The CITY shall make payments to the DESIGN- BUILDER in accordance with the provisions in Article 8.

5.5 PROJECT MANAGER'S STATUS

5.5.1 The Project Manager shall review the Design-Build Documents and shall recommend approval or rejection of the Design-Build Documents.

5.5.2 The Project Manager shall review the DESIGN-BUILDER's Submittals including requests for substitutions, shop drawings, product data, samples and test reports, as necessary in the opinion of the Project Manager to determine conformance with the Final Construction Documents.

5.5.3 The Project Manager shall conduct field visits as necessary to determine that in the opinion of the Project Manager, construction is progressing in accordance with the Final Construction Documents. The Project Manager will attend regular progress meetings.

5.5.4 The Project Manager shall review all Applications for Payment submitted by the DESIGN-BUILDER and shall provide proper certification to the best of the Project Manager's knowledge and in the opinion of the Project Manager in order to support the approval of such payment applications or shall provide the basis for recommending rejection.

5.5.5 Reserved.

5.5.6 The Project Manager shall conduct field visits to determine the dates of Substantial and Final Completion, receive and review written warranties and related closeout documents required by the Final Construction Documents and this Contract, and shall review and forward the DESIGN-BUILDER's final Application for Payment to the CITY.

5.5.7 The Project Manager shall certify to the best of his/her knowledge that the completed facility meets the intent of the Final Construction Documents.

5.5.8 Limitations on Project Manager's Responsibilities. Neither the Project Manager's authority to act under this Article or elsewhere in the Contract, nor any decision made in good faith to exercise such authority, shall give rise to any duty or responsibility of the Project Manager to the DESIGN-BUILDER, any Professional, Subconsultant or Subcontractor, or any of their agents or employees.

5.5.8.1 The Project Manager shall not be responsible for the DESIGN-BUILDER's construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. The Project Manager shall not be responsible for the DESIGN-BUILDER's failure to perform the Work in accordance with the Contract.

5.5.8.2 The Project Manager shall not be responsible for the acts or omissions of the DESIGN-BUILDER, any Professionals, Subconsultants or Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

ARTICLE 6 RELATIONSHIP OF PARTIES

6.1 CITY'S RIGHTS. Notwithstanding anything to the contrary set forth herein, the CITY shall have the absolute and continuing right, but not the obligation, to inspect all aspects of the design and construction of the Project, and DESIGN-BUILDER shall grant to the CITY full and unlimited access to the Site and all construction Sites at all times to enable the CITY to fully exercise its rights hereunder. The DESIGN-BUILDER shall also grant the CITY reasonable access to the offices of the Professional(s) for observation of the progress of design work. The DESIGN-BUILDER understands and agrees that the CITY shall have the right, but not the obligation, to fully inspect the Work to its satisfaction prior to taking possession of any part thereof.

6.2 CITY AS THIRD-PARTY BENEFICIARY; CORRELATION AND INTENT OF DOCUMENTS. Nothing contained in this Contract or any or all of DESIGN-BUILDER'S Contracts with its Subconsultants or Professionals shall create a contractual relationship between the CITY and any third party. However, the parties understand and agree that the CITY is an intended third-party beneficiary of all of DESIGN-BUILDER'S Contracts and subcontracts for Design-Build services. DESIGN-BUILDER shall require that all of its contracts with its Professionals and Subconsultants expressly provide for the CITY to be an intended third-party beneficiary of such contracts so as to enable CITY to maintain a cause of action directly against such Professionals and Subconsultants as necessary for any errors and omissions related to this Project. DESIGN-BUILDER shall provide evidence of such contractual provisions to CITY upon request, and DESIGN-BUILDER agrees not to modify such provisions.

6.2.1 DESIGN-BUILDER shall incorporate all the applicable obligations of this Contract into all of its respective contracts, subcontracts, supply contracts, purchase orders and insurance policies.

6.2.2 The CITY shall not be responsible or liable for, or assume any obligations whatever for, any Contract entered into between any Professional, Subconsultant, or Subcontractor and the DESIGN-BUILDER, or any other Professional, Subconsultant or Subcontractor. The CITY shall not be responsible for any payments due and/or owing to any Professional, Subconsultant or Subcontractor.

6.3 DESIGN-BUILDER AS INDEPENDENT CONTRACTOR. DESIGN-BUILDER and its Professionals, Subconsultants, and Subcontractors shall remain independent contractors and shall have no power to bind the CITY, nor shall any of them represent that they have any power to bind the CITY, or to assume or create any obligations, expressed or implied, on behalf of the CITY. DESIGN-BUILDER, in providing and

performing the Work required pursuant to this Contract, shall only represent CITY in the manner and to the extent specifically set forth in writing in this Contract and as provided in any written Change Order(s) issued hereunder. CITY neither assumes nor accepts any obligation, commitment, responsibility or liability which may result from any representation(s) by DESIGN-BUILDER not specifically provided for and authorized as stated hereinabove. DESIGN-BUILDER shall promote the best interests of the CITY with respect to any performance of the Work under this Contract.

6.4 NO PARTNERSHIP OR JOINT VENTURE. Nothing contained in this Contract shall be deemed to create a partnership or joint venture relationship between the DESIGN-BUILDER and the CITY.

6.5 THE CITY'S ACTION FOR THE CITY'S OWN PROTECTION ONLY. The authority herein conferred upon the CITY and any action taken by the CITY or any of its agents or employees in making inspections of the Site, procuring sworn statements and/or waivers of lien, and/or reviewing and approving any portion of the Design-Build Documents before or after their creation will be taken by the CITY, Project Manager, and by their agents or employees for their own protection only. Neither the CITY, nor the Project Manager, nor any of their agents or employees, shall be deemed to have assumed any responsibility of DESIGN-BUILDER or any other person or entity as a result of any such action herein authorized or taken by them with respect to furthering the proper construction and equipping of the Project, performance of any construction, contracts, or prevention of claims from construction liens.

6.6 GOOD FAITH AND FAIR DEALING. CITY and DESIGN-BUILDER shall assume toward one another a relationship of good faith and fair dealing.

ARTICLE 7 PROJECT SCHEDULE/CONTRACT TIME/COMPLETION

7.1 PROJECT SCHEDULE DETAIL

7.1.1 Prior to the issuance of the Notice to Proceed with Construction Services, DESIGN-BUILDER shall submit for review and acceptance by CITY the Project Schedule Detail. The Project Schedule Detail shall be submitted and shall be in conformance with and incorporate the milestones indicated in the Project Schedule Summaries. The Project Schedule Detail shall be in conformance with the requirements of the RFP Documents and this Contract.

7.1.2 DESIGN-BUILDER acknowledges and agrees that CITY, by accepting and approving the Project Schedule Detail as defined in Article 2, has no duty to independently verify the accuracy or completeness of the Project Schedule Detail. Further, such acceptance and approval shall not relieve DESIGN-BUILDER of its obligation to provide an accurate and complete Project Schedule Detail and to timely complete the Project.

7.2 CONDITIONS FOR NOTICES TO PROCEED

7.2.1. Commencement of Work and Notices to Proceed are set forth in Article 3 of this Contract.

7.2.2 Notice to Proceed with Phase I – Design Services. Notice to Proceed with Phase I – Design Services will be issued by CITY only after DESIGN-BUILDER has delivered to

the CITY any documentation required by the City not previously provided such as bonds or insurance certificates. Notice to Proceed with Phase I –Design Services shall be issued by the CITY within fifteen (15) days of receipt of such documents.

7.2.3 Notice to Proceed with Phase II – Construction Services. In addition to the conditions set forth in Article 3 of this Contract, the following conditions must also be met before the CITY will issue Notice to Proceed with Construction Services.

(i) Written approval by CITY of all Design-Build Documents necessary or related to such portion of the Work, including but not limited to required Submittals and the Final Construction Documents;

(ii) Approval by CITY of DESIGN-BUILDER’s Final Schedule of Values and CPM Schedule;

(iii) Issuance of all applicable permits and receipt of all applicable approvals relating to such portion of the Work from governmental agencies having or claiming jurisdiction over the Project or Site;

(iv) Written confirmation from DESIGN-BUILDER’s insurance agents and/or companies that all insurance coverages required under this Contract are in full force and effect; and

(v) Written certification from the DESIGN-BUILDER that there are no obstacles to the Substantial Completion and Final Completion within the Contract Time.

(vi) Receipt of payment and performance bonds required by Section 13.1.7.

7.3 CONTRACT TIME

7.3.1 Contract Time shall commence on the date indicated in the Notice to Proceed with Design Services.

7.3.2 Failure of DESIGN-BUILDER to achieve the Final Completion Date set in the Project Schedule will result in substantial costs to CITY. DESIGN-BUILDER acknowledges and agrees that time is of the essence for completion of all of the duties and obligations of the DESIGN-BUILDER contained in the Contract.

7.4 SUBSTANTIAL COMPLETION

7.4.1 NOTICE; INSPECTION; CERTIFICATION. When the DESIGN-BUILDER believes that Work is Substantially Complete, the Engineer of Record shall certify in writing to the Project Manager that Work is Substantially Complete in accordance with this Contract and shall request the Project Manager to approve the appropriate Certificate of Substantial Completion. Thereafter, the DESIGN-BUILDER shall schedule an inspection with the Project Manager, the Professional(s), and any other personnel requested by the Project Manager. The Project Manager, assisted by other personnel as required, along with the DESIGN-BUILDER, shall make an inspection of the Project to determine the status of completion in accordance with the Final Construction Documents and this Contract. If the Project Manager does not consider the Work Substantially Complete, the Project Manager will notify the DESIGN-BUILDER in writing, giving specific reasons why the Work is not Substantially Complete. If the CITY considers the Works Substantially Complete, the appropriate Certificate of Substantial Completion shall be approved by the

Project Manager and issued to the DESIGN-BUILDER. This Certificate shall fix the date of Substantial Completion and will define and identify deficiencies and Punch List items for which DESIGN-BUILDER shall be responsible.

7.4.1.1 CITY may not unreasonably refuse to perform punch list requirements to prevent DESIGN-BUILDER from reaching Final Completion. DESIGN-BUILDER agrees to maintain exclusive supervision and control over the Project as necessary until the date of Substantial Completion. All warranties and guaranties shall begin to run on the date of Substantial Completion.

7.4.2 SAFE AND PROPER USE. Substantial Completion cannot occur until all conditions necessary for safe and proper use, maintenance and operations are in place.

7.5 PARTIAL UTILIZATION. Where a portion of the Project is sufficiently completed to allow use, but significant other portion(s) remain uncompleted, the Project Manager may direct the DESIGN-BUILDER to permit the CITY to take control of that portion, operate and utilize it (take Beneficial Occupancy), when the CITY believes such use will not significantly interfere with construction of the other parts of the Project. If the DESIGN-BUILDER is of the opinion that said Beneficial Occupancy is not in the CITY's best interests, it shall give written notice of such opinion and include a statement of all reasons why certification of Beneficial Occupancy should not be issued. Otherwise, the DESIGN-BUILDER and the Engineer of Record shall certify to the CITY that all critical elements of that part of the Project are complete to the extent that the CITY may take Beneficial Occupancy, and request the Project Manager to approve a Certificate of Beneficial Occupancy for that part of the Project. Thereafter, the Project Manager, assisted by other personnel as required, along with DESIGN-BUILDER will make an inspection of that part of the Project to determine the status of completion. If the Project Manager considers that part of the Project to be ready and appropriate for Beneficial Occupancy, the Project Manager will approve and deliver to the DESIGN-BUILDER a Certificate of Beneficial Occupancy to that effect, fixing the date of Beneficial Occupancy as to that part of the Project, attaching a list of items to be completed or corrected before final payment, and fixing responsibility between the CITY and DESIGN-BUILDER for any outstanding obligations on that part of the Project. The CITY shall have the right to occupy and use the portion of the Project after date of Beneficial Occupancy for that portion, but the Project Manager will allow the DESIGN-BUILDER reasonable access to complete or correct items on the list. Acceptance of Beneficial Occupancy shall not negate the DESIGN-BUILDER's obligation to meet milestone requirements, including Substantial and Final Completion Dates as set forth in the herein. Where Beneficial Occupancy has been established for a portion of the project, warranties and guarantees for that portion shall commence on the date of Beneficial Occupancy unless otherwise provided for in the Contract.

7.6 FINAL COMPLETION

7.6.1 Notice; Inspection. When the DESIGN-BUILDER believes the Work is complete, the DESIGN-BUILDER and Engineer of Record shall certify in writing to the Project Manager that the Work is complete in accordance with this Contract and shall request the Project Manager to approve the appropriate Certificate of Final Completion. Thereafter, the DESIGN-BUILDER shall schedule a final inspection with the Engineer of Record and

other Professionals, Project Manager, the Project Manager, and any other personnel requested by the Project Manager. The Project Manager shall, after such inspection, notify the DESIGN-BUILDER in writing of any Work this inspection reveals to be Defective, or any other Work not in accordance with the Final Construction Documents and this Contract. The DESIGN-BUILDER shall immediately take such action as may be necessary to remedy such defects and bring the Project into full compliance with Final Construction Documents and this Contract and then request another inspection.

7.6.2 Final Completion of the Work shall be achieved by the DESIGN-BUILDER when all Work required under this Contract has been completed to the CITY's satisfaction.

7.6.3 After the Project Manager has determined that all Work has been completed, the Project Manager will approve and issue the Certificate of Final Completion for the Work.

ARTICLE 8 COST OF WORK AND METHOD OF PAYMENT

8.1 DESIGN BUILDERS Compensation. The total cost to CITY and the total compensation to DESIGN-BUILDER for the Work necessary to complete the Project, , shall not exceed the GMP or the sum of Design-Build Fee and Cost of Work, whichever is less. An Initial GMP will be prepared by DESIGN-BUILDER when the 60% plans are completed and the final GMP at 90% plans. After negotiation and approval by both Parties, the mutually agreed upon final GMP shall be added to the Contract by amendment.

8.2 DESIGN-BUILD FEE. The Design-Build Fee is included within the GMP and is formatted under two headings "Professional's Fees and Costs" and "Contractor's Fees and Costs."

8.3 CONTINGENCY. The Parties have agreed to certain Contingency amounts which are included within the GMP. Use and release of these shall be as set forth within Article 9.

8.4 Cost of Work. The "Cost of the Work" or "Cost of Work" refers only to the direct or indirect field costs the DESIGN-BUILDER reasonably and necessarily incurs to properly perform the Work in strict compliance with the Contract Documents, and excludes any item of cost required to be covered by the Phase I – Design Services Fee or the construction management fee. The Cost of the Work includes only the cost items expressly set forth below.

8.4.1 Direct Costs. Direct costs include the following:

8.4.1.1 Wages of construction workers directly employed by DESIGN-BUILDER to self-perform at the Job Site which will be paid in compliance with the requirements of this Contract. Such wages do not include DESIGN-BUILDER's wages of DESIGN-BUILDER's indirect management personnel assigned to coordinate and manage the Subcontractors' performance of the Work on the Project.

8.4.1.2 With regard to those workers directly employed by DESIGN-BUILDER to self-perform at the Job Site, costs incurred and paid by DESIGN-BUILDER for taxes, contributions, assessments, and benefits required by law or collective bargaining agreements and, for such personnel who are not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions.

8.4.2 Subcontract Costs. Costs that DESIGN-BUILDER incurs and pays according to the terms of approved Subcontracts competitively awarded for the performance of all major elements of the Work on the Project. Such costs may include the labor costs for construction workers directly employed by a Subcontractor under an approved Subcontract to perform such portions of the Work, including approved labor burden rates for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on the wages for such construction workers and comply with the prevailing wage rate requirements of this Contract.

8.4.3 Costs of Materials, Consumable Supplies and Equipment Incorporated into the Project. DESIGN-BUILDER'S Reasonable and necessary costs of materials, consumable supplies, and equipment required by the Contract Documents to be used or incorporated into the completed Project, including and subject to the following.

8.4.3.1 Reasonable and necessary costs of transportation and storage for such items.

8.4.3.2 Costs of materials in excess of those actually installed or incorporated that DESIGN-BUILDER demonstrates to have been reasonably unavoidable due to normal and customary waste and spoilage and that cannot be recovered by return or alternative uses for other purposes resulting in a credit to CITY for the cost thereof.

8.4.3.3 At CITY's option, any unused excess materials will become CITY's property at the completion of the Work or removed from the Site and sold by DESIGN-BUILDER in a commercially reasonable manner as soon as it is reasonable to determine that they are unnecessary for the Project. Any amounts realized from such sales will be credited to CITY to reduce the Cost of Work.

8.4.3.4 Costs for any previously used items to be installed in the Project must be approved in advance and based on fair market value.

8.4.4 Other Costs of Construction. Other reasonable and necessary costs of construction, as follows.

8.4.4.1 Reasonable and necessary costs of renting motorized or engine powered or other specialized items of construction equipment or temporary facilities that are necessary to perform the Work at the Site. If such items are rented from the DESIGN-BUILDER's own inventory, the amount or rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, will be determined to be the lesser of (i) those established by the Rental Rate Blue Book, latest edition, published by EquipmentWatch, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been approved before any commitments are made. Such rental costs will in no event be charged at higher than competitive rental rates prevailing in the Deltona-Daytona Beach-Ormond Beach, FL Metropolitan Statistical Area for similar equipment. In no event will the aggregate rental cost to CITY exceed the purchase price and maintenance cost of the item. In the event the item can be purchased

for an amount comparable to the aggregate rental cost thereof, DESIGN-BUILDER will at CITY's option, either (i) purchase such item, transfer ship of it to CITY upon Final Completion, or (iii) credit CITY with the amount of the fair market resale value thereof.

8.4.4.2 Reasonable and necessary costs of furnishing hand tools, instruments and other devices (except for those customarily owned by construction workers) that are necessary to use at the Site to perform the Work; provided, however, any rates to rent any such items must be approved in advance and all other such costs must be based on fair market value less any fair market salvage value or credit for the sale or return thereof.

8.4.4.3 Worksite debris removal and disposal costs in accordance with this Contract and Applicable Laws.

8.4.4.4 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which DESIGN-BUILDER is liable and for which DESIGN-BUILDER is unable to will avail itself of an exemption based upon CITY's tax-exempt status.

8.4.4.5 Permits, licenses, and inspections and related fees and assessments, for which DESIGN-BUILDER is required to be paid by the Contract Documents.

8.4.4.6 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

8.4.4.7 Third-party intellectual property royalties and license fees paid for the use of a particular design, process, or product when specifically required by the Contract Documents and identified in the amendment establishing the Guaranteed Maximum Price for such Work; and duties with respect to royalties and licenses to use intellectual property. DESIGN-BUILDER will pay all royalties and license fees due in connection with the Services and the Work. DESIGN-BUILDER warrants that the Services, the Work and the use of DESIGN-BUILDER's Work Product will not infringe any patent or other proprietary right; provided, however, DESIGN-BUILDER will only be liable to CITY for infringement of a patent or other proprietary right if it arises out of designs, processes or products in the Work that the DESIGN-BUILDER has recommended or caused to be used for or on the Project or that arise out of the use of the DESIGN-BUILDER's Work Product. Should CITY, in consultation with DESIGN-BUILDER, determine that DESIGN-BUILDER's proprietary information, data or systems will be used on the Project, DESIGN-BUILDER agrees that CITY will be entitled to a royalty-free license to enable CITY to use DESIGN-BUILDER's proprietary information, data or system, in connection with the ongoing use and maintenance of the Project, which license agreement will be non-exclusive, perpetual, and not require further expenditure by CITY.

8.4.4.8 Net Premiums (less return premiums, rebates and bond dividends) for insurance and bonds to the extent directly attributable to this Contract and incurred in accordance with the requirements of this Contract. Return premiums, rebates and bond dividends will be paid to CITY when received by DESIGN-BUILDER.

8.4.4.9 Other costs approved in advance by CITY at CITY's sole discretion.

8.4.5 Emergency Costs. Emergency costs, which will include the following.

8.4.5.1 Costs incurred in taking action to prevent or mitigate damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.4.5.2 Costs of repairing damaged Work performed by DESIGN-BUILDER or Subcontractors.

8.4.5.3 Notwithstanding the foregoing provisions of this Section 8.4.5, such costs may be included in the Cost of the Work only to the extent such costs (i) were not caused or contributed to by the DESIGN-BUILDER's or the Subcontractors' negligence, or failure to fulfill a specific responsibility, and (ii) are not covered by insurance of the DESIGN-BUILDER, sureties, Subcontractors, or others.

8.4.6 Cost Items Excluded from the Cost of Work. Any provisions in this Contract to the contrary notwithstanding, Cost of Work will not include the following cost items.

8.4.6.1 Costs of salaries or other compensation of DESIGN-BUILDER's personnel not stationed at the Site and stationed at the DESIGN-BUILDER's principal office or offices, except as may be specifically provided in Section 7.1.1.

8.4.6.2 Expenses of the DESIGN-BUILDER's home office or other principal or satellite offices.

8.4.6.3 Overhead and general expenses, including legal costs to review and negotiate the Contract Documents, except as may be expressly included in Sections 8.4.1 to 8.4.5.

8.4.6.4 DESIGN-BUILDER' s capital expenses, including interest, on the DESIGN-BUILDER' s capital employed for the Work.

8.4.6.5 Except as provided in Section 8.4.5.3, costs due to the negligence or failure of DESIGN-BUILDER, Subcontractors, or anyone directly or indirectly employed or engaged by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility under the Contract.

8.4.6.6 Travel and subsistence expense of DESIGN-BUILDER, its officers or employees incurred while traveling between the Project and DESIGN-BUILDER's principal or branch offices, and travel in the metropolitan area of the Project that exceed the amount set forth in the GMP for travel and subsistence expenses, unless approved in advance in writing via a change order or amendment to this Contract. Any such travel and subsistence expenses approved will be limited to reasonable and necessary expenses.

8.4.6.7 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of DESIGN-BUILDER.

8.4.6.8 Costs resulting from the failure of DESIGN-BUILDER or any DESIGN-BUILDER's personnel to procure and maintain insurance as and to the extent required by the Contract Documents.

8.4.6.9 Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the field office at the Worksite and only as specifically permitted under this Contract.

- 8.4.6.10 Any and all overhead expense or office expense except as specifically permitted under this Contract.
- 8.4.6.11 Costs related to DESIGN-BUILDER's indemnification obligations.
- 8.4.6.12 Costs arising out of the DESIGN-BUILDER's failure to adhere to the standard of care, including, without limitation, costs related to defective, rejected, or nonconforming Work, materials or equipment, and damage to persons or property, including warranty Work, or other costs which should have been mitigated and avoided by DESIGN-BUILDER in the exercise of the standard of care.
- 8.4.6.13 Liquidated or actual damages imposed by CITY for failure of DESIGN-BUILDER to complete the Work by the Scheduled Date of Substantial Completion.
- 8.4.6.14 Rental costs of machinery and equipment, except to extent expressly permitted under this Contract.
- 8.4.6.15 Fees of testing laboratories for tests required by the Contract Documents inasmuch as those are paid by CITY directly under separate contract.
- 8.4.6.16 Costs due to DESIGN-BUILDER's failure to apply in a timely manner for permits for which DESIGN-BUILDER is responsible under this Contract.
- 8.4.6.17 Costs of acceleration of the Work arising as a result of delay in the Work caused by the negligence of DESIGN-BUILDER, or its Subcontractor or other persons over whom DESIGN-BUILDER or any Subcontractor exercises control or is legally responsible, including any and all overtime wages, unabsorbed home office overhead, exemplary damage, or other consequential damage incurred by DESIGN-BUILDER.
- 8.4.6.18 Any and all costs not otherwise expressly authorized to be charged as a Cost of the Work herein, including, without limitation, any cost which would exceed a Guaranteed Maximum Price established by Contract Amendment.
- 8.4.6.19 Testing fees that must be incurred by DESIGN-BUILDER pursuant to the terms and conditions of this Contract.
- 8.4.6.20 Any costs not specifically and expressly identified in Sections 8.4.1 through 8.4.5.
- 8.4.6.21 Costs exceeding the GMP as amended for any Change Orders that are approved in advance.
- 8.4.6.22 Reserved.
- 8.4.6.23 Costs incurred by CITY in making CITY Direct Purchases as provided in Section 8.18.
- 8.4.7 General Conditions. For purposes of this Contract, "General Conditions" means the following items and related costs which are included in the Cost of Work.
- 8.4.7.1 Bonds and insurance.
- 8.4.7.2 Both office and field project management, supervisory, support, and administrative personnel.

- 8.4.7.3 Temporary field offices, facilities and storage including equipment, materials, and temporary utilities.
- 8.4.7.4 Background checks and employee identification materials.
- 8.4.7.5 Safety program.
- 8.4.7.6 Construction documentation.
- 8.4.7.7 Transportation.
- 8.4.7.8 Parking.
- 8.4.7.9 Temporary barriers, signage, and controls.

8.5 SCHEDULE OF VALUES

8.5.1 Prior to Notice to Proceed with Phase II – Construction Services, the DESIGN-BUILDER shall submit a Final Schedule of Values for CITY’s review and approval. The Parties acknowledge that the Final Schedule of Values shall be based upon the GMP. The DESIGN-BUILDER shall update the Schedule of Values in form, content and detail as deemed appropriate by the CITY, during the Construction Phase. The DESIGN-BUILDER shall finalize the Schedule of Values with regard to form, content and detail, as deemed appropriate by the CITY, upon approval of Final Construction Documents, and prior to issuance of Notice to Proceed with Construction Services. The CITY reserves the right to withhold all Notices to Proceed pending its approval of the applicable Final Schedule of Values.

8.5.2 The Final Schedule of Values shall be satisfactory in form and substance to the Project Manager and include a list or description of all activities of the Work. The Final Schedule of Values shall subdivide the Work into component parts in sufficient detail to allow CITY to use as the basis for measurement of quantities in place and to calculate amounts due based on percentage of completion for payments during construction. Unsupported or unreasonable allocation of costs to one activity on the Final Schedule of Values shall be justification for rejection by CITY of such Final Schedule of Values.

8.5.3 The approved Final Schedule of Values shall accompany each Application for Payment and shall delineate the approved values, previous percentage complete approved, current percentage complete requested, and value of percentage requested.

8.6 APPLICATIONS FOR PAYMENT

8.6.1 Applications for Payment for Design Services shall be made upon completion of each stage in the Design Phase in accordance with the Initial Schedule of Values for Design Phase.

8.6.2 Applications for Payment for Construction Services shall be submitted on a monthly basis. The DESIGN-BUILDER shall prepare each Application for Payment and submit them to the Project Manager. The Project Manager’s response to the Application for Payment shall be provided within 7 days after receipt. The Application for Payment, when submitted, shall be filled out accurately and signed by the DESIGN-BUILDER, covering Work completed as of the date of the Application and shall be supported by such data as required by the CITY. The DESIGN-BUILDER shall certify in writing that all Professionals, Subconsultants, Subcontractors and suppliers have been paid for

acceptable Work and materials from previous progress payments received (less any retainage) prior to receipt of any further progress payments. The DESIGN-BUILDER shall submit an Application for Payment on the form(s) agreed upon with Project Manager and which will include the aforementioned certification. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data as will establish the CITY's title to the material and equipment and protect its interest therein, including applicable insurance.

8.6.3 All Applications for Payment by DESIGN-BUILDER during the Construction Phase shall be accompanied by DESIGN-BUILDER's certification as to the percentage of completion of the Work-in-place on a trade-by-trade or subcontract-by-subcontract basis, and by written evidence satisfactory to CITY that the Professionals, Subconsultants, and Subcontractors performing or providing any portion of the Work during the immediately preceding payment period have been paid in full.

8.6.4 Each Application for Payment shall contain a sufficiently detailed work description and breakdown of charges for the preceding 30-day period or other agreed upon milestone. Such Application shall be prepared using an agreed upon format such as a standard industry payment application form. Supporting documentation must be included to the extent required under Florida Statutes, any implementing rules, or other requirements of CITY.

8.7 PROGRESS PAYMENT FOR CONSTRUCTION SERVICES

8.7.1 Basis of Payment. Following commencement of construction of the Project, CITY shall pay DESIGN-BUILDER on a percentage of construction completion based on Work in place performed by DESIGN-BUILDER.

8.8 RETAINAGE

8.8.1 All Construction Phase progress payments shall be subject to a 5% retainage to be withheld by CITY. When project achieves substantial completion, retainage may be reduced to 2.5%. The CITY has no obligation to reduce the retainage but may do so, provided however, that the Work has proceeded to the satisfaction of the CITY. CITY shall not be obligated to pay DESIGN-BUILDER interest on any retainage held by CITY.

8.9 APPROVAL AND TIME OF PAYMENTS

8.9.1 All Applications for Payment including Final Payment are subject to the review and approval of the CITY, and in the event of any dispute between the CITY and DESIGN-BUILDER as to the percentage of completion indicated therein, the Project Manager shall issue his or her opinion as to such percentage of completion, which opinion shall be the basis upon which payment shall be made.

8.9.2 CITY shall make payments in accordance with Sections 218.70 through 218.80, Florida Statutes, The Local Government Prompt Payment Act.

8.9.3 The Project Manager may refuse to approve the whole or any part of any payment if, in the Project Manager's opinion, he/she is unable to make the representation that the Application is acceptable to the CITY. The Project Manager may also refuse to approve any such Application, or nullify any such payment previously approved, to such extent as

may be necessary in the Project Manager's opinion to protect the CITY because of the following:

- (i) Subsequently discovered evidence or the results of subsequent inspections or tests, indicating Defective Work;
- (ii) The Work or any portion thereof is Defective;
- (iii) The CPM schedule, and regular updates to the Project Schedule, as required in this Contract, have not been submitted or accepted;
- (iv) Lien or other claims have been filed against the CITY for which the DESIGN-BUILDER may be liable;
- (v) The CITY has been required to correct Defective Work or complete the Work and has not completed the correction Work;
- (vi) The Work, or a portion thereof, was executed unsatisfactorily, or DESIGN-BUILDER failed to clean up as required by this Contract, or failed to control traffic or dust, or was otherwise, not in compliance with this Contract; or
- (vii) There is any uncured Default under this Contract.

8.10 PREREQUISITES TO PROGRESS PAYMENTS. Payment with respect to each and every Application for Payment shall be contingent upon the occurrence of the following conditions precedent, and such other conditions precedent as CITY may require pursuant to the terms of this Contract:

- (i) Application for Payment in form and content satisfactory to CITY pursuant to this Article 8;
- (ii) Written certification by the DESIGN-BUILDER pertaining to the Work covered by the respective Application for Payment stating that the portion of the Work then completed has been constructed in a good and workmanlike manner and in strict compliance with the Final Construction Documents and all applicable laws, ordinances and building codes;
- (iii) There are no claims outstanding against, for or in connection with any portion of the Work, the Project or Site, or any portion thereof;
- (iv) All governmental permits, approvals, consents, licenses, inspections and other authorizations required in connection with the construction of that portion of the Work for which such Application for Payment is being made, have been obtained and are in full force and effect;
- (v) All funds previously disbursed by CITY have been disbursed by DESIGN-BUILDER in accordance with the Schedules of Values and the GMP, as the case may be;
- (vi) All funds previously disbursed by CITY to DESIGN-BUILDER have been paid by DESIGN-BUILDER to DESIGN-BUILDER's Subconsultants, Professionals, and Subcontractors, and have not been withheld for any purpose; and

- (vii) DESIGN-BUILDER has certified to CITY that all outstanding claims for Work, including labor, services, materials and equipment furnished by any of its Subconsultants, Professionals, and Subcontractors have been paid up to and through the date of the immediately preceding Application for Payment.

8.11 APPLICATION FOR FINAL PAYMENT. After the Certificate of Final Completion for the Work has been approved and issued by the Project Manager, and the final Change Order, if any, has been approved by the CITY, the DESIGN-BUILDER may make Application for Final Payment following the procedure for progress payments. The Application for Final Payment shall be accompanied by the Certificate of Final Completion, Certificate of Occupancy and the Consent of Surety to Final Payment, all submitted on forms to be provided by the CITY, and such other documents as CITY may reasonably require.

8.12 DOCUMENTATION REQUIRED FOR FINAL PAYMENT. In addition to the documentation required above, the following items and documentation shall be submitted by DESIGN-BUILDER, subject to approval of the CITY, in order for DESIGN-BUILDER to receive payment under DESIGN-BUILDER's Final Application for Payment:

8.12.1 CERTIFICATE OF COMPLIANCE AND STATEMENT OF GUARANTEE. A written statement(s) from the appropriate Professional(s), addressed to the CITY certifying and warranting that:

- (i) to the best of the Professional(s) knowledge and belief, the Project complies with all applicable governmental laws, codes, ordinances, decrees and regulations, including, but not limited to, all permit requirements, and regulations,
- (ii) to the best of the Professional(s) knowledge and belief, the Project has been completed in a good and workmanlike manner in accordance with the Final Construction Documents.

8.12.2 CONSENT OF SURETY. A letter of consent, or a written waiver of such consent from the surety(s), consenting to such Final Payment, provided that in so consenting, or in so waiving its consent, such surety(s) shall not be relieved of any obligations under such payment and performance bond(s).

8.12.3 PROJECT RECORD DOCUMENTS. As described in the City of Daytona Beach Utilities Department Standard Details, latest edition.

8.12.4 Reserved.

8.12.5 DELIVERY OF PERMITS. Originals, if available, or true copies of all licenses, permits and approvals required by all governmental agencies having or claiming jurisdiction over the Project for the full and uninterrupted use, occupancy and operation of the Project.

8.12.6 All other documents required by this Contract.

8.13 STORED MATERIALS. No payment or compensation for materials purchased by DESIGN-BUILDER but not yet installed or incorporated into the Project shall be made without the CITY's prior written approval of the conditions under which such materials are

purchased and stored. The CITY's prior written approval shall be provided in a timely manner and not unreasonably withheld. In no event shall any such payment or compensation be made unless the materials involved have been delivered to the Site or stored with a bonded warehouseman, clearly labeled and identified, with satisfactory written evidence of security, insurance and suitable storage. DESIGN- BUILDER shall provide the CITY, in connection with such materials, a copy of a bill of sale or other evidence of title in DESIGN-BUILDER, together with a copy of Uniform Commercial Code (UCC) searches against DESIGN-BUILDER and the warehouseman, if applicable, indicating the existence of no liens or claims which may affect such materials.

8.14 CLEAR TITLE. At such time as DESIGN-BUILDER receives payment with respect to any and all Work, including materials and equipment, covered by an Application for Payment, whether incorporated in the Project or not, title thereto shall pass to CITY free and clear of all claims, security interests and encumbrances, and CITY shall not be required to pay for any Work, including materials or equipment, which is subject to a Contract under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by or upon DESIGN-BUILDER or any other person. Any liens filed against any portion of the Work, Project or Site shall be promptly removed, discharged and/or transferred by DESIGN-BUILDER to other security as a strict condition precedent to any subsequent progress payments or, if applicable, the Final Payment.

8.15 COST OF CLAIMS. If at any time there shall be evidence of any claim for which, if established, the CITY might become liable, and which is chargeable to DESIGN-BUILDER, or if DESIGN-BUILDER shall incur any liability to the CITY, or the CITY shall have any claim or demand against DESIGN-BUILDER, whether or not reduced to judgment or award, of any kind or for any reason, related to or arising out of this Contract, the CITY shall have the right to retain out of any payment due, or which may become due under this Contract, an amount sufficient to indemnify the CITY against that portion of the claim as is allocable to the DESIGN-BUILDER, and to compensate the CITY for and fully satisfy such liability, claim or demand. Should any such claim develop after final payment has been made, the DESIGN-BUILDER shall refund to the CITY all monies that the latter may be compelled to pay in discharging such claims or incurred in collecting said monies from the DESIGN-BUILDER. This paragraph only refers to claims or such portion of claims as are chargeable and are allocable to the DESIGN-BUILDER, and/or its officers, agents, servants, employees, volunteers, Subconsultants and Subcontractors.

8.16 DESIGN-BUILDER'S CONTINUING OBLIGATION. The DESIGN- BUILDER'S obligation to perform the Work and complete the Project in accordance with this Contract shall be absolute. Neither approval of any Work-in-progress or the Final Payment, the issuance of a Certificate of Substantial Completion or a Certificate of Final Completion, any payment by CITY to DESIGN-BUILDER, any use of the Project or any part thereof by the CITY, any act of acceptance by CITY, any failure to do so, nor any correction of Defective Work by CITY shall constitute an acceptance of Work not in accordance with this Contract or relieve DESIGN-BUILDER in any way of its obligations under this Contract.

8.17 WAIVER OF CLAIMS. The making and acceptance of Final Payment shall constitute a waiver of any and all claims by the DESIGN-BUILDER against the CITY, except for those previously submitted in writing in accordance with the Contract.

8.18 OWNER DIRECT PURCHASES. The CITY reserves the right to issue CITY Purchase Orders directly to suppliers of materials to be incorporated into the Work of Project as described in the Contract, in order to obtain the exemption from sales taxes available under Fla. Stat. § 212.08(6), in accordance with the procedures listed below. For purposes of this Policy, the term, “materials,” means all items of tangible personal property which CITY may be eligible to directly purchase tax free in accordance with Fla. Stat. § 212.08(6), and implementing administrative regulations; and all other terms will have the meaning provided or suggested in the Contract, where applicable.

8.18.1 The DESIGN-BUILDER will provide to the CITY a list of all materials to be used in the Work, including those items of material required to be used by design Professional, and will denote on that list any items that the DESIGN-BUILDER deems suitable for CITY to purchase directly. DESIGN-BUILDER will also denote those items that are to DESIGN-BUILDER’s knowledge likely to have long lead times or that are available from only one or a severely limited number of suppliers.

8.18.2 The CITY may accept or reject the DESIGN-BUILDER’s recommendations and will in CITY’s discretion directly purchase those items that CITY deems suitable for direct purchase. The CITY’s election to make direct purchases under this Policy will not eliminate or affect the DESIGN-BUILDER’s responsibilities under the Contract except as specifically noted herein. Among other things, DESIGN-BUILDER will remain responsible for controlling the means and methods by which the Work is to proceed; working diligently to complete the Work in accordance with applicable deadlines; and for tracking ordering and delivery of materials so as to maintain the critical path. Neither the procedures herein, nor the CITY’s election to directly purchase certain materials, will alter or the applicability of the procedures and standards to be used under the Contract for claims for delay or change orders.

8.18.3 The DESIGN-BUILDER will require that all quotes for materials received by DESIGN-BUILDER for tangible personal property to be incorporated into the Project: (i) itemize sales tax as a separate item; (ii) include language that the quotations are assignable to the CITY; and (iii) include language stating that if assigned to CITY, no sales tax will be charged upon provision of CITY’s sales tax exemption certificate. Nothing herein will prohibit the CITY from requiring the supplier of materials to be directly purchased by CITY, from requiring the supplier to issue a written quotation directly to CITY, even where DESIGN-BUILDER has provided CITY with an assignable quotation as provided herein.

8.18.4 CITY will provide DESIGN-BUILDER a list of items of tangible personal property to be purchased directly by CITY. DESIGN-BUILDER will remain responsible for directly purchasing all items of such property that CITY does not elect to purchase directly.

8.18.5 For those items of tangible personal property that CITY elects to directly purchase, DESIGN-BUILDER will prepare City form Purchase Order Requests, consistent with the quotes provided by the suppliers and this Policy.

8.18.6 DESIGN-BUILDER will forward the completed Purchase Order Request to the City’s Purchasing Agent and provide a copy to the Project Manager.

8.18.7 The CITY will issue a Purchase Order to the supplier based on the information provided by the DESIGN-BUILDER and the supplier's written quotation. The City will provide a copy of the Purchase Order to the DESIGN-BUILDER.

8.18.8 Upon receipt of the CITY'S Purchase Order, DESIGN-BUILDER will issue a deductive change order to the Subcontractor or supplier that will account for the value of the material and the sales tax as it pertains to that Subcontractor's or supplier's contract with the DESIGN-BUILDER. All sales tax savings shall be credited to the CITY through a deductive change order under the CITY'S Contract with DESIGN-BUILDER.

8.18.9 CITY will acquire title to and assume responsibility for materials directly purchased by CITY under this Policy, upon delivery to the job site.

8.18.10 Owner-Direct Suppliers shall directly invoice the CITY. Invoices will be forwarded to the DESIGN-BUILDER for verification. Immediately as materials directly purchased by CITY are delivered to the Project site, the DESIGN-BUILDER will review the condition of the materials delivered for conformity with Contract specifications and the supplier's invoice for conformity with this Policy, including confirmation that the invoice references CITY's Purchase Order and is billed to CITY, not DESIGN-BUILDER or Subcontractor. DESIGN-BUILDER will promptly advise the CITY of any deficiencies in the materials or invoice. The intent of this requirement is to require DESIGN-BUILDER to act diligently to allow CITY to meet its obligations to the supplier under Florida's Prompt Payment Act, Fla. Stat. § 218.70 et seq. Nothing herein will prohibit the DESIGN-BUILDER from requiring a Subcontractor of DESIGN-BUILDER's conduct a similar review for DESIGN-BUILDER's benefit; however, DESIGN-BUILDER will remain responsible to CITY for promptly reviewing the materials and invoice in accordance with this Section.

8.18.11 Upon being satisfied that directly purchased materials and the accompanying invoice from the supplier are satisfactory, CITY will pay the supplier for the items purchased. Under no circumstances will DESIGN-BUILDER be responsible for paying the supplier. The CITY will issue a check for the approved invoice amount and mail this check directly to the supplier, accompanied by the Certificate of Entitlement. A copy of the check will be forwarded to the DESIGN-BUILDER so that DESIGN-BUILDER can accurately track and summarize all CITY Direct Purchase payments.

In the event the CITY does not timely execute the appropriate documents submitted by the DESIGN-BUILDER for direct purchase, the DESIGN-BUILDER may, upon timely notice to the CITY, order such materials irrespective of loss of sales tax savings. It is the intent of these provisions to implement the cost savings afforded by the sales tax exemption without delay of the Work and that the DESIGN-BUILDER retain complete control of the Progress Schedule. While the CITY's direct purchase of materials or supplies shall not relieve the DESIGN-BUILDER of responsibility to maintain and safeguard such materials and supplies until they are incorporated into the Work and accepted by the CITY, the CITY shall assume liability for the materials at the time they are delivered to the jobsite. The DESIGN-BUILDER may be entitled to a time extension in the event that delay is occasioned by the CITY's direct purchase of materials.

8.18.12 The CITY will bear the economic burden of obtaining insurance covering damage or loss or will directly enjoy the economic benefit of the proceeds of any such insurance. Nothing herein will prohibit the CITY from requiring DESIGN-BUILDER to

supply additional coverage, such as through a builder's risk policy or installation floater, to insure materials directly purchased by CITY from damage and risk of loss.

8.18.13 The CITY does hereby defend, hold harmless, and indemnify the DESIGN-BUILDER from any and all liability for unpaid sales taxes which the DESIGN-BUILDER may suffer as a result of claims, demands, costs, interest, penalties or judgments against the DESIGN-BUILDER made by or in favor of the State of Florida on account of failure to pay Florida State Sales Taxes on materials directly purchased by the CITY under this Policy. The CITY agrees to defend against any such claims or actions brought against the DESIGN-BUILDER whether rightfully or wrongfully brought or filed. The DESIGN-BUILDER agrees that it will promptly notify the CITY of any such claim, demand, or action. Furthermore, the DESIGN-BUILDER expressly agrees that, if and when requested by the CITY, it will enter into such amendments to this Contract as the CITY, upon consultation with its legal counsel, may deem necessary or useful to preserve or ensure its right under Florida law to the sales tax exemption contemplated by this subsection. CITY's obligation to indemnify and hold harmless DESIGN-BUILDER as provided herein is subject to limitations, including monetary limitations, contained in Florida Statutes Section 768.28.

8.18.14 The deductive change for owner direct purchase will not reduce the DESIGN-BUILDER fee.

ARTICLE 9 **CONTINGENCY**

9.1 PHASE 1 CONTINGENCY

9.1.1 As the design scope is not fully defined and unknown conditions may be identified by the DESIGN-BUILDER during the preliminary inspection, a Contingency amount is included with the Phase 1 – Design Services fee proposal. All work by the DESIGN-BUILDER related to the contingency shall be performed in accordance with the terms and provisions of this Contract and with the prior approval of the CITY. If at the end of Phase 1, contingency funds remain, those funds may be added to the Phase 2 contingency funds or removed from the project budget at the City's discretion.

9.2 PHASE 2 CONTINGENCY IS INCLUDED WITHIN THE GMP

9.1.2 Because of the size, complexity and nature of the Project, a contingency will be established. It is understood that the contingency is included in the GMP. The amount of the contingency will be indicated in the amendment establishing the GMP. All work by the DESIGN-BUILDER related to the contingency shall be performed in accordance with the terms and provisions of this Contract and with the prior approval of the CITY. Prior to final payment, GMP shall be adjusted, as required, and an appropriate Change Order issued to reflect actual authorized expenditures made against the contingency and provide credit to the CITY. The DESIGN-BUILDER agrees that the DESIGN-BUILDER shall receive payment only for the amount of Work actually authorized by the CITY and performed by the DESIGN-BUILDER.

ARTICLE 10
CHANGES TO THE WORK

10.1 CHANGES TO THE WORK

10.1.1 Without invalidating the Contract, the CITY may at any time or from time to time order additions, deletions, or revisions in the Work. Should the CITY request DESIGN-BUILDER to provide and perform changes to the Work for this Project, DESIGN-BUILDER agrees to provide and perform such changes to the Work in accordance with the covenants, terms, and provisions set forth herein and as a continuation of the Work covered under this Contract. Changes to the Work shall consist of additions, revisions or deletions to the Work after the Final Construction Documents have been approved by the CITY.

10.2 CHANGE ORDER PROCEDURE FOR CHANGES TO THE WORK

10.2.1 In the event CITY desires to make changes to the Work after establishment of Final Construction Documents, the Project Manager shall provide DESIGN-BUILDER with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt of a proposal request from CITY, the DESIGN-BUILDER shall promptly submit a written Change of Work Proposal for the changed Work priced in accordance with this Article 10. The DESIGN-BUILDER shall submit a proposed credit for Work to be deleted, which is priced consistent with the Final Schedule of Values. In the event DESIGN-BUILDER proposes changes to the Work after establishment of Final Construction Documents, DESIGN-BUILDER shall provide CITY with a Change of Work Proposal priced in accordance with this Article 10. If the proposal request calls only for the deletion of Work, the Project Manager may order the partial suspension of any Work related to the proposed deletion, in which case the DESIGN-BUILDER must cease performance as directed; the DESIGN-BUILDER may be entitled to additional compensation or an increase in Contract Time to complete the Contract as a result of the suspension. The DESIGN-BUILDER shall not be entitled to claim lost profits on deleted Work. Changed Work shall be performed in accordance with all applicable conditions of the Contract.

10.2.2 Additional Work performed by the DESIGN-BUILDER without authorization of a Change Order will not entitle the DESIGN-BUILDER to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 4. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in this Contract.

10.2.3 When and if there are changes in the Work to be performed and any mutually agreed upon claim of the DESIGN-BUILDER for a change in the Contract time or the GMP, the Project Manager will prepare a written Change Order to be signed by the DESIGN-BUILDER and processed in accordance with CITY's Purchasing Code.

10.2.4 It is the DESIGN-BUILDER's responsibility to notify its Surety of any changes affecting the general scope of the Work, GMP, or Contract Time.

10.2.5 In the absence of agreement as to changes in the Work, the CITY may, at its sole discretion, issue a unilateral Change Order to the DESIGN-BUILDER. Pricing of the unilateral Change Order will be in accordance with this Article 10. The Change Order will specify a price, and if applicable, a time extension, determined to be reasonable by the

CITY. If DESIGN-BUILDER fails to sign such Change Order, the DESIGN-BUILDER may submit a claim in accordance with this Article 10, but the DESIGN-BUILDER shall nevertheless be obligated to fully perform the Work as directed by the Change Order.

10.3 CLAIMS BY THE DESIGN-BUILDER

10.3.1 Should the DESIGN-BUILDER make a claim for an increase in Contract Time or an increase in GMP, the claim shall be accompanied by an affidavit stating that:

- (i) The claim is made in good faith;
- (ii) The supporting data are accurate and complete to the best of the DESIGN-BUILDER's knowledge and belief; and
- (iii) The amount requested accurately reflects the GMP adjustment for which the DESIGN-BUILDER believes the CITY is liable.

Absent such affidavit, the claim will not be considered. Should any dispute arise, submission of the affidavit shall be a condition precedent to filing a lawsuit.

10.3.2 Any claim by the DESIGN-BUILDER for an increase in the Contract Time or an increase in the GMP shall be calculated and priced in accordance with this Article 10, shall be in writing, and shall be delivered to the Project Manager within 10 days of the occurrence prompting the request for the increase first happening. Written supporting data shall be submitted to the Project Manager within 20 days after such occurrence unless the Project Manager allows additional time.

10.3.3 The DESIGN-BUILDER shall proceed diligently with performance of the Work as directed by the CITY, regardless of pending claim actions or disputes.

10.4 CHANGE OF GMP. The GMP is as defined in Article 2. All duties, responsibilities, and obligations assigned to or undertaken by the DESIGN-BUILDER shall be at its sole expense without change in the GMP. The GMP may only be increased or decreased by a written Change Order.

10.5 PRICING OF CHANGES TO THE WORK

10.5.1 The price for changes to the Work shall be determined on the basis of reasonable expenditures and savings of those performing the Work directly attributable to the change and shall be no higher than that prevailing in the area of the Project. The price for changes to the Work shall be consistent with Article 8.

10.5.2 For all changes, the DESIGN-BUILDER shall submit an itemized cost breakdown, together with supporting data in such detail and form as required by the CITY. When a credit is due, the amount of credit to be allowed by the DESIGN-BUILDER to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the CITY, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment,

material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

10.5.3 If the parties are unable to agree on a price for the changed Work, a reasonable price for the same shall be established by the CITY in accordance with this Article 10. The CITY shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with Article 10. The DESIGN-BUILDER shall perform the Work as directed in the Change Order but may submit a claim in accordance with this Article 10.

10.6 CHANGE OF CONTRACT TIME

10.6.1 The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to the Project Manager within ten (10) days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to the Project Manager within twenty (20) days after such occurrence unless the Project Manager allows additional time. All claims submitted by the DESIGN-BUILDER for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay; clearly demonstrate that the delay will impact the Critical Path; and indicate why the subject delay was beyond the DESIGN-BUILDER'S control or fault.

10.6.2 If the DESIGN-BUILDER is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of the CITY or by any of its employees, or by any separate entity employed by the CITY, or by changes ordered in the Work, or by Acts of God, fire, utility conflicts which could not have been identified or foreseen by the DESIGN-BUILDER using reasonable diligence, or other causes beyond the DESIGN-BUILDER's reasonable control, then the Contract Time shall be extended by Change Order for such reasonable time as the CITY may determine. DESIGN-BUILDER shall be entitled to an extension of time for such causes only for the number of days of delay which the DESIGN-BUILDER demonstrates to be due to such causes and only to the extent such occurrences actually impact the critical path and consequently delay the completion of the Project.

Provided, however, notwithstanding anything in the Contract to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve DESIGN-BUILDER of its duty to perform the Work under the Contract, or give rise to any right to damages from the CITY. DESIGN-BUILDER shall be entitled to an extension of time and/or reasonable additional compensation as agreed upon by the DESIGN-BUILDER and the CITY related to any delay caused by other contractors not under the authority and control of the DESIGN-BUILDER or any delay caused by the CITY.

The above paragraph shall expressly apply to claims based on early completion, as well as claims based upon late completion. The DESIGN-BUILDER shall not have the right to damages or additional compensation on the basis that delays, not caused by CITY, for any cause whatsoever prevented early completion.

10.7 LIQUIDATED DAMAGES. If DESIGN-BUILDER fails to achieve Substantial Completion set forth in the Project Schedule, Liquidated Damages shall entitle the CITY

to deduct from the GMP "Liquidated Damages" per calendar day of delay. Liquidated Damages will be established and included in the amendment establishing the GMP. Upon Project Manager's notification to DESIGN-BUILDER that DESIGN-BUILDER failed to meet the Substantial Completion Date, the CITY may deduct the liquidated damages in the amounts stated in the Contract either by deductive Change Order or from any monies due the DESIGN-BUILDER, in addition to any retainage being withheld. Failure of the Project Manager to notify the DESIGN-BUILDER and to deduct the liquidated damages from a progress payment shall not be construed as a waiver of liquidated damages assessment.

10.8 If DESIGN-BUILDER fully performs its due diligence investigation with respect to concealed conditions (below ground or within existing construction) prior to the commencement of Work, and conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the due diligence investigation or (2) 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 due diligence investigation, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The CITY shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the DESIGN-BUILDER's cost of, or time required for, performance of any part of the Work, shall negotiate with the DESIGN-BUILDER an equitable adjustment in the GMP or Contract Time, or both. If the CITY determines that the conditions at the site are not materially different from those indicated in the documents, reports or other like materials provided by CITY and that no change in the terms of the Design-Build Contract is justified, the CITY shall so notify the DESIGN-BUILDER in writing, stating the reasons. Claims by the DESIGN-BUILDER in opposition to such determination must be made within 10 days after the CITY has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the CITY and DESIGN-BUILDER cannot agree on an adjustment in the GMP or Contract Time, the adjustment shall proceed pursuant to Article 10.5 of this Contract.

ARTICLE 11 WARRANTIES, GUARANTEES AND REPRESENTATIONS

11.1 REPRESENTATIONS AND WARRANTIES. DESIGN-BUILDER represents and warrants to the CITY the following, which representations and warranties are a material inducement for CITY entering into and executing this Contract:

11.1.1 CORPORATE OR JOINT VENTURE STATUS. DESIGN-BUILDER warrants and represents to the CITY that it is and shall remain throughout the term of this Contract the same entity that submitted the Proposal in response to the RFP, and that this same entity will remain active and current throughout the period this Contract is in effect, which includes post-construction and warranty periods.

11.1.2 LICENSES. DESIGN-BUILDER agrees and covenants to maintain itself as the legal entity obligated under this Contract to perform and provide the services hereunder, and in good standing throughout the period this Contract is in effect, which includes post-

construction and warranty periods. It further agrees to obtain and maintain in good standing throughout the period this Contract is in effect, all such licenses as are required to do business in the State of Florida, the CITY, and any other applicable jurisdiction, including, but not limited to, licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional engineering, architectural, surveying and construction services to be provided and performed by DESIGN-BUILDER pursuant to this Contract.

11.1.3 QUALITY OF MATERIALS AND WORK. DESIGN-BUILDER represents and warrants to the CITY that all supplies, materials and equipment incorporated in the Project shall be new, of the highest quality, free from faults and defects, and in strict conformance with the Final Construction Documents. The DESIGN-BUILDER warrants and guarantees to the CITY that all Work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract or such inspections, tests, approvals, or applicable building, construction and safety requirements, shall be considered Defective. Notice of all defects shall be given to the DESIGN-BUILDER by the Project Manager. Work not conforming to these requirements shall be corrected in accordance with Article 4 and Article 14.

11.1.4 STANDARDS OF WORK. DESIGN-BUILDER represents and covenants that all the Work to be provided and/or performed by DESIGN-BUILDER and the Professionals, Subconsultants, and/or Subcontractors engaged by DESIGN-BUILDER shall be performed in accordance with the standards of ethical and professional practice and in accordance with all applicable laws, rules, regulations, ordinances, codes, decrees, policies, standards or other guidelines issued by those governmental agencies which have or may claim jurisdiction over all or any portion of the Project.

11.1.5 MAINTAIN PREMISES. DESIGN-BUILDER shall, during the term of this Contract, keep the Site free from accumulation of waste materials or rubbish caused by DESIGN-BUILDER's operations and shall maintain the Site in accordance with all applicable laws, codes, rules, regulations and ordinances of all governmental agencies having or claiming to have jurisdiction over the Site. DESIGN-BUILDER shall control dust, wind-blown rubbish or construction materials (with tarps, water or other approved materials) at all times and shall respond promptly to any complaints and shall take necessary measures to abate any problems with dust or wind-blown rubbish. Further, at the completion of the Project, DESIGN-BUILDER shall promptly remove from and about the Site all of DESIGN-BUILDER's tools, construction equipment, machinery, surplus materials, waste materials and rubbish and temporary fencing and barricades.

11.1.6 APPROVED FINAL CONSTRUCTION DOCUMENTS. The Final Construction Documents shall be approved and, where required, permitted by all governmental agencies or authorities having or claiming jurisdiction over the Project and any other whose approval, in whole or in part, may be required.

11.1.7 BUILDING PERMITS AND OTHER REQUIRED CONSTRUCTION PERMITS. All building permits and other required permits and approvals shall be issued and received on or prior to issuance of Notice to Proceed with Construction Services.

11.1.8 COMPLIANCE WITH LAWS. DESIGN-BUILDER shall not violate any court order or any law, regulation, ordinance, rule, order, decree, code or requirement of any governmental authority having or claiming jurisdiction over the Project.

11.1.9 UTILIZATION OF MATERIALS AND EQUIPMENT. All labor and materials to be paid for by CITY hereunder shall be employed or used solely for the design and construction of the Project.

11.1.10 NO CONFLICT OF INTEREST. DESIGN-BUILDER represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Work required hereunder. DESIGN-BUILDER further represents that no person having any such interest shall be knowingly employed or engaged by DESIGN-BUILDER for said performance. DESIGN-BUILDER covenants that it shall obtain this same representation from its Subconsultants, Professionals, and Subcontractors.

11.1.11 NO SOLICITATION OR CONTINGENCY FEES. DESIGN-BUILDER represents that it has not employed or retained any company or person other than *bona fide* employees working solely for DESIGN-BUILDER for the purpose of soliciting or securing this Contract, and that DESIGN-BUILDER has not paid or agreed to pay any person, company, firm or entity other than *bona fide* employees working solely for DESIGN-BUILDER any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. DESIGN-BUILDER covenants that it shall obtain these same representations from its Subconsultants, Professionals, and Subcontractors.

11.1.12 NO CHANGE OR SUBSTITUTION OF SUBCONSULTANTS, PROFESSIONAL AND/OR SUBCONTRACTORS. DESIGN-BUILDER warrants and represents that it shall not change or substitute the Subconsultants, Professionals and/or Subcontractors identified in DESIGN-BUILDER's Proposal in response to the RFP without prior written approval of the CITY. Such CITY approval will not be unreasonably withheld.

11.1.13 DRUG-FREE. DESIGN-BUILDER shall use reasonable efforts, throughout the term of this Contract, to prohibit the use and possession of any alcoholic or other intoxicating beverages, illegal drugs, or controlled substances while on the job or on the City's property by all agents and employees of DESIGN-BUILDER and its Subconsultants, Professionals, and Subcontractors.

11.1.14 GENERAL WARRANTY. DESIGN-BUILDER shall warrant the entire Work, and all labor, materials, services and equipment incorporated therein, for an initial minimum period of one year from the date of Substantial Completion or for such longer period(s) as may be reasonable or fair under the circumstances as agreed upon between CITY and DESIGN-BUILDER or as may be otherwise provided in this Contract. However, this provision shall not terminate DESIGN-BUILDER's liability which shall terminate under an applicable statute of limitations or establish a period of limitations with respect to the Work nor limit or abrogate any other rights or remedies of the CITY under this Contract or applicable law. DESIGN-BUILDER warrants that all materials and equipment will be of good quality and new unless otherwise required or permitted by express written agreement between CITY and DESIGN-BUILDER. DESIGN-BUILDER further warrants that the Work will be free from defects not inherent in the quality required or permitted.

DESIGN-BUILDER additionally warrants that Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. DESIGN-BUILDER's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by DESIGN-BUILDER, improper or insufficient maintenance, or improper operation. If requested by CITY, DESIGN-BUILDER shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided.

11.1.15 EXTENDED WARRANTIES. Extended warranties applicable to certain specified portions of the Project are stated herein. Specific and more detailed language will be supplied by DESIGN-BUILDER along with the detailed and itemized project specifications under development. Such warranties will be drafted under the guidance of CITY to clarify any ambiguities in the extended warranties, prior to Substantial Completion. DESIGN-BUILDER agrees, on behalf of itself and its Professionals, Subconsultants, and Subcontractors, to timely honor all such extended warranties. This provision shall not terminate DESIGN-BUILDER's liability which shall terminate under an applicable statute of limitations or establish a period of limitations with respect to the Work, nor limit or abrogate any other rights or remedies of the CITY under this Contract or applicable law.

ARTICLE 12 COVENANTS

12.1 DESIGN-BUILDER covenants that it shall fully comply with the following provisions, in addition to all other terms, conditions and requirements of this Contract:

12.1.1 Design and Construction Contracts. DESIGN-BUILDER shall enter into binding Contracts which are made subject to the terms of this Contract with all Subconsultants, Professionals, and Subcontractors. Any modifications to those contracts shall also be made subject to the terms of this Contract. DESIGN-BUILDER's direct contracts with all Subconsultants, Professionals, and Subcontractors shall be evidenced by a written binding document prior to Subconsultants, Professionals, and Subcontractors performing any Work on the Project. Further, DESIGN-BUILDER shall be responsible for any defaults under the terms of any Contracts with any and all of its Subconsultants, Professionals, and Subcontractors which may affect the GMP or the Project Schedule and shall repair such defaults at the DESIGN-BUILDER's sole cost and expense, and shall enforce all of the obligations of the parties to such Contracts so as to avoid any adverse impact to the GMP and the Project Schedule. DESIGN-BUILDER shall provide to CITY, at its request, current and updated lists of its Subconsultants, Professionals, and Subcontractors which have performed or may perform any portion of the Work, and shall, upon request, provide CITY with copies of all such Contracts with any or all of them.

12.1.2 Final Construction Documents. DESIGN-BUILDER shall submit the Final Construction Documents, and each part thereof, to the CITY for review and approval, at the CITY's sole discretion, before commencing construction of the Project.

12.1.3 Audit Requirements. DESIGN-BUILDER shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Contract which shall be available and accessible at DESIGN-BUILDER's offices for the purpose of inspection, audit, and copying during normal business hours by the CITY or any of its authorized representatives. Such records shall be retained for a minimum of

five years after completion of the services. Prior to the destruction of any records, the DESIGN-BUILDER shall notify the CITY and deliver to the CITY any records the CITY requests. DESIGN-BUILDER shall require all Subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written Contract between DESIGN-BUILDER and the Subcontractor.

12.1.4 Books and Records. DESIGN-BUILDER will keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to CITY or to federal or state agencies that are participating in the funding of the Work, such as through State Revolving Fund loans, or their respective authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes. Where DESIGN-BUILDER performs Work on a fixed-price or unit-price basis, CITY's audit rights shall not extend to DESUGN-BUILDER's costs for such Work. Audits shall not be contingent-fee basis or any similar basis where the auditor has a financial interest in maximizing recoveries from DESIGN-BUILDER.

12.1.5 **Inspections and Audits.** DESIGN-BUILDER agrees that all relevant records related to this Contract or any Work Product under this Contract, including practices of its Subcontractors, will be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of DESIGN-BUILDER where such records may be found. All Subcontracts will reflect the requirements of this Section 12.1.

12.1.6 Compliance with Requirements. DESIGN-BUILDER shall cause the Project to be constructed in strict compliance with the Final Construction Documents and all requirements of all laws, rules, codes and regulations applicable to the Site and the Project.

ARTICLE 13 **INSURANCE REQUIREMENTS**

13.1 INSURANCE COVERAGES REQUIRED. DESIGN-BUILDER and, where designated, each of its Subconsultants, Professionals, and Subcontractors shall obtain and maintain during the full duration of Work required under this Contract, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements. All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the CITY. Unless specifically waived hereafter in writing by the Risk Manager for the City, DESIGN-BUILDER agrees that the insurer(s) shall waive its rights of subrogation, if any, against the City on all policies required below.

All liability insurance policies, other than the Worker's Compensation and Employers' Liability Policy and Professional Liability Policy, obtained by the DESIGN-BUILDER to meet the requirements of this Contract, shall name the CITY as an additional insured as to the operations of the DESIGN-BUILDER under this Contract and shall contain the "Severability of Interests" provision. In addition, all policies required shall be written as

primary policies and not contributing to nor in excess of any coverage CITY may choose to maintain. The insurance coverages must cover all of the DESIGN-BUILDER's activities under this Contract whether on CITY's property or not.

13.2 DESIGN-BUILDER's Insurance.

13.2.1 Coverages Required: After the execution of the Agreement and prior to receiving a Notice to Proceed with Phase I – Design Services, the DESIGN-BUILDER shall purchase, and maintain through completion of Phase II – Construction Services Phase, the following types and amounts of insurance, in form and companies satisfactory to the CITY:

- (1) **Workers' Compensation Insurance:** As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of the DESIGN-BUILDER, employed at the site of the work or in any way connected with the work, which is the subject of this service. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.
- (2) **Liability Insurance:** Commercial General Liability Insurance, including coverage for operations, independent Contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the DESIGN-BUILDER and any other interests, including but not limited to any associated or subsidiary companies involved in the work.; and Automobile Liability Insurance, which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the DESIGN-BUILDER at the site of the project or in any way connected with the work which is the subject of this agreement.

THE LIABILITY INSURANCE SHALL NAME THE CITY AS AN ADDITIONAL INSURED. DESIGN-BUILDER's Commercial General Liability insurance policy shall provide coverage to Contractor, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such

Additional Insured status that is at least as broad as ISO form CG 20 10 11 85.

The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$2,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$2,000,000.

- (3) **Professional Liability.** DESIGN-BUILDER shall obtain and require all Professionals, including all architects, engineers, and surveyors, performing or providing any of the Work as Consultants or Subconsultants required under this Contract, as Named Insured, to carry Professional Liability coverage in the amount of \$1,000,000 minimum for any errors or omissions in the Work.

(i) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible or self-insured retention amount(s), or other exclusions or limitations as to the amount of coverage to be provided within the minimum coverage limits set forth above, DESIGN-BUILDER shall be responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible or self-insured retention amount(s), exclusions or limitations, DESIGN-BUILDER shall be required to provide the CITY with written documentation acceptable to the CITY that DESIGN-BUILDER has the financial resources readily available to cover damages, injuries and/or losses which are not covered as a result of the policy(s) deductible amount(s), exclusions and/or limitations as stated above.

(ii) If the foregoing policy (or policies, as applicable) is a claims-made policy, the DESIGN-BUILDER and Professional(s) shall maintain the policy(s) continuously for a period of at least five years from the Final Completion Date, or shall purchase the necessary tail coverage to cover the additional five-year period. In the event of cancellation or nonrenewal of any Professional Liability insurance coverage required hereunder, the DESIGN-BUILDER and Professional(s) shall obtain the maximum extended claims reporting period(s) permitted under the policy(s).

(iii) Any and all deductible(s) and self-insured retention amount(s) shall be the responsibility of the DESIGN-BUILDER and the insured Professional(s).

(iv) Professional Liability insurance policies provided hereunder must cover all contractual liability and warranties, without any exclusions, or the Professional(s) shall be required to enter into direct Contracts with the CITY. Lack of privity between the CITY and any Professional shall not be a defense to any claim by the CITY for loss or damage.

(v) DESIGN-BUILDER's inability or failure to obtain Professional Liability coverage for services performed by the DESIGN-BUILD entity shall not relieve it of any liability or responsibility for any design errors or omissions by it or any of its Professionals.

13.2.2 Builders' Risk: After the execution of the GMP Amendment and prior to receiving a Notice to Proceed with Phase II – Construction Services DESIGN-BUILDER shall purchase Builders' Risk insurance for the Work on an "all risk" basis, including without limitation, insurance against the perils of flood, fire, earthquake, theft, vandalism, malicious mischief, collapse, water damage, stored materials, materials in transit, windstorm, falsework, testing and startup, temporary building and debris removal on a completed value basis insuring the Work, and all equipment and materials to be incorporated into the Work, for the benefit of the CITY, the DESIGN-BUILDER and Subcontractors at every tier as their interests may appear. The Owner, the DESIGN-BUILDER and any Subcontractor insured therein waive all rights against each other for damages caused by fire and other perils to the extent covered by the insurance obtained pursuant to this paragraph.

13.2.3 Any insurance policy required by or pursuant to this Section may contain a reasonable deductible provision provided advance notice of said deductible provision is given by the Contractor to the City and approval from the Risk Manager for the City is given, which approval shall not be unreasonably withheld or delayed. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or sub-contractor providing such insurance.

13.2.4 Proof of Insurance: The DESIGN-BUILDER shall furnish proof of insurance acceptable to the CITY prior to or at the time of execution of the agreement and the DESIGN-BUILDER shall not commence work under this agreement until he has obtained all the insurance required under this agreement and such insurance has been filed with and approved by the CITY, nor shall the DESIGN-BUILDER allow any Subcontractor to commence work on its subcontract until similar insurance required of the Subcontractor has been so obtained and approved. The DESIGN-BUILDER shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard and the expiration dates,

If requested by the CITY, the DESIGN-BUILDER will furnish copies of the insurance policies to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

13.2.5 Maintenance of Insurance: The DESIGN-BUILDER shall file replacement certificates 15 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. In the event such insurance shall lapse, the CITY expressly reserves the right to renew the insurance at the DESIGN-BUILDER's expense. The DESIGN-BUILDER may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and the Design- Builder has received written notification from the Risk Management Division of the City of Daytona Beach that the DESIGN-BUILDER may cancel the insurance required by this agreement and the date upon which the insurance may be cancelled. The Risk Management Division will

provide such written notification at the request of the DESIGN-BUILDER if the request is made no earlier than two weeks before the work is to be completed.

Anything to the contrary notwithstanding, the liabilities of the Design- Builder under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration, limitation, exclusion or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the DESIGN-BUILDER shall relieve the DESIGN-BUILDER or its sub-contractors from responsibility to provide insurance as required by the contract.

13.2.6 These insurance requirements will be reviewed after the design is completed and before the Notice to Proceed with Phase II – Construction Services is issued and may be subject to modification.

13.3 PAYMENT AND PERFORMANCE BONDS. DESIGN-BUILDER shall obtain and maintain the following Payment and Performance Bonds in the type, amounts and in conformance with the following minimum requirements.

13.3.1 DESIGN-BUILDER shall furnish the CITY with a Performance Bond and Payment Bond, each equal to the amount of the GMP at the time CITY issues Notice to Proceed with Construction Services. DESIGN-BUILDER's shall furnish and record in the Public Records of Volusia County the executed Performance and Payment Bonds prior to Notice to Proceed with Construction Services. The Performance Bond shall name the DESIGN-BUILDER as Principal and be conditioned upon the timely and complete performance by DESIGN-BUILDER of all undertakings, covenants, terms and obligations under this Contract. It shall further provide affirmative coverage for liquidated damages suffered by the CITY caused by or arising from DESIGN-BUILDER's failure to timely perform its obligations under this Contract. The Payment Bond shall be conditioned upon the prompt payment by DESIGN-BUILDER and its Subcontractors, to all persons, firms and entities supplying all labor, services and materials in the prosecution of the Work.

13.3.2 The Performance and Payment Bonds shall be executed by DESIGN-BUILDER and a corporate bonding company(s), acceptable to the CITY and licensed to transact such business in the State of Florida, rated as an A.M. Best "A-" rated company. All payments, expenses and premiums shall be borne by DESIGN-BUILDER. If at any time a Surety on any such Bond is declared bankrupt, loses its right to do business in Florida or is rated lower than "A-" by Best, DESIGN- BUILDER shall, within ten (10) days of the occurrence of such event, substitute an acceptable Bond (or Bonds) in such form and sum and signed by other Surety or Sureties as may be satisfactory to the CITY. In such event, no payments shall be due or made by the CITY until the new Surety or Sureties shall have furnished an acceptable Bond(s) to the CITY.

ARTICLE 14 DEFAULT, TERMINATION AND OTHER REMEDIES

14.1 EVENTS OF DEFAULT. Without limiting the effect of any other provision of this Contract, the occurrence of any of the events listed in Articles 14.1.2 through 14.1.17 shall be deemed a default under this Contract and shall permit CITY to terminate this Contract and/or seek all remedies set forth in this Contract, or otherwise available in law and equity.

14.1.1 DESIGN-BUILDER or any of its Subconsultants, Professionals, or Subcontractors fails to comply with, perform and/or maintain any term, covenant, condition, duty, obligation, liability, representation or warranty of this Contract which the CITY determines to be material in the manner or within the time required by this Contract;

14.1.2 DESIGN-BUILDER files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws, or a court of competent jurisdiction enters an order, judgment or decree approving a petition filed by or against DESIGN-BUILDER or its Subconsultants, Professionals or Subcontractors, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future, federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors;

14.1.3 DESIGN-BUILDER makes a general assignment for the benefit of its creditors;

14.1.4 A trustee or receiver is appointed for DESIGN-BUILDER or for any of its property;

14.1.5 The termination, liquidation or dissolution of DESIGN-BUILDER;

14.1.6 The issuance of a writ of execution, garnishment, levy, attachment or similar process against DESIGN-BUILDER in connection with a claim for the payment of money or damages relating to the Project in excess of \$100,000.00, if the writ is not stayed or vacated within twenty (20) days after the issuance of it;

14.1.7 DESIGN-BUILDER repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to make prompt payments to Subconsultants or Subcontractors or for labor, materials, or equipment;

14.1.8 DESIGN-BUILDER disregards the authority of the Project Manager;

14.1.9 The violation by DESIGN-BUILDER of any law, rule, regulation, order, ordinance or decree of any governmental agency having or claiming jurisdiction over the Work, the Project or the Site;

14.1.10 Through no fault of the CITY, construction is discontinued or abandoned for a period of fifteen consecutive (15) days. This does not include any delays by either party, caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, revolution, civil unrest, riots, strikes, lockouts, fires, pandemics, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster, or governmental actions;

14.1.11 In the reasonable opinion of the CITY, DESIGN-BUILDER has not timely commenced any portion of the Work, and/or is not proceeding or does not proceed continuously and diligently towards completion of the Work so as to materially interfere with the Project Schedule and jeopardize Substantial Completion of the Work;

14.1.12 DESIGN-BUILDER fails to complete the Work, except for any Punch List items, in accordance with the Final Construction Documents and this Contract on or before the Substantial Completion date;

14.1.13 DESIGN-BUILDER fails to complete the Work in accordance with the Final Construction Documents and this Contract on or before the Final Completion date;

14.1.14 Determination by CITY that any of the materials, fixtures or articles used by DESIGN-BUILDER in the construction of the Project, or the appurtenances thereto or to be used in the operation thereof, are not in material accordance with the Final Construction Documents;

14.1.15 DESIGN-BUILDER fails to submit the Bonds and Certificates of Insurance in accordance with the requirements of this Contract or Policies as requested by the CITY; or

14.1.16 DESIGN-BUILDER fails to fully correct any defects determined to be material by the CITY.

14.2 TERMINATION OF WORK

14.2.1 TERMINATION FOR CAUSE. The CITY may terminate this Contract for the reasons stated in Articles 14.1.2 through 14.1.6 and 14.1.10 without giving prior written notice to DESIGN-BUILDER. In the event CITY shall seek to terminate the Contract for the reasons stated in Articles 14.1.1, 14.1.7 through 14.1.9, and 14.1.11 through 14.1.16, the CITY shall first provide DESIGN-BUILDER with reasonable opportunity to cure or remedy the default. Upon termination, the CITY shall take possession of the Project and may take possession of all materials, equipment, tools, construction equipment, and machinery thereon owned by the DESIGN-BUILDER and finish the Work by whatever method it may deem expedient. In such case, the DESIGN-BUILDER shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the GMP (excluding any remaining Contingency amounts) exceed the cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the DESIGN-BUILDER for any work performed but remaining unpaid at termination. If such cost exceeds the unpaid balance, the DESIGN-BUILDER shall pay the difference to the CITY. If, after notice of termination of this Contract as provided for herein, it is determined for any reason that the DESIGN-BUILDER was not in default, or that its default was excusable, or that the CITY was not entitled to the remedy against DESIGN-BUILDER provided herein, the termination will be deemed to be a termination for convenience and the DESIGN-BUILDER'S remedies against the CITY shall be the same as and limited to those afforded there under. Where the DESIGN-BUILDER's services have been so terminated pursuant to the above by the CITY, said termination shall not affect any rights of the CITY against the DESIGN-BUILDER then existing or which may thereafter accrue. CITY may, in the alternative, and without waiving any rights under this Contract, withhold from DESIGN-BUILDER any payment due or to become due until such default is cured. Any correction or replacement of the Defective Work shall be at the sole expense of the DESIGN-BUILDER without any cost to the CITY. CITY's retention of payment of monies due the DESIGN-BUILDER will not release the DESIGN-BUILDER from liability.

14.2.1.1 Notice to Cure. If a Notice to Cure is contemplated above, the CITY will provide a written Notice to Cure to DESIGN-BUILDER and its surety to cure any of the conditions outlined in Section 14.1 and/or an anticipatory breach of contract and, if required by the CITY, to attend a meeting with the CITY, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently

prosecuted. Upon receipt of any Notice to Cure, DESIGN-BUILDER will prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The DESIGN-BUILDER's report will be delivered to the CITY at least three days prior to any requested meeting with the CITY and surety. CITY may not terminate the Contract for default without providing DESIGN-BUILDER a reasonable opportunity to cure the default but may exercise its other remedies for default in the absence of the discretionary cure notice referenced herein.

14.2.1.2 STOP WORK. Whenever the CITY has the right to terminate the Contract for cause, the CITY may, without waiving any rights under the Contract, order the DESIGN-BUILDER to stop the Work or any portion thereof until the cause for such order has been eliminated. This right is in addition or as an alternative to termination for cause. However, this right of the CITY to stop the Work shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of the DESIGN-BUILDER or any other party. The DESIGN-BUILDER shall have no right to claim an increase in the GMP or Contract Time or other damages for such order to stop the Work.

14.2.1.3 CORRECTION OF WORK BY CITY. If, after receiving notice and an opportunity to cure pursuant to Article 14.2.1, DESIGN-BUILDER defaults or neglects to carry out the Work, or any portion thereof, CITY may, in addition or as alternative to termination for cause and without prejudice to other remedies CITY may have, correct such deficiencies, defaults or neglects. In such case, an appropriate Change Order shall be issued deducting, on a dollar for dollar basis, from any payment then or thereafter due DESIGN-BUILDER, all costs of correcting such deficiencies, defaults or neglects. All costs of such correction shall be paid by the DESIGN-BUILDER or deducted from payment to DESIGN-BUILDER. The DESIGN-BUILDER shall also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the Defective Work. If the payments then or thereafter due DESIGN-BUILDER are not sufficient to cover the amount of the deduction, DESIGN-BUILDER shall immediately, but no later than fifteen (15) days after such correction, pay the difference to CITY.

14.2.2 TERMINATION FOR CONVENIENCE

14.2.2.1 The performance of Work under this Contract may be terminated by the CITY in accordance with this clause in whole, or from time to time in part, whenever the CITY shall determine that such termination is in the best interest of the CITY. Any such termination shall be affected by delivery to the DESIGN-BUILDER of a Notice of Termination for Convenience specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

14.2.2.2 After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the CITY, the DESIGN-BUILDER shall:

- (i) Stop Work under this Contract on the date and to the extent specified in the Notice of Termination for Convenience;

- (ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under this Contract as is not terminated;
- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination for Convenience;
- (iv) In the sole discretion of the CITY, the DESIGN-BUILDER shall either:
 - (1) assign to the CITY, in the manner, at the time, and to the extent directed by the Project Manager, all of the right, title, and interest of the DESIGN-BUILDER under some or all of the orders and subcontracts so terminated; or
 - (2) settle all outstanding liabilities and all claims arising out of such termination of non-assigned orders and subcontracts.
- (v) Transfer title and deliver to the CITY, in the manner, at the times and to the extent, if any, directed by the Project Manager, the fabricated or unfabricated parts, Work-in-progress, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the Notice of Termination for Convenience.
- (vi) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination for Convenience.
- (vii) Take such action as may be necessary or as the CITY may direct, for the protection and preservation of the property related to this Contract which is in the possession of the DESIGN-BUILDER and in which the CITY has or may acquire an interest.

14.2.2.3 After receipt of a Notice of Termination for Convenience, the DESIGN-BUILDER shall submit to the CITY its termination claim, in accordance with the procedures set forth in Article 10. DESIGN-BUILDER shall make every reasonable attempt to mitigate its costs resulting from the CITY's Termination for Convenience. DESIGN-BUILDER's claim shall be submitted promptly, but in no event later than four months from the effective date of termination unless one or more extensions in writing are granted by the CITY. Upon failure of the DESIGN-BUILDER to submit its termination claim within the time allowed, the CITY shall determine, on the basis of information available to it, the amount, if any, due to the DESIGN-BUILDER by reason of the Termination for Convenience.

14.2.2.4 The DESIGN-BUILDER and the CITY may agree upon the whole or any part of the amount or amounts to be paid to the DESIGN-BUILDER by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided, that such agreed amount or amounts shall not exceed the total GMP (less any remaining Contingency amounts described in Article 9) as reduced by the amount of payments otherwise made and as further reduced by the GMP not terminated. The Contract shall be amended accordingly, and the DESIGN-BUILDER shall be paid the agreed upon amount.

14.2.2.5 In the event of the failure of the DESIGN-BUILDER and the CITY to agree on the whole amount to be paid to the DESIGN-BUILDER by reason of the termination of Work pursuant to this Article, the CITY shall pay, on the basis of information available to it, with respect to all Work performed prior to the effective date of the Notice of Termination for Convenience, the total (without duplication of any items) of the cost of such Work, and a sum as profit, equal to agreed upon fee of the cost of the completed Work. In the event the parties are unable to reach agreement as to the cost of such Work, the parties retain the right to seek judicial resolution of their dispute. In no event shall the DESIGN-BUILDER be entitled to recover any anticipated or lost profit on Work not performed as a result of the termination

14.2.2.6 Notwithstanding any provision to the contrary, the total sum to be paid to the DESIGN-BUILDER shall not exceed the total GMP (less any remaining Contingency amounts) as reduced by the amount of payments otherwise made and as further reduced by the GMP of Work not terminated. Except for normal spoilage, and except to the extent that the CITY shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the DESIGN-BUILDER, the fair value as determined by the CITY, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the CITY.

14.2.2.7 In arriving at the amount due the DESIGN-BUILDER for termination for convenience, there shall be deducted:

- (i) all unliquidated advance or other payments on account theretofore made to the DESIGN-BUILDER, applicable to the terminated portion of this Contract;
- (ii) any claim which the CITY may have against the DESIGN-BUILDER in connection with this Contract; and
- (iii) the agreed upon price for, or the proceeds of sale of, any materials, supplies, or other things kept by the DESIGN-BUILDER, or sold pursuant to the provisions of this clause, and not otherwise recovered by or credited to the CITY.

14.2.3 TERMINATION FOR FAILURE TO PERFORM IN A TIMELY MANNER. Should DESIGN-BUILDER fail to commence, provide, perform and/or complete any of the Work necessary to achieve timely Substantial Completion or Final Completion, then the CITY may terminate this Contract in accordance with the requirements of Article 14.2.1, and may seek all remedies as set forth in this Contract, including the right to take over the Work, and possession and control of all tools, supplies, equipment and materials associated therewith. In addition, or as an alternative, to such termination, and with the same notice, CITY may, at its option, withhold any or all payments due and/or owing to DESIGN-BUILDER, not to exceed the amount of the compensation for the Work in dispute as determined by the CITY, until such time as DESIGN-BUILDER resumes performance of its obligations in such a manner as to correct any such failures and to get back on schedule in accordance with the Project Schedule. DESIGN-BUILDER may be required to submit a recovery plan and to take specific corrective actions including, but not limited to, employing additional workmen and/or equipment,

and working extended hours and additional days, all at no cost to the CITY, in order to put the Project back on schedule.

14.2.4 **TERMINATION FOR FAILURE TO RECEIVE STATE REVOLVING FUND LOAN.** City may terminate this Agreement in accordance with this article in the event the City is unable to meet the deadlines necessary to be considered for a state revolving fund loan due to the failure of the Design-Builder to complete the design necessary for the application. DESIGN-BUILDER shall complete the work through Task 6 as identified in Exhibit A attached hereto. Pursuant to Article 17 all documents and records regardless of form or format shall be turned over to the City with authorization to use the design for construction when the City determines it is in its best interest to proceed. CITY shall pay for all Phase 1 fees identified in Exhibit A attached hereto. No additional fees for the use of the plans shall be incurred by the City.

14.3 TERMINATION FOR FAILURE TO NEGOTIATE A GMP.

CITY may terminate this Agreement for convenience in accordance with this article in the event the CITY and DESIGN-BUILDER fail to negotiate a GMP. DESIGN-BUILDER shall complete the work through Task 6 as identified in Exhibit A attached hereto. Pursuant to Article 17 all documents and records regardless of form or format shall be turned over to the City with authorization to use the design for construction when the City determines it is in its best interest to proceed. CITY shall pay for all Phase 1 fees identified in Exhibit A attached hereto. No additional fees for the use of the plans shall be incurred by the City.

14.4 **ASSIGNMENT OF ALL CONTRACTS AND AGREEMENTS.** In the event that CITY terminates this Contract for any reason, DESIGN-BUILDER shall, at the request of CITY, assign over to CITY all or some of DESIGN-BUILDER's rights, title and interest in and to all or some of its Contracts with all Professionals, Subconsultants, and Subcontractors. If the CITY requests such assignment(s), the CITY shall only assume future responsibilities and obligations under the Contracts, and DESIGN-BUILDER shall be liable for all of its responsibilities and obligations under the Contracts prior to the time of assignment. In no event shall such assignment(s) be construed to be a novation by the CITY.

**ARTICLE 15
SUSPENSION OF WORK**

15.1 **SUSPENSION OF WORK.** The CITY may at any time suspend the Work or any portion thereof for a continuous period of not more than 90 days by notice in writing to the DESIGN-BUILDER. The Project Manager shall fix the date on which Work shall be resumed, and the DESIGN-BUILDER shall resume the Work on the date so fixed. The DESIGN-BUILDER shall be allowed an extension of the Contract Time if directly attributable to any such suspension, provided it makes a proper claim for same as provided for in Article 10. DESIGN-BUILDER shall not be entitled to any damages or additional compensation for any such suspensions. However, DESIGN-BUILDER shall only be allowed the reasonable costs for General Conditions and Subcontractor re-mobilization that are directly attributable to the suspensions. Pricing of such cost shall be in accordance with Article 10.

**ARTICLE 16
INDEMNIFICATION**

16.1 INDEMNIFICATION. DESIGN-BUILDER shall indemnify and hold harmless CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees, for any personal injury claims (including death) and any third-party property damage claims to the extent caused by the negligence or wrongful misconduct of DESIGN-BUILDER and any persons employed or utilized by DESIGN-BUILDER in the performance of this Contract.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF DESIGN-BUILDER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT IF THE CONDITIONS OF SECTION 558.0035 ARE SATISFIED.

**ARTICLE 17
OWNERSHIP OF DOCUMENTS AND MAINTENANCE OF RECORDS**

17.1 All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from DESIGN-BUILDER's services under this Agreement shall become the property of and shall be delivered to CITY without restriction or limitation as to use regardless of the format of the document (paper or electronic). However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of CITY.

17.2 DESIGN-BUILDER agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement shall be compatible with existing CITY software and systems. It is anticipated that the software utilized will be run on Windows-based PC's and will consist of AutoCAD release 2020, Microsoft Office 365 ProPlus including: Word, Excel, and PowerPoint, Microsoft Project 2019, and Adobe Acrobat DC version 15.

17.3 CITY agents, employees and representatives shall have the right to visit the offices of DESIGN-BUILDER, and its Professionals, Subconsultants and Subcontractors for inspection of the Work, drawings, specifications, test data, and related materials at any time during normal business hours.

17.4 The CITY shall also have the right to obtain a copy of and otherwise inspect, any audit made at the direction of DESIGN-BUILDER as concerns the aforesaid records and documentation.

17.5 Adequate records shall include accounting, in detail sufficient for a proper preaudit and post audit, of all charges that relate to the Work. Expenses and other direct costs

shall be itemized, and an explanation shall be furnished stating why the charge is applicable to the Project.

17.6 DESIGN-BUILDER shall permit CITY to examine and copy:

- (i) all drawings, specifications, plans, shop drawings, field notes, field reports, daily reports, logs and all other documents which the CITY shall deem related to the Work;
- (ii) all of DESIGN-BUILDER's books, records and accounts relating to Work contracted, materials ordered and received, and all disbursements and accounts payable in connection with the Project and;
- (iii) certificates and reports of inspecting architects, engineers and public officials; and all subcontracts, bills, bank accounts, payroll records, employment records and other records pertaining to the Project.

DESIGN-BUILDER shall maintain such records in a single, consolidated, easily accessible location for a minimum period of five years.

17.7 (a) To the extent applicable, DESIGN-BUILDER will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract and following such completion if DESIGN-BUILDER fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. DESIGN-BUILDER will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, DESIGN-BUILDER MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone) 386 671-8023
(Email) CLERK@CODB.US

(Address) 301 S. Ridgewood Avenue
Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive DESIGN-BUILDER's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

17.8. CITY may unilaterally cancel this Contract for refusal by DESIGN-BUILDER to allow public access to all documents, papers, letters, or other materials made or received by DESIGN-BUILDER in conjunction with the Contract unless such records are exempt under Section 24(a) of Art. I of the Florida Constitution and Section 119.07(1), Florida Statutes.

ARTICLE 18 **ASSIGNMENT**

18.1 ASSIGNMENT. DESIGN-BUILDER shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from:

- (i) the merger or consolidation of DESIGN-BUILDER with a third party, which merger or consolidation has been approved in writing by CITY; or
- (ii) the disestablishment of DESIGN-BUILDER's Professional practice and the establishment of successor Subconsultants or Professionals, or consulting organization, all as approved by CITY.

Further, DESIGN-BUILDER shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Contract, without prior written approval of CITY. DESIGN-BUILDER shall have the right, subject to the CITY's prior written approval, to employ other persons and/or firm, other than or in addition to those preliminarily listed by DESIGN-BUILDER, and upon which preliminary list CITY has materially relied in entering into this Contract, to serve as Professionals, Subconsultants, and/or Subcontractors to DESIGN-BUILDER in connection with DESIGN-BUILDER providing and performing the Work pursuant to the requirements of this Contract.

ARTICLE 19 **RELIANCE UPON REPRESENTATIONS AND STATEMENTS OF ASSURANCE**

19.1 STATEMENT OF ASSURANCE. In the performance of this Contract, DESIGN-BUILDER herein assures CITY that DESIGN-BUILDER is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that DESIGN-BUILDER does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against DESIGN-BUILDER'S employees or applicants for employment. DESIGN-BUILDER understands and agrees that this Contract is conditioned upon the veracity of this Statement of Assurance. Other applicable federal and state laws, executive orders, and regulations prohibiting the type of discrimination as herein above delineated are included by this reference.

19.2 TRUTH-IN-NEGOTIATION CERTIFICATE. In accordance with Section 287.055, Florida Statutes, signature of this Contract by DESIGN-BUILDER shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit

costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting. The GMP and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the GMP was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Contract adjustments shall be made within one year following the end of this Contract.

19.3 RELIANCE UPON DESIGN-BUILDER. DESIGN-BUILDER acknowledges and agrees that its experience and expertise in the performance of the Scope of Work required under this Contract, as represented in its Proposal submitted in response to the RFP is a material inducement to CITY entering into this Contract. The CITY does not make any representation and assumes no obligations or duties as to third parties concerning the quality, sufficiency or accuracy of the design and/or construction by DESIGN-BUILDER of the Project or the absence of any defects. The CITY's review and approval of the Final Construction Documents, and each component thereof, and the construction of the Project, is and will be done as a matter of right only and not as a matter of obligation, and shall not be a representation to any third party of the quality, soundness or integrity of the design and construction of the Project. The CITY is strictly relying on DESIGN-BUILDER'S expertise and experience with respect to the quality, sufficiency and accuracy of the Final Construction Documents and the construction of the Project, including but not limited to, the functional soundness and structural integrity of the Project. This Article shall survive the termination of this Contract and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists.

ARTICLE 20 **MISCELLANEOUS**

20.1 CITY APPROVAL. Unless expressly stated otherwise, in all instances in which the CITY's approval is required under this Contract, the CITY shall not unreasonably withhold such approval and shall provide such approval in a timely manner. The above provision shall not be construed to require the CITY in any way to waive its rights to the DESIGN-BUILDER's full performance of its obligations under the Contract.

20.2 APPLICABLE LAW; VENUE. This Contract shall be governed by the laws, rules and regulations of the State of Florida. The parties agree that venue for any action relating to this Contract or the Project shall be in Volusia County, Florida.

20.3 NO WAIVER OF BREACH. Waiver by either party of a breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

20.4 HEADINGS AND NUMBERS; CAPITALIZATIONS; USAGE. The Headings and Numbers of the Articles, Sections, Paragraphs, Exhibits and Attachments, as contained in this Contract, and the use of capitalized terms in this Contract, are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Paragraphs, Exhibits and Attachments. Further, as terms are used herein, the singular shall mean plural and there shall be no distinction as to gender, when interpreting or construing such terms.

20.5 ENTIRE CONTRACT. This Contract, including the Exhibits and Attachments hereto and documents included by reference herein, constitutes the entire Contract

between the parties hereto and shall supersede, replace and nullify any and all prior contracts or understandings, written or oral, relating to the matters set forth herein, and any such prior contracts or understandings shall have no force or effect whatever on this Contract.

20.6 EXHIBITS. The Exhibits to this Contract, which are referred to herein, are acknowledged, understood and agreed to be an integral part of this Contract.

20.7 CHANGE OF ADDRESS. Either party may change its address by written notice to the other party.

20.8 CUMULATIVE REMEDIES. All rights, powers and privileges conferred by this Contract upon the parties shall be cumulative and in addition to those otherwise provided by law and, unless specifically stated, shall not be deemed to preclude any right or remedy provided by law.

20.9 SUCCESSORS AND ASSIGNS. This Contract shall be binding upon the successors and assigns of the parties hereto, subject to Article 18 above.

20.10 SEVERABILITY. If any provision of this Contract is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the other provisions of this Contract.

20.11 ACCEPTANCE. Acceptance of this Contract shall be indicated by the signature of the duly authorized representative of the herein above-named parties in the space provided hereinafter and being attested and witnessed as indicated.

20.12 AUTHORITY TO SIGN CONTRACT. CITY and DESIGN-BUILDER both warrant to the other that they, and the persons executing this Agreement on behalf of each of them, have the right, power and authority to execute this Contract.

20.13 The DESIGN-BUILDER and the CITY mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Contract. This mutual waiver includes: (1) damages incurred by the CITY for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and, (2) damages incurred by the DESIGN-BUILDER for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

20.14 Dispute Resolution

20.14.1 If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies, in lieu of any other procedures including arbitration procedures as referenced in SGTCs Section 4.4.

20.14.2 Negotiations Required. A Party will request in writing that a meeting be held between representatives of each Party within 14 days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

20.14.3 Non-Binding Mediation. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described above proves unsuccessful or the Parties mutually waive the procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

20.14.4 If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

20.15 NOTICE. Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

DESIGN-BUILDER:	CITY:
Company: Wharton-Smith	City of Daytona Beach Utilities
Name: Nathan Hillard	Shannon Ponitz, Utilities Director
Address: 705 Monroe Road	125 Basin St.
City/State/Zip: Sanford, FL 32771	Daytona Beach, FL 32114
Fax: 407-327-6984	Fax: 386-671-8501

ARTICLE 21.

EMPLOYEE RESTRICTIONS

21.1. CITY will not intentionally award publicly-funded contracts to any Design-Builder who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)]. The CITY shall consider employment by any Consultant or subconsultant or subcontractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the DESIGN-BUILDER of the employment provisions contained in Section 274A(e) of the INA shall be grounds for termination of this Agreement by the CITY.

21.2. The Consultant shall incorporate the terms of paragraphs 21.1 and 21.2 into all contracts with any subconsultants or subcontractors.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, authorized representatives of the Parties have signed this Agreement on the dates indicated below.

The City of Daytona Beach

>Design-Builder

By: _____

Derrick L. Henry, Mayor

By: 

Printed: PATRICK J. HEWITT

Date: _____

Title: EXECUTIVE VICE PRESIDENT

Attest: _____

Letitia LaMagna, City Clerk

Date: 5-27-21

Approved at to legal form:

By: _____

Robert Jagger, City Attorney

EXHIBIT A



Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF DAYTONA BEACH
WESTSIDE REGIONAL WRF IN-PLANT PUMP STATION AND HEADWORKS
PHASE I SCOPE OF SERVICES

The following narrative is to provide more detail to the Phase I Scope of Services for the design phase for the Westside Regional WRF In-Plant Pump Station and Headworks project.

The Phase I Services will cover a 16-month period for design development and FDEP permitting which is inclusive of preconstruction services provided by Wharton-Smith and 2-months for the production and negotiation of the Guaranteed Maximum Price (GMP). Please note that the 2 months allotted for the GMP does not include the time required for the City's approval and contract amendment.

Generally:

Attend general progress review and coordination meetings with Owner.

Attend periodic design meetings to provide consultation on aspects of the design and construction that will impact the budget, schedule, and quality of the completed Work.

1. Design-Builder will work with Owner to develop the optimum scope and quality of Work to meet Owner's Budget. Such work will consist of considering options and alternates with scope and quality adjustments as determined by Owner. Design-Builder will assess cost and schedule impact of these options and alternates.
2. Consult with Owner regarding site use and improvements, and the selection of materials, building systems, and equipment.
3. Provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible opportunities for savings.
4. Provide recommendations on construction schedule for possible opportunities for time savings.

Provide input to the Owner regarding current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions. Develop Subcontractor and Supplier interest in the Work, consistent with Legal Requirements. Furnish Owner a list of possible Subcontractors and Suppliers, from whom bids will be requested for each principal portion of the Work. Submission of this list is for information and discussion purposes only and not for prequalification.

In conjunction with the Owner, identify the appropriate Early Work packages including procurement of long-lead time items and equipment and other Work required to meet the schedule for the Owner.



In conjunction with the Owner, identify the appropriate Work packages from the Contract Documents for distribution to prospective bidders for providing all elements of Work not included in the General Conditions. Appropriate Work packages shall generally mean scopes of work that will maximize the competition for those Work packages. Work packages will also be identified with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting communities.

The following breakdown lists the anticipated tasks and expectations taken into account when producing the preconstruction proposal. Any work outside of this scope of work that is requested of Wharton-Smith by the Owner, shall be submitted in the form of a 'Request for Quotation' for review and approval prior to such work taking place.

Task 1 Project Coordination

- 1.1 Project Kickoff Meeting – Wharton-Smith staff will attend one (1) project kickoff meeting with the City of Daytona Beach (City/Owner) and Hazen (Designer). Meeting minutes will be prepared and distributed.
- 1.2 Conceptual Design Workshops – Wharton-Smith staff will attend conceptual design review workshops with the City and Hazen. These workshop style meetings are not necessarily independent of each other and may be combined depending on the time expected to discuss each topic. It is assumed that two, 2-hr workshops will be required.
- 1.3 Preliminary Design Workshops – Wharton-Smith staff will attend preliminary design review workshops with the City and Hazen. These meetings will be workshop style meetings to review the preliminary design evaluations (screening, grit removal, pump station, and odor control). These workshop style meetings are not necessarily independent of each other and may be combined depending on the time expected to discuss each topic. It is assumed that two, 2-hr workshops will be required.
- 1.4 Design Review Workshops – Wharton-Smith staff will attend three (3) design review workshops with the City and Hazen. These meetings will be workshop style meetings to review drawings and specifications at the 30%, 60%, and 90% design submittals.
- 1.5 Additional Meetings – Aside from the meetings detailed above, Wharton-Smith staff will attend up to four (4) additional subject specific meetings with required parties for additional design coordination. Additional internal and external coordination efforts will be held by conference call or web meetings.
- 1.6 Site Visits & Investigation – Wharton-Smith will perform a site visit to investigate existing conditions, review spatial constraints, evaluate structure placement, develop ingress & egress plan during construction, and analyze site conditions for development of site-specific safety and quality plans. Wharton-Smith will provide final reports of encountered conditions to the City and Hazen. Wharton-Smith will also provide the necessary labor to assist with the subsurface utility exploration.



- 1.7 Permitting Meetings & Coordination – Wharton-Smith staff will attend pre-application meetings, coordination meetings, site visits, and assist with the preparation and submittal for the design phase permits.
- 1.8 Preconstruction Video – Wharton-Smith will hire a subcontractor and provide the necessary labor to video existing conditions at the Westside Regional WRF site and surrounding area. A copy of the video will be provided to the City.

Task 2 Preliminary Cost Estimates

- 2.1 Design Evaluations Costing – Wharton-Smith will prepare conceptual level cost estimates for the conceptual and preliminary design options to allow the City of Daytona Beach to make informed decisions regarding the potential options versus the project budget and schedule.
- 2.2 30% Cost Estimate – Wharton-Smith preconstruction staff will perform detailed takeoffs (based on drawing concepts) on all construction trades such as site work, concrete, process equipment, utilities, mechanical, building, finishes, etc. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor cost estimates.
- 2.3 60% Cost Estimate – These costs are for the same items outlined in Task 2.2, but more accurate cost data will be provided as more detail is provided in the design. This cost estimate will serve as the Preliminary GMP.
- 2.4 Final Submittal Cost Estimate (Reconcile GMP) – Once the 100% construction documents are issued, after GMP but before mobilization, Wharton-Smith preconstruction staff will review the drawings to revisit all detailed takeoffs for self-performed trades. The pricing is adjusted and tracked based on additions and deletions. Subcontractors also adjust their pricing after reviewing more detailed drawings. At this time the GMP is reconciled with cost savings being returned to contingency.

Task 3 Design and Constructability Reviews

- 3.1 Conceptual Design Evaluation Review – Wharton-Smith will perform design and constructability reviews to identify changes, conflicts, and constructability concerns for each of the conceptual design options and site layout options.
- 3.2 30% Submittal Constructability Review – Wharton-Smith will perform detailed design and constructability review to identify changes, conflicts, constructability concerns, spatial concerns, general questions, and overall consistency of the design disciplines (structural, civil, process, etc.). Each of the preliminary design evaluation options will also be reviewed during this phase. Value engineering options are also provided during this phase and throughout the life cycle of the project.
- 3.3 60% Submittal Constructability Review – These costs are for the same items outlined in Task 3.2 but for the 60% design documents.



- 3.4 90% Submittal Constructability Review (GMP Development Set) – These costs are for the same items outlined in Task 3.2 but for the GMP design documents including specifications and detailed review of all documents to ensure that they are “bid ready”.
- 3.5 100% Submittal / Conformed Document Review – These costs are for the same items outlined in Task 3.2 but include final review of all documents to ensure that they are conformed and ready for construction.

Generally, Design-Builder shall review in-progress design documents, including at a minimum the documents generally described above in 3.1 through 3.5 and provide input and advice to Owner on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

- Constructability, including sequencing or coordination issues, to enable Work to be completed with a minimum of RFI's and change orders.
- Adequacy of details for construction.
- Potential conflicts during construction.
- Ability to coordinate among Subcontractors and Suppliers.
- Coordination between Contract Documents.
- Operability.
- Ability to minimize disruptions to existing operations and maintain plant operations.
- Ability to complete construction connections to existing facilities or utilities.
- Modifications to facilitative commissioning and start-up and/or performance testing.
- Ability of Owner to operate/maintain the Work in a safe, time and cost-efficient manner when completed.

Task 4 CPM Master Schedule

- 4.1 Schedule Development and Phasing – At the 30% design phase, Wharton-Smith will develop a baseline Critical Path Method (CPM) schedule using Primavera P6 software based on available information (and providing reasonable allowances for Owner review time and time for permits and approvals from governmental agencies). The schedule will be broken down by phase (design/permitting, procurement, construction, and closeout) as by structure. A detailed schedule sequence will be provided for each structure. All portions of the project will be interrelated by schedule logic so that a true “critical path” is easily identifiable. Wharton-Smith and Hazen will also prepare and maintain a progress schedule during the preconstruction phase.
- 4.2 Review and Update Schedule During Design – The schedule developed in Task 4.1 is updated and modified based on the 60% design documents and construction sequencing is determined.
- 4.3 Final GMP Schedule (90% Design) – The schedule developed in Task 4.2 is modified based on the GMP design documents and construction sequencing is determined. This schedule shall serve as the basis for General Condition's costs in the GMP as well as the contract time required for the duration of construction.



Task 5 Bidding, Procurement, and GMP

- 5.1 Long Lead Equipment / Early Work Packages – Wharton-Smith will identify and break-out long lead equipment and early work packages for these scopes to be procured and executed as early as practical so that the overall construction schedule is minimized.
- 5.2 GMP Development – Wharton-Smith will identify and assemble appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting community. Wharton-Smith preconstruction staff will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.
- 5.3 Pre-Bid Site Visits – Wharton-Smith will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. Wharton-Smith will take notes and answer questions. Clarifications/addenda will be issued to bidding parties as needed.
- 5.4 Receive Bids – Wharton-Smith will receive bids throughout the course of an entire day. The bid times may be staggered to ensure our ability to answer questions or provide direction up to the last minute.
- 5.5 Review Bids and Recommend Award – All of the subcontractor and purchase order work package bids are reviewed for completeness, responsiveness, exceptions, clarifications, and deviations from the contract documents. Value engineering ideas and schedule commitments will also be evaluated. Wharton-Smith will provide a bid tabulation worksheet and, make a recommendation for package award, based on the best interest of the City. Final decision is made by the City.
- 5.6 Final GMP Assembly – All documents that comprise the GMP are assembled into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy provided). This includes all schedules, bid documents, subcontractor and supplier bids, Wharton-Smith self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies and allowances, and other GMP relevant documents that were considered in creation of the GMP. It is anticipated that multiple, phased GMP's may be required to accomplish desired project schedule.

Task 6 Design Services & Allowances

- 6.1 Design Services – See attached for Hazen's scope of services, fee, and design schedule. Our scope includes Hazen's fee of \$1,851,735.03.



6.2 Allowance for Preconstruction Video – Refer to Task 1.8 above. An allowance of \$1,200 has been included in subcontractor services for the preconstruction video. Any unused allowance will go back to the City of Daytona Beach.

6.3 Allowance for Subsurface Utility Exploration – A \$10,000 allowance for subsurface utility exploration has been included for additional SUE that may be identified during the course of the design phase. Any unused allowance will go back to the City of Daytona Beach.

Fee Summary: Below is a fee summary for the Phase I Scope of Services. A detailed hours and fee table for this phase of the project has been included as an attachment to this scope. Design consultant and subconsultant proposals for this phase of the project are also attached.

Description	Fee
Task 1: Project Coordination	\$25,396.76
Task 2: Preliminary Cost Estimates	\$43,589.14
Task 3: Design and Constructability Review	\$23,425.30
Task 4: CPM Master Schedule	\$12,642.84
Task 5: Bidding, Procurement, and GMP	\$29,541.18
Task 6: Design Services & Allowances	\$1,862,935.03
Subtotal	\$1,997,530.25
Phase I Design-Build Fee (8.0%)	\$159,802.42
Phase I Insurance (0.51%)	\$10,187.40
*Phase I Contingency	See Note Below
Total	\$2,167,520.07

*\$177,298.32 has been included within Hazen’s proposal for Phase I Contingency.



Hazen and Sawyer
919 Lake Baldwin Lane, Suite 200
Orlando, FL 32814 • 407-367-2626

May 17, 2021

Nathan Hillard
Wharton Smith
Sanford, Florida

Re: City of Daytona Beach – Westside Regional Water Reclamation Facility In-Plant Pump Station and Headworks Design-Build Project

Dear Mr. Hillard:

Enclosed please find our proposal to provide preliminary engineering and design phase services for the In-Plant Pump Station and Headworks Project at the Westside Regional WRF. We are ready to begin work upon Wharton Smith's written approval. Please feel free to call me at 407-230-7809 if you have any questions.

We look forward to working with you and all of City Staff on this important project.

Ervin B. Myers Jr., PE
Associate Vice President

Westside Regional Water Reclamation Facility In-Plant Pump Station and Headworks Project

Project Description

The Westside Regional Water Reclamation Facility (Westside WRF) is owned and operated by the City of Daytona Beach (City) and is located at 3651 LPGA Boulevard. The Westside WRF was upgraded to a modified Bardenpho process in 1999 and is permitted for an average daily flow of 15 MGD. The aim of this project is to address two separate needs:

- Influent flow to the Westside WRF is pumped through a series of force mains that are fed by multiple lift stations. The force mains combine into a single 36-inch diameter force main on the Westside WRF property and ultimately discharge into the elevated pretreatment structure. The pretreatment structure is approximately 35-feet above grade, adding nearly 15 psi of pressure to the system. It is the City's desire to reduce static pressures at lift stations, thereby reducing strain on the force mains.
- The Pretreatment structure includes screening via bar screens and cyclonic (free) vortex grit removal. During the Wastewater Master Plan, both screening and grit removal scored low with regards to mechanical operation, electrical/SCADA condition, and maintenance intensity. Additionally, both processes were identified to be hydraulically limited to flows less than the permitted capacity. It is the City's desire to improve these processes to aid in the overall efficiency of the treatment process.
- In addition, the City would prefer to have dedicated influent flow equalization tank capacity.

In order to address these needs, the City desires to construct a new influent pump station, headworks and equalization facilities. The Project will include the following:

- Screening selection
- Peaking factor study
- Pump selection, operation, and control strategy for optimal efficiency
- Pumping capacity redundancy
- Grit characterization study
- Options for grit removal equipment
- Options for odor control
- Stand-by emergency back-up power
- Piping repair/replacement/redundancy needs
- Instrumentation improvements
- Architectural and landscaping improvement options
- Required permits
- Maintenance of operations during construction plan
- Preliminary cost estimates for various alternatives

- Estimated construction schedule for alternatives implementation
- Final Design
- Permitting
- SRF Support Services
- Guaranteed Maximum Price (GMP) Development

Project Objectives

The City has selected a progressive design-build approach to the Westside WRF in-plant pump station and headworks project. Project goals include:

- A pump station that can efficiently pump the full range of expected flows
- A grit removal system that removes 95% of influent grit
- Effective screening
- Equalization to provide consistent flows and loads to the secondary process
- Restoration of reliability through new equipment and improved redundancy and controls

The scope of this project includes engineering services for conceptual/preliminary design, detailed design, and SRF support services to support the City's goals as stated above. The following is the detailed scope of services.

1. Scope of Services

TASK 1 – Project Initiation and Management

Hazen and Sawyer (FIRM) will complete the following subtasks:

Subtask 1.1 Project Kick-off Meeting

Wharton Smith (WS) will arrange a meeting with the City to review the goals and scope of the project, review the schedule and identify critical path issues, and establish project communications and protocols to follow. The FIRM will prepare and distribute an agenda as well as notes of this meeting to all attendees.

Deliverables:

- *A Kick-off Meeting Agenda in electronic (PDF) format.*
- *Meeting summary in electronic (PDF) format.*

Subtask 1.2 Project Coordination

The FIRM will provide the following services for the duration of the project.

- **Project Coordination:** Coordinate with WS's Project Manager throughout the project via meetings, email and phone conversations to respond to questions, provide regular project updates, and discuss planning activities and other program requirements.
- **Schedule Coordination:** Prepare a schedule in Microsoft Project, which incorporates the major tasks. The schedule will identify key deliverables and milestones throughout the program duration. The schedule shall be updated monthly and distributed to the program team.
- **Manage Budget:** Manage the budget, schedule, and invoicing throughout the duration of program.
- **Progress Meetings:** Project status will be reviewed at the series of decision making meetings/workshops listed in Tasks below. Up to four additional meetings are included with the team to coordinate activities and work effort.

Deliverables:

- *Meeting minutes as applicable in electronic (PDF) format.*
- *Monthly invoices to the WS in (PDF) format.*

TASK 2 – Data Collection and Conceptual Design

The FIRM will evaluate options with the City through multiple workshops prior to completion of the draft preliminary design report (PDR). Workshops are not necessarily independent of each other and can be combined depending on the time expected to discuss each topic. It is assumed that 2, 2-hr workshops will be required for Task 2 to discuss:

- Treatment Process, Redundancy and Conceptual Site Layout Workshop
- Grit Characterization Study Review Meeting
- Odor Control Data Review Meeting

The FIRM will complete the following subtasks:

Subtask 2.1 Data Collection/Review

The City will provide the following information as needed for use in subsequent project tasks:

- Record drawings of influent force main and discharge force main to downstream treatment trains
- Record drawings of electrical building and associated single line diagrams
- Electrical Utility contact information and monthly electrical peak demand data for each electrical service associated with the plant
- Available historical data for influent flow and upstream pump stations (flows, pressures, run times, for past 2 years)
- Any operations or maintenance insight into volume and type of screenings and grit and issues related to debris
- Any other information that may be available such as a previous structural, geotechnical evaluation, etc.
- Details on existing controls systems strategies for the Westside WRF

The FIRM will review and summarize the data as necessary for the evaluation. Any additional data needs will also be identified.

Deliverables:

- *Data request in electronic Excel format.*

Subtask 2.2 Treatment Process, Redundancy and Conceptual Site Layout Workshop

The FIRM will prepare and present conceptual treatment process arrangements including flow equalization tank, screening, in-plant pump station and grit removal equipment. Site layout options, orientation of the structures including piping and redundancy will also be evaluated. The proposed options will incorporate the proposed structures and will include two-dimensional schematics that show the proposed overall layout. The final option will be selected based on review of the various requirements, cost, and the feasibility of implementation.

Deliverables:

- *Meeting minutes in electronic (PDF) format will include the conceptual site layout options.*

Subtask 2.3 Grit Characterization Study

Grit characterization will allow the FIRM to better understand the composition of grit in the wastewater in the raw influent streams ahead of the treatment trains. Results of the grit characterization will allow the FIRM to evaluate the design removal efficiency required of the proposed grit removal system.

FIRM will develop a Sampling Plan for the grit characterization data collection. FIRM will develop a Sampling Plan including parameter selection, associated equipment and testing methods, identified sampling locations, and a sampling schedule. A draft Sampling Plan will be submitted to the City for review and comment. Based on the City's review comments and the discussion at the pre-sampling plan review meeting, the draft Sampling Plan will be finalized and submitted to the City.

The FIRM (up to 4 personnel) will attend a pre-sampling meeting to review the sampling plan, receive comments from the City and verify sampling locations and logistics for obtaining samples and performing analyses. FIRM anticipates to continuously capture grit from up to 2 locations in the flow stream, over a period of approximately 8 hours of a given day for 3 days. Sampling will begin in the morning, prior to the first influent peak of the day. Approximately three (3) samples will be taken per day to evaluate diurnal flow impacts on grit concentrations. It is assumed that samples will be obtained from the following locations:

- Raw Influent, upstream of the existing screens
- Downstream of the existing screens prior to the existing grit removal equipment

Samples will be washed and decanted onsite. Samples will then be sieved and settling velocity tested. The grit characterization analysis will include: physical size distributions, settling velocities, and grit concentrations (in sand equivalent size). Grit characterization results will be presented at a workshop. It is assumed that grit sampling will be performed with a ViCAs unit.

The FIRM will conduct a virtual meeting with the City to review the grit characterization results.

Deliverables:

- *Draft and Final sampling plan in electronic (PDF) format.*
- *Meeting minutes in electronic (PDF) format which will include a summary of the grit characterization results.*

Subtask 2.4 Odor Control Data Collection

The FIRM will conduct targeted liquid and vapor phase odor sampling at the Westside WRF

FIRM will conduct sampling to characterize and quantify the odorous compounds present in order to identify the most suitable technology to treat the foul air associated with the proposed influent pump station and headworks structures. FIRM will develop draft and final Sampling Plans for the odor data collection effort. FIRM will rent, deploy, retrieve, and return two (2) continuous hydrogen sulfide (H₂S) data recorders to measure the vapor phase H₂S concentrations in the existing influent screens channels and grit chambers over a 7-day period.

FIRM will collect four (4) grab samples using glass-lined Silco canisters for reduced sulfur compound (RSC) analysis at an independent certified laboratory able to test for ASTM International (ASTM) D5504-12. This laboratory procedure is used to analyze for 20 sulfur-based compounds that include many of the primary odor-causing compounds prevalent in a wastewater collection and treatment, such as mercaptans, dimethyl sulfide, and dimethyl disulfide.

FIRM will collect and analyze wastewater samples from the existing headworks structure for total sulfide, dissolved sulfide, D.O., pH, temperature, and ORP with portable hand-held meters and field test kits. Data will be used to characterize the influent wastewater conditions and the associated vapor phase odor potential. Each grab sample (vapor and liquid phase) will be collected twice, on a different date if possible, in an attempt to ensure representative data is obtained and to capture varying influent conditions. The FIRM will conduct a virtual meeting with the City to review the odor sampling results.

Deliverables:

- *Draft and Final sampling plan in electronic (PDF) format.*
- *Meeting minutes in electronic (PDF) format which will include a summary of the odor sampling results.*

TASK 3 – Preliminary Design Report (30%)

It is assumed that 2, 2-hr workshops will be required for Task 3 to discuss:

- Screening Workshop
- Grit Removal Workshop
- Pump Station Workshop
- Odor Control Workshop

The FIRM will complete the following subtasks:

Subtask 3.1 Screening Options Evaluation

FIRM will evaluate and recommend alternatives for the appropriate screening technologies to meet the City's goals. The FIRM will assess the need for coarse screening ahead of the new in-plant pumps in addition to fine screening. The assessment will be based on operational history with the existing offsite pump stations with regards to the amount and size of likely oversized solids that may enter the facility. If coarse screens are deemed necessary, the FIRM will provide alternatives for the appropriate screening technology to meet the City's goals, including capture rate, target characteristics of captured materials, and means to convey and dispose of captured materials.

Two weeks in advance of the workshop, the FIRM will conduct a one hour conference call with the City and narrow the focus of the workshop to include up to two (2) technologies per screen as applicable. The FIRM will conduct a workshop with the City describing typical wastewater treatment screening options and a comparison of each with respect to the criteria below. The comparison of technologies will be relative to one another and not site specific.

- Capture rate
- Footprint
- Operations and maintenance requirements
- Competition
- Municipal wastewater experience
- Cost
- Capacity
- Headroom
- Means to convey and dispose of captured materials via the City's current disposal practices
- Constructability

FIRM will assist in identifying a local installation of the selected screening technology that City staff can visit to examine specific equipment of particular interest that are in operation. The FIRM will also assist the City in identifying other utility staff contacts where the selected technology has been installed so City staff can call to discuss other's experience.

The FIRM will evaluate one selected make and model of equipment to develop a preliminary layout in the PDR of equipment for the screens.

Deliverables:

- *Meeting minutes in electronic (PDF) format.*

Subtask 3.2 Grit Removal Equipment Options Evaluation

Results of the grit characterization study will allow the FIRM to evaluate the design removal efficiency required of the proposed grit removal system. FIRM will evaluate and recommend alternatives for the appropriate grit removal technologies to meet the City's goals. Two weeks in advance of the workshop, the FIRM will conduct a one hour conference call with the City to narrow the focus of the workshop to include up to two (2) technologies. The FIRM will conduct a workshop with the City tailored to discuss up to 2 wastewater treatment grit removal technologies based on the results of the grit characterization providing a comparison of each with respect to the criteria below. The comparison of technologies will be relative to one another and not site specific.

- Capture rate
- Footprint
- Operations and maintenance requirements
- Municipal wastewater experience
- Cost
- Capacity
- Means to convey and dispose of captured materials via the City's current disposal practices
- Constructability

FIRM will assist in identifying a local installation of the selected grit removal technology that City staff can visit to examine specific equipment of particular interest that are in operation. The FIRM will also assist the City in identifying other utility staff contacts where the identified technology has been installed so City staff can call to discuss other's experience. The FIRM will evaluate one make and model of equipment to develop a preliminary layout in the PDR of equipment for the grit removal equipment.

Deliverables:

- *Meeting minutes in electronic (PDF) format.*

Subtask 3.3 Pump Station Workshop

The FIRM will determine the IPS pumping capacity with various pump selections for historical and projected future influent flow conditions and the incorporation of potential flow equalization. This work will utilize data collected from the City and historical pumping conditions as available. The FIRM will coordinate with City staff for hydraulic model scenarios for consideration. The FIRM will utilize the peak flow, average daily flow, and anticipated minimum flow to recommend the capacity and provide alternatives for the number of pumps to be included and the operating sequences. The number of pumps will include firm capacity with the largest pump taken out of service.

For the Pump Station Workshop, submersible pump station design options will be investigated and presented to the City. Submersible pump station design options including the number of duty pumps and jockey pumps, trench style self-cleaning options, etc. will be investigated and possible layouts will be presented. The FIRM will present the advantages and disadvantages to the City for selection of one option to be included in a Pump Station PDR under the Draft Preliminary Design Report subtask. Criteria to be considered will include approximate capital and lifecycle costs, O&M requirements, importance of equipment standardization throughout the City, spare parts, and training. City staff will select a preferred arrangement following the meeting. Pumps will be based on submersible pump design and the City's preferred manufacturer(s). The FIRM will utilize the peak flow, average daily flow, and anticipated minimum flow to recommend the capacity and provide alternatives for the number of pumps to be included and the operating sequences. The number of pumps will include firm capacity with the largest pump taken out of service.

Deliverables:

- *Meeting minutes in electronic (PDF) format.*

Subtask 3.4 Odor Control Workshop

Based on the results of the odor field sampling activities (Subtask 2.5), as well as calculations of required foul air flow from each process area odor source the FIRM will review applicable odor control technology alternatives. Two weeks in advance of the workshop, the FIRM will conduct a one hour conference call with the City to narrow the focus of the workshop to include up to two (2) technologies. The FIRM will conduct a workshop with the City tailored to discuss up to 2 wastewater treatment odor control technologies based on the results of the odor field sampling results providing a comparison of each with respect to the criteria below. FIRM will review applicable odor control technology alternatives, including:

- Identifying required system design criteria
- Describing feasible odor control technologies and advantages/disadvantages
- Developing life cycle cost comparisons of feasible treatment technologies

The FIRM will evaluate one make and model of equipment to develop a preliminary layout in the PDR of an odor control system for the preliminary treatment components at the Westside WRF. The FIRM will summarize the Odor Control Strategy Evaluation in the draft PDR.

Deliverables:

- *Meeting minutes in electronic (PDF) format.*

Subtask 3.5 Preliminary Design Report (PDR)

FIRM will produce a draft PDR combining previous workshop summaries to document the findings of previous Tasks/Subtasks and provide preliminary equipment layout drawings, along with a general narrative of the design. The FIRM will develop the proposed electrical loads associated with the project. The FIRM will develop the proposed control strategies for the proposed process systems. The FIRM will develop P&IDs to depict the design and control concept for the proposed components. The drawings will constitute a 30% design level. The FIRM will provide quality assurance and quality control (QA/QC) review prior to submittal to the City.

The FIRM will review permitting requirements with the local permitting agencies and summarize the findings in the PDR. The FIRM will attend one meeting with the Florida Department of Environmental Protection (FDEP), along with City staff, if required.

Deliverables:

- *Draft preliminary design report and drawings in electronic (PDF) format.*

Subtask 3.6 PDR Review Meeting and Final Report

FIRM will attend a PDR review meeting with City staff to review the submitted draft report. The FIRM will assist WS in developing a PowerPoint presentation of the draft PDR components and will assist with presentation during the meeting. FIRM will receive comments at the review meeting and document the comments and the resolution to those comments in the meeting notes produced by the FIRM prior to finalizing the report. Following the review meeting, the FIRM will furnish one electronic pdf copy of the final PDR.

Deliverables:

- *Meeting minutes in electronic (PDF) format.*
- *Final preliminary design report and drawings in electronic (PDF) format.*

TASK 4 – Final Design

The FIRM will prepare 60% and 90% design drawings and equipment shop drawings. Drawings will, to the extent possible, use the City's standard technical specifications and conform to City standards. The FIRM will adhere to its own computer-aided design drawing (CADD) standards for plotting and will provide the City and/or WS with the applicable plot files along with final electronic file copies of the record drawings upon project completion. Final design drawings and equipment shop drawings will be provided

electronically in pdf format, AUTOCAD version 2020, and any associated 3D BIM models. Preparation of Technical specifications will be included in Word format.

The FIRM will perform the following activities to complete the final design of the project:

Subtask 4.1 60% Design Submittal

The FIRM will provide a 60% design submittal. These documents will be used to obtain an estimate for the guaranteed maximum price proposal for the construction of this project. The 60% submittal will include, but not be limited to:

- Draft equipment shop drawings for all major project components. FIRM will work with subconsultants and manufacturers to prepare detailed procurement packages. FIRM will work closely with those manufacturers and provide assistance with completing the draft equipment shop drawings for all major project components. Review all draft major equipment submittal packages and make necessary revisions in preparation for City review and approval.
- Technical Specifications. FIRM will prepare specification package utilizing City standard specifications. For those items not covered by City standards, FIRM will prepare required technical specifications.
- Drawings for General, Civil Architectural, Structural, Mechanical, HVAC, Plumbing, Electrical, and Instrumentation design. Drawings will include site plans for demolition, construction staging, final site layout, plan and profile drawings for the replacement force main; plan views of the screening structure, in-plant pump station, and grit removal structure, flow equalization tank, building elevations, major sections and details, electrical one-line diagrams, telemetry network diagram, P&ID (panel I/O lists and bill of materials will be in the specifications), and schedules for finishes, doors, windows, louvers, columns and beams, HVAC equipment, plumbing fixtures, lighting fixtures and panels, conduit and cable, and electrical distribution. Updates from the 60% and 90% drawings will be tracked and shown on each sequential design update.
- Control System Improvements Workshop. The FIRM will provide recommendations to be included in the design to incorporate the facility improvements into the new control system, select the proposed analytical and process control instruments associated with the improvements, upgrade the plant Supervisory Control and Data Acquisition (SCADA) system to match on-going work efforts being completed by the City, and develop the proposed control strategies for the proposed process systems. The FIRM will follow City standards for SCADA controls. A workshop will be held with the City to discuss the preliminary control system improvements prior to completion of the 60% drawings.
- Maintenance of Plant Operations (MOPO) Workshop. A workshop will be held with the City to discuss a detailed sequence of construction and maintenance of plant operations plan.
- The FIRM will provide quality assurance and quality control (QA/QC) review prior to submittal to the City.

Deliverables:

- *60 Percent Level of Completion Drawings and Specifications in electronic (PDF) format*
- *Meeting minutes in electronic (PDF) format.*

Subtask 4.2 90% Design Submittal

The FIRM will prepare a 90% design submittal based on the comments received at the 60% design submittal review meeting with the City. The 90% submittal will include, but not limited to:

- Equipment shop drawings. FIRM will review and comment on shop drawings provided by equipment manufacturers based on the updated 60% documents.
- Drawings for General, Civil, Architectural, Structural, Mechanical, HVAC, Plumbing, Electrical, Instrumentation design. Drawings will be updated based on comments received for the 60% documents along with updates based on shop drawing review as well as remaining details, notes, and legends. Updated Drawings will be ready for submittal along with the equipment manufacturer's shop drawings (which will include complete control panel wiring diagrams and panel elevations).
- Technical Specifications will be updated based on comments received for the 60% documents along with updates based on shop drawing review.
 - The FIRM will provide quality assurance and quality control (QA/QC) review prior to submittal to the City.

Deliverables:

- *90 Percent Level of Completion Drawings and Specifications in electronic (PDF) format*

Subtask 4.3 Final Design Submittal

The FIRM will prepare a 100% final design submittal based on the comments received at the 90% review meeting with the City and any revisions made during bidding for a conformed set. FIRM will provide review of the final shop drawings based on these final design documents. The technical specifications and drawings will then be submitted to the City and/or WS.

Deliverables:

- *Final Drawings and Specifications in electronic (PDF) format*

Subtask 4.4 Review Meetings

FIRM will prepare final design submittals and attend review meetings at the 60% and 90% milestones in the design process. FIRM will review each comment and, if not sufficiently resolved in the meeting itself, respond back to the City in writing to fully address and/or provide alternatives for each unresolved comment provided in the review meeting. FIRM will keep the notes of review meetings and will prepare and distribute a written summary of the meeting notes and all decisions rendered after the meeting. The approved written summary will serve as the basis for proceeding with the next design milestone.

Deliverables:

- *60 Percent Review Meeting Summary in electronic (PDF) format*
- *90 Percent Review Meeting Summary in electronic (PDF) format*

TASK 5 - Permitting Services

Permit applications required for this project will be prepared and submitted by the FIRM to the responsible regulatory agency for review and approval. It is anticipated that the following permits will be required.

- A Florida Department of Environmental Protection (FDEP) construction permit using a Minor Revision to a Wastewater Facility or Activity Permit, Form 62-620.910(9).
- Permit waiver for Environmental Resource Permit (ERP) for storm water management through FDEP.

It is assumed that City site development reviews and Building Department reviews will not be required in the design phase of the project.

The FIRM will perform the following subtasks:

Subtask 5.1 FDEP Permitting for Westside WRF

The FIRM will provide engineering services to support permitting of facilities at the Westside WRF with the FDEP. The FIRM will prepare a draft Application for a Minor Revision to a Wastewater Facility or Activity Permit, Form 62-620.910(9). The FIRM will provide the draft application to the City for review. The FIRM will receive any feedback from the City on the draft application and edit as necessary. The FIRM will submit Form 62-620.910(9) and supporting documentation to the FDEP for review. The FIRM will respond to up to one Request for Additional Information (RAI) as needed in support of obtaining the permit.

Deliverables:

- *Draft Application for a Minor Revision to a Wastewater Facility or Activity Permit in electronic (PDF) format.*
- *Final Application for a Minor Revision to a Wastewater Facility or Activity Permit in electronic (PDF) format.*
- *Response to RAI.*

Subtask 5.2 FDEP Environmental Resource Permitting

The FIRM will provide engineering services to support that an ERP permit is not required for stormwater management. The FIRM will meet with the FDEP and submit supporting documentation as applicable for review. The FIRM will respond to up to one Request for Additional Information (RAI) as needed in support of obtaining the permit waiver.

TASK 6 – SRF Support Services

The FIRM will coordinate with the City and FDEP in the funding administration process. Draft transmittal letters and final document submittals to the agencies to facilitate the funding will be prepared by the FIRM. The City will provide documents and information as necessary to complete these Tasks. The FIRM will advise and draft responses to questions and/or comments relative to the funding.

Subtask 6.1 Consultation and Advisory Services

The FIRM will be available on an as needed basis to meet with and assist the City, respond to questions, and provide guidance and advice to the City's staff relative to the SRF funding process.

Subtask 6.2 Document Preparation Services

The FIRM will advise and assist the City in the preparation of plans and specifications, procurement and other documents with conditions and provisions as may be required by the FDEP to develop the GMP for the Project and obtain a construction loan. The FIRM will assist the City in obtaining appropriate wage rates and related documents for compliance with the federal Davis-Bacon Act, Buy American Iron and Steel provision, and other compliance requirements for inclusion in the documents. The FIRM will coordinate with the City to assist in gaining approval of the permissible set of plans, specifications, contract documents, and supporting documents by the FDEP so that the project is ready for construction.

The FIRM will review the plans and specification are consistent with the approved Facilities Plan recommendations and environmental mitigation as recommended in the Department's environmental information review. FIRM will review and supplement the City's procurement front end documents including Supplemental Conditions, templates and forms, etc. for bidding to meet SRF requirements. The FIRM will review that Davis-Bacon wage rate requirements and Minority and Women's Business Enterprise (W/MBE) requirements are included per SRF requirements. The FIRM will review that bid evaluation form including bid item additives, deducts and contract awards are clearly specified. The FIRM will review that the Cost and Effectiveness Certification and Water/Energy Conservation Certification are also included. The FIRM will submit the plans and specifications to FDEP for approval.

Subtask 6.3 Request for Inclusion (RFI)

The FIRM will review available information and assemble the supporting documents to prepare a draft Clean Water State Revolving Fund (SRF) RFI for a construction loan for the Project in accordance with the requirements of the FDEP. The City will cooperate with and make information available to the FIRM as needed to complete the RFI. The RFI will be submitted to the City for review, approval, signing, and for submission to the FDEP. The FIRM will advise the City in the preparation of the Site Certification and other supporting documents as may be required to obtain approval of the FDEP for a listing on the fundable portion of the SRF Priority List. The FIRM will attend the SRF Priority List meeting.

Subtask 6.4 Construction Loan Application

The FIRM will coordinate with the City's Finance Department and prepare the draft loan application or assist the City. The FIRM will provide comments and recommendations relative to the application and application process. The FIRM will assist the City in completing the final construction loan application and the submittal of the required documentation to the FDEP. The FIRM will assist the City in the preparation of draft resolutions and certifications as may be necessary to complete the application process. The FIRM will coordinate with the City and the FDEP to gain approval of the application. The FIRM will review the draft loan agreement that will be prepared by the FDEP. The FIRM will comment and advise the City as to the provisions of the draft agreement, communicate with the FDEP to negotiate needed revisions to the draft agreement, and respond to comments and questions. The FIRM will provide guidance on the execution and filing of the final agreement with the FDEP. The FIRM will coordinate with the FDEP to gain approval of the final construction loan agreement.

TASK 7 – Owner's Contingency

An Owner's Contingency of \$177,090.00 is included in this work assignment for unforeseen tasks that may be required. In the event that additional work is required or requested by the City which may arise from unforeseen engineering services, this task is intended to provide an owner's contingency for such work.

The FIRM will provide design assistance and coordination with respect to work on the LPGA Boulevard Force Main project as well as design assistance and coordination on other area sanitary sewer force main(s) terminating at Westside WRF and existing area Westside WRF yard piping. Work under the task is not limited but includes the following activities:

- 7.1: Engineering design services for the extension of the LPGA Boulevard force main at Westside WRF Road 6.
- 7.2: Hydraulic modeling assistance with City staff to review impacts of the Project to the existing upstream pump stations.
- 7.3: Engineering design services for redundancy: tie-in between an existing 36" sanitary sewer force main and the proposed LPGA Boulevard force main (note that the proposed LPGA Boulevard force main may be upsized from the proposed 30" within the Westside WRF plant site).
- 7.4: Engineering design services for redundancy: tie-in between an existing 20" sanitary sewer force main and the proposed LPGA Boulevard force main (note that the proposed LPGA Boulevard force main may be upsized from the proposed 30" within the Westside WRF plant site).
- 7.5: Hydraulic Analysis Review and Workshop: The FIRM will conduct a hydraulic analysis and Hydraulic Analysis Workshop. The hydraulic analysis will include a Peaking Factor Study to better understand the influent wastewater flow and the design capacity for the proposed treatment structures, including the IPS and possible flow equalization tank, including different options for piping connectivity and unit operations sizing. This work will utilize data collected from the City and historical pumping conditions as available. The hydraulic analysis will also incorporate hydraulic conditions related to the design of the headworks (screening and grit removal) and

possible flow equalization tank. The hydraulics of the proposed unit operations are interconnected, and the hydraulic analysis study will review the conditions of the unit operations as one system. *Deliverable(s): Meeting minutes in electronic (PDF) format which will include a summary of the peaking factor study and hydraulic analysis results.*

The FIRM will assist with preparation of applications and supporting documents for governmental grants, loans or advances in connection with the construction of the Project.

- 7.6: Additional SRF services during design.

Based on the results of the odor field sampling activities as well as calculations of required foul air flow from each process area, the FIRM will prepare 60% and 90% design drawings and equipment shop drawings for the odor control system. Work under the task is not limited but includes the following activities:

- 7.7: Odor Control System Design Services: The FIRM will provide a 60%, 90% and final design submittal.

The FIRM will provide hard copies signed and sealed by a Florida licensed Professional Engineer as applicable of the Drawings and Specifications at the City's request.

- 7.8: Printing hard copies of Drawings and Specifications

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2. Compensation

The FIRM will be compensated for the scope of services outlined above on a Lump Sum Basis. The work will be performed for a fee of **\$1,851,735.03**. A detailed hours and fee table assumed for this phase of the project have been included as an attachment to this scope. Subconsultant proposals for this phase of the project are attached. Construction phase services will be authorized under a separate, future work authorization:

Task Number	Task Name	Fee
1	Project Initiation and Management	\$50,147.56
2	Data Collection and Conceptual Design	\$116,418.80
3	Preliminary Design Report (30%)	\$290,249.42
4	Construction Documents	\$1,168,956.88
5	Permitting Services	\$35,564.05
6	SRF Support Services	\$13,100.00
7	Owner's Contingency	\$177,298.32
	Total	\$1,851,735.03

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3. Schedule

Task Number	Task Name	Duration
1	Project Initiation and Management	71 weeks
2	Data Collection and Conceptual Design	13 weeks from NTP
3	Preliminary Design Report (30%)	15 weeks from Task 2
4	Construction Documents	60% - 18 weeks from Task 3
		90% - 30 weeks from Task 3
		Final - 37 weeks from Task 3
5	Permitting Services	As-Needed
6	SRF Support Services	As-Needed
7	Owner's Contingency	As-Needed

4. Assumptions

Certain assumptions were made in development of the scope of services described above. To the extent possible, they are stated within the Scope of Services described above. In addition to those assumptions stated within the Scope of Services described above, this Scope of Service is based also upon the following:

- 4.1. Permitting – The City will sign permit applications as the Permittee.
- 4.2. The FIRM will pay minor modification permit application fees.
- 4.3. No Environmental Resource Permitting (ERP) is required and a request for waiver will be prepared.
- 4.4. No ventilation is required for the proposed headworks structures.
- 4.5. Consolidated written client comments to be received within 14 calendar days of each milestone submittal.
- 4.6. Services during construction shall be negotiated at a later date and the Scope of Services, including fee amount will be amended.
- 4.7. Wetlands delineation and the associated ERP permitting requirements are not included.
- 4.8. Facilities plan for SRF funding has already been prepared and approved.
- 4.9. Clarifying meetings prior to workshops provide early decision making to narrow focus of the workshops.

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ATTACHMENT A
Hazen Sawyer
City of Daytona Beach
Westside Regional WRF In-Plant Pump Station and Headworks Design-Build Project
FINAL 05/17/2021

Task	Description	VP	Associate VP	Senior Associate 2	Senior Associate 1	Associate	Sr. Principal Engineer	Principal Engineer	Assistant Engineer	Senior Principal Designer	Senior Designer	Admin	Total Hours	Hazen	ODC's	FNI	Survey	Geotech	Berryhill	Total	
		\$ 297.00	\$ 275.01	\$ 255.00	\$ 200.01	\$ 174.99	\$ 159.99	\$ 135.00	\$ 125.01	\$ 129.99	\$ 114.99	\$ 80.01									
		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours									
1	Project Administration	12	0	12	84	12	0	0	24	4	0	18	166	\$ 30,485.10	\$ 208.32	\$ 19,454.14	\$ -	\$ -	\$ -	\$ 50,147.56	
1.1	Project Kick-off Meeting	4	0	8	12	4	0	0	8	4	0	4		\$ 8,168.16	\$ 208.32						
1.2	Project Coordination	8	0	4	72	8	0	0	16	0	0	14		\$ 22,316.94	\$ -						
2	Data Collection and Conceptual Design	2	28	51	115	48	0	45	181	80	0	0	550	\$ 91,800.96	\$ 3,691.76	\$ 20,926.08	\$ -	\$ -	\$ -	\$ 116,418.80	
2.1	Data Collection/Review	0	0	12	16	0	0	0	24	40	0	0		\$ 14,460.00	\$ 208.32						
2.2	Treatment Process, Redundancy and Conceptual Site Layout Workshop	2	24	20	28	0	0	0	32	40	0	0		\$ 27,094.44	\$ 208.32						
2.3	Grit Characterization Study and Workshop	0	4	19	63	0	0	45	89	0	0	0		\$ 35,746.56	\$ 732.48						
2.4	Odor Control Data Collection	0	0	0	8	48	0	0	36	0	0	0		\$ 14,499.96	\$ 2,542.64						
3	Preliminary Design Report (30%)	40	72	118	170	180	32	0	182	228	0	24	1,046	\$ 186,700.08	\$ 1,249.92	\$ 102,299.42	\$ -	\$ -	\$ -	\$ 290,249.42	
3.1	Screening Options Evaluation	8	4	16	32	0	0	0	40	40	0	0		\$ 24,156.36	\$ 208.32						
3.2	Grit Removal Equipment Options Evaluation	8	4	16	32	40	0	0	0	40	0	0		\$ 26,155.56	\$ 208.32						
3.3	Pump Station Workshop	0	4	0	8	0	0	0	0	0	0	0		\$ 2,700.12	\$ 208.32						
3.4	Odor Control Workshop	0	4	0	6	72	0	0	70	0	0	0		\$ 23,650.08	\$ 208.32						
3.5	Preliminary Design Report (PDR)	16	52	58	60	40	32	0	40	148	0	16		\$ 83,481.48	\$ -						
3.6	PDR Review Meeting and Final Report	8	4	28	32	28	0	0	32	0	0	8		\$ 26,556.48	\$ 416.64						
4	Final Design	42	412	128	424	480	408	160	664	2130	442	84	5,374	\$ 831,525.24	\$ 1,666.56	\$ 312,190.08	\$ 14,275.00	\$ 9,300.00	\$ -	\$ 1,168,956.88	
4.1	60% Design Submittal	16	196	58	206	260	200	80	360	1022	262	48		\$ 414,762.66	\$ 416.64		\$ 14,275.00	\$ 9,300.00			
4.2	90% Design Submittal	14	184	34	170	200	200	80	288	988	180	36		\$ 363,239.10	\$ 416.64						
4.3	Final Design Submittal	4	16	4	16	0	8	0	0	80	0	0		\$ 21,487.44	\$ -						
4.4	Review Meetings	8	16	32	32	20	0	0	16	40	0	0		\$ 32,036.04	\$ 833.28						
5	Permitting Services	0	0	12	20	28	0	0	80	40	0	0	180	\$ 27,160.32	\$ 500.00	\$ 7,903.73	\$ -	\$ -	\$ -	\$ 35,564.05	
5.1	FDEP Permitting for Westside WRF	0	0	4	20	20	0	0	64	40	0	0		\$ 21,720.24	\$ 500.00						
5.2	FDEP Environmental Resource Permitting	0	0	8	0	8	0	0	16	0	0	0		\$ 5,440.08	\$ -						
6	SRF Support Services	0	0	0	0	0	0	0	0	0	0	0	0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,100.00	\$ 13,100.00	
6.1	Consultation and Advisory Services	0	0	0	0	0	0	0	0	0	0	0		\$ -	\$ -				\$ 5,000.00		
6.2	Document Preparation Services	0	0	0	0	0	0	0	0	0	0	0		\$ -	\$ -				\$ 3,000.00		
6.3	Request for Inclusion (RFI)	0	0	0	0	0	0	0	0	0	0	0		\$ -	\$ -				\$ 1,500.00		
6.4	Construction Loan Application	0	0	0	0	0	0	0	0	0	0	0		\$ -	\$ -				\$ 3,600.00		
7	Owner's Allowance	0	8	8	56	80	0	0	32	88	0	0	272	\$ 44,879.28	\$ 2,208.32	\$ 121,420.72	\$ 8,790.00	\$ -	\$ -	\$ 177,298.32	
7.1	Influent Force Main Rd 6 Route	0	0	0	4	0	0	0	0	0	0	0		\$ 800.04	\$ -	\$ 14,184.62	\$ 8,790.00				
7.2	Hydraulic Modeling	0	0	0	8	0	0	0	0	0	0	0		\$ 1,600.08	\$ -	\$ 22,662.42					
7.3	Tie-in between 36" FM and New LPGA FM Pipe	0	0	0	4	0	0	0	0	0	0	0		\$ 800.04	\$ -	\$ 13,183.82					
7.4	Tie-in between 20" FM and New LPGA FM Pipe	0	0	0	4	0	0	0	0	0	0	0		\$ 800.04	\$ -	\$ 13,183.82					
7.5	Hydraulic Analysis Review and Workshop	0	8	8	16	0	0	0	16	0	0	0		\$ 9,440.40	\$ 208.32	\$ 53,351.76					
7.6	Additional SRF Services During Design	0	0	0	12	0	0	0	16	8	0	0		\$ 5,440.20	\$ -	\$ 4,854.28					
7.7	Odor Control Design Services	0	0	0	8	80	0	0	0	80	0	0		\$ 25,998.48	\$ -						
7.8	Printing													\$ -	\$ 2,000.00						
	Total Hours	96	512	321	813	748	440	205	1,131	2,482	442	126	7,588								
	Subtotal													\$ 1,212,550.98	\$ 9,524.88	\$ 584,194.17	\$ 23,065.00	\$ 9,300.00	\$ 13,100.00	\$ 1,851,735.03	
	Overall Total																				\$ 1,851,735.03

City of Daytona Beach - Westside Regional WRF In-Plant Pump Station and Headworks Design-Bid-Construct

Task	Description	Proposed	Mileage 1	Mileage 2	Permit	Odor Sampling	Sheet 1	Sheet 2
			\$58.24	\$150.08	\$500.00	\$ 2,126.00	\$ 0.20	\$ 0.14
		BREAKDOWN	# Trips (RT)	# Trips (RT)	# Permit	# Sampling Even	# Sheets	# Sheets
1	Project Administration	\$ 208.32						
1.1	Project Kick-off Meeting	\$ 208.32	1		1			
1.2	Project Coordination							
2	Data Collection and Conceptual Design	\$ 3,691.76						
2.1	Data Collection/Review	\$ 208.32	1		1			
2.2	Treatment Process, Redundancy and Conceptual Site Layout Workshop	\$ 208.32	1		1			
2.3	Grit Characterization Study and Workshop	\$ 732.48	10		1			
2.4	Odor Control Data Collection	\$ 2,542.64	2		2	1		
3	Preliminary Design Report (30%)	\$ 1,249.92						
3.1	Screening Options Evaluation	\$ 208.32	1		1			
3.2	Grit Removal Equipment Options Evaluation	\$ 208.32	1		1			
3.3	Pump Station Workshop	\$ 208.32	1		1			
3.4	Odor Control Workshop	\$ 208.32	1		1			
3.5	Preliminary Design Report (PDR)	\$ -						
3.6	PDR Review Meeting and Final Report	\$ 416.64	2		2			
4	Final Design	\$ 1,666.56						
4.1	60% Design Submittal	\$ 416.64	2		2			
4.2	90% Design Submittal	\$ 416.64	2		2			
4.3	Final Design Submittal	\$ -						
4.4	Review Meetings	\$ 833.28	4		4			
5	Permitting Services	\$ 500.00						
5.1	FDEP Permitting for Westside WRF	\$ 500.00				1		
5.2	FDEP Environmental Resource Permitting	\$ -						
6	SRF Support Services	\$ -						
6.1	Consultation and Advisory Services							
6.2	Document Preparation Services							
6.3	Request for Inclusion (RFI)							
6.4	Construction Loan Application							
7	Owner's Allowance	\$ 2,208.32						
7.1	Influent Force Main Rd 6 Route							
7.2	Hydraulic Modeling							
7.3	Tie-in between 36" FM and New LPGA FM Pipe							
7.4	Tie-in between 20" FM and New LPGA FM Pipe							
7.5	Hydraulic Analysis Review and Workshop	\$ 208.32	1		1			
7.6	Additional SRF Services During Design							
7.7	Odor Control Design Services							
7.8	Printing	\$ 2,000.00					1,600	12,000
	Total Hours							
	Subtotal	\$ 9,524.88						
	Overall Total							

Mileage	Miles OW	\$/Mile	
Mileage 1	52	\$0.56	\$58.24
Mileage 2	134	\$0.56	\$150.08
FDEP Minor Modification Permit Fee		\$500.00	
Odor Evaluation Sampling			

From Hazen Orlando Office to Westside WRF [919 Lake Baldwin Lane, Suite 200, Orlando, FL 32814]
 From Hazen Tampa Office to Westside WRF [1000 N. Ashley Drive, Suite 1000, Tampa, FL 33602]

Item	Quantity	Source	Status/Comment	Cost
Acrolug H ₂ S Data Recorder Unit (week rental)	2	Detection Instruments		\$ 404.00
Water Quality Probe	1	Pine		\$ 500.00
Poly Tubing (20' roll, 1/4-inch OD)	2	Home Depot		\$ 12.00
Poly Tubing (20' roll, 3/8-inch OD)	1	Home Depot		\$ 6.00
Poly Tubing (20' roll, 1/2-inch OD)	1	Home Depot		\$ 6.00
Duct Tape	1	Home Depot		\$ 6.00
Twine	1	Home Depot		\$ 9.00
Latex Gloves	1	CVS		\$ 9.00
Paper Towels	1	CVS		\$ 4.00
Miscellaneous Supplies/Shipping	1	Varies		\$ 250.00
		Subtotal Equipment/Supplies		\$ 1,206.00
RSC Analysis - 6L Canisters w/ Flow Controllers	4	ALS Labs		\$ 920.00
		Subtotal Lab Costs		\$ 920.00
		Total Estimated Sampling Costs		\$ 2,126.00
Printing Sheets	Sheets/set	# of sets	\$/Sheet	
Sheet 1	200	8	\$ 0.20	\$ 320.00
Sheet 2	1,500	8	\$ 0.14	\$ 1,680.00

Black and white 11x17
 Black and white 8.5 x 11

May 17, 2021

Josefin E. Hirst, PE
Senior Associate
Hazen and Sawyer
919 Lake Baldwin Lane, Suite 200
Orlando, FL 32814

**Re: City of Daytona Beach
Westside Regional Water Reclamation Facility
In-Plant Pump Station and Headworks Design-Build Project
Phase I Scope of Services**

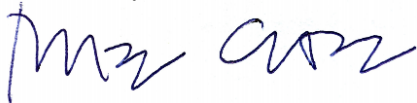
Josefin:

Enclosed please find the Scope of Services for Phase I (design services) for the above referenced project. It is our understanding that this Scope of Services will be included as Exhibit A to the subcontract agreement currently in negotiation between Hazen and Sawyer and Freese and Nichols, Inc.

We look forward to working together as a team on this project.

If you have any questions, please contact me at tom.cross@freese.com or (813) 541-8351.

Sincerely,



Thomas Cross, PE, DBIA
Senior Project Manager
Freese and Nichols, Inc.

cc:

Trooper Smith, PE
Craig Wells, PE
Tony Pevec, PE

Attachments

Exhibit A – Scope of Services

Exhibit A

Westside Regional Water Reclamation Facility

In-Plant Pump Station and Headworks Design-Build Project

Project Description

The Westside Regional Water Reclamation Facility (Westside WRF) is owned and operated by the City of Daytona Beach (City) and is located at 3651 LPGA Boulevard, Daytona Beach, FL. The Westside WRF was upgraded to a modified Bardenpho process in 1999 and is permitted for an average daily flow of 15 MGD. The City has selected a Design Builder, which is a team led by Wharton-Smith, Inc., (WS) and includes Design Consultants led by Hazen and Sawyer (Hazen). Hazen will serve as Design Lead and will provide overall design management, civil/site drainage, structural, electrical, and instrumentation and control (I&C) designs. The Scope of Service included herein will be completed by Freese and Nichols Inc., (FNI) as a subconsultant to Hazen for the following:

- Influent flow to the Westside WRF is pumped through a series of force mains that are fed by multiple lift stations. The force mains combine into a single 36-inch diameter force main on the Westside WRF property and ultimately discharge into the elevated pretreatment structure. The pretreatment structure is approximately 35-feet above grade, adding nearly 15 psi of pressure to the system. It is the City's desire to reduce static pressures at lift stations, thereby reducing strain on the force mains.

In order to address this need, the City desires to construct an In-Plant Pump Station (IPS). FNI's Project Scope of Services will include the following:

- Yard piping and plant influent tie-in(s)
- Pump selection, operation, and control strategy for optimal efficiency
- Pumping capacity redundancy
- Quality control review of the preliminary treatment odor control elements
- Assisting with plan development of 'maintenance of operations during construction'
- Preliminary cost estimates for various IPS alternatives
- Estimated construction schedule for IPS alternatives implementation
- Final IPS design
- Final yard piping design
- IPS permitting assistance
- Yard piping permitting services
- SRF support services
- Guaranteed Maximum Price (GMP) IPS and yard piping development assistance

Project Objectives

The City has selected a progressive design-build approach for the Westside WRF IPS. Project goals include:

- A pump station that can efficiently pump the full range of expected flows
- Consistent flows and loads to the secondary process
- Restoration of reliability through new equipment and improved redundancy and controls

The scope of this project includes engineering services for yard piping design, preliminary IPS design, detailed IPS design, permitting services, and SRF support services to support the City's goals as stated above. The following are the detailed scope of services.

1. Scope of Services

TASK 1 – Project Initiation and Management

FNI will complete the following subtasks:

Subtask 1.1. Project Kick-off Meeting

WS will arrange a meeting with the City to review the goals and scope of the project, review the schedule and identify critical path issues, and establish project communications and protocols to follow. FNI will attend the meeting and will review and provide edits to the Hazen developed agenda and meeting summary notes.

Deliverable(s):

- *Review and input on kick-off meeting agenda.*
- *Review and input on kick-off meeting minutes.*

Subtask 1.2. Project Coordination

FNI will provide the following services for the duration of the Project:

- **Project Coordination:** Coordinate with WS's Project Manager and Hazen's Project Manager throughout the project via meetings, email, and phone conversations to respond to questions, provide regular project updates, discuss planning activities and other program requirements, and issue a monthly invoice.
- **Schedule Coordination:** Provide input to the schedule in Microsoft Project, which incorporates the major tasks. The schedule will identify key deliverables and milestones throughout the program duration. The schedule shall be updated monthly and distributed to the program team.
- **Progress Meetings:** Attend monthly progress meetings with the team to coordinate activities and work effort.

Deliverable(s):

- *Review and input on meeting agendas.*
- *Review and input on meeting minutes.*
- *Monthly invoices.*
- *Monthly progress reports.*

TASK 2 – Data Collection and Conceptual Design (15%)

FNI will complete the following subtasks:

Subtask 2.1. Historical Data Collection/Review

The City will provide the following information as needed for use in subsequent project tasks:

- Record drawings of influent force main and discharge force main to downstream treatment trains.
- Available historical data for influent flow and upstream pump stations (flows, pressures, run times, for past 2 years).
- Any other available information that may be available such as a previous structural, geotechnical evaluation, etc.
- Details on existing controls systems strategies for the Westside WRF.

FNI will review the data and summarize the data as necessary for the IPS evaluation. Any additional data needs will also be identified.

Deliverable(s):

- *Data request.*

Subtask 2.2. Treatment Process, Redundancy and Conceptual Site Layout Workshop

FNI will assist in preparation and presentation of conceptual treatment process arrangements including EQ, and IPS equipment at a Treatment Process, Redundancy and Conceptual Site Layout Workshop.

Site layout options, orientation of the structures including piping and redundancy will be evaluated. FNI will work with WS and Hazen to develop the proposed options and will incorporate the proposed structures and will include two-dimensional schematics of the IPS for incorporation of proposed overall layout(s). The final option will be selected based on review of the various requirements, cost, and the feasibility of implementation with the City, WS, Hazen and FNI at a 2-hour Workshop.

Deliverable(s):

- *Conceptual IPS layouts – portable document format (PDF).*
- *Workshop agenda review.*
- *Workshop meeting summary notes and review.*

Subtask 2.3. Grit Characterization Study

FNI will not provide any services with this subtask.

Subtask 2.4. Odor Control Data Collection

FNI will not provide any services with this subtask.

TASK 3 – Preliminary Design Report (30%)

It is assumed that two (2), 2-hour Workshops will be required under Task 3 to discuss and review the following:

- Pump Station Workshop
- Odor Control Workshop

FNI will provide Quality Assurance/Quality Control (QA/QC) reviews under Task 3.

FNI will complete the following subtasks:

Subtask 3.1. Screening Options Evaluation

FNI will not provide any services with this subtask.

Subtask 3.2. Grit Removal Equipment Options Evaluation

FNI will not provide any services with this subtask.

Subtask 3.3. Pump Station Workshop

FNI will determine the IPS pumping capacity with various pump selections for historical and projected future influent flow conditions and the incorporation of potential flow equalization. This work will utilize data collected from the City, and historical pumping conditions as available. FNI will coordinate with City staff, Hazen staff, and WS staff for hydraulic model scenarios for consideration. FNI will utilize the peak flow, average daily flow, and anticipated minimum flow to recommend the capacity and provide alternatives for the number of pumps to be included and the operating sequences. The number of pumps will include firm capacity with the largest pump taken out of service.

For the Pump Station Workshop, submersible pump station design options will be investigated and presented to the City. Two weeks in advance of the Pump Station Workshop, FNI will conduct a one-hour remote conference call with the City, WS and Hazen to review initial findings and to agree and narrow the focus of the Pump Station Workshop to a selected design option.

Submersible pump station design options including the number of duty pumps and jockey pumps, trench style self-cleaning options, etc., will be investigated and possible layouts will be presented. FNI will present the advantages and disadvantages to the City for selection of one option to be included in a Pump Station

PDR under the Draft Preliminary Design Report subtask. Criteria to be considered will include approximate capital and lifecycle costs, O&M requirements, importance of equipment standardization throughout the City, spare parts, and training. City staff will select a preferred arrangement following the meeting. Pumps will be based on submersible pump design and the City's preferred manufacturer(s). FNI will utilize the peak flow, average daily flow, and anticipated minimum flow to recommend the capacity and provide alternatives for the number of pumps to be included and the operating sequences. The number of pumps will include firm capacity with the largest pump taken out of service.

Deliverable(s):

- *Workshop agenda and presentation.*
- *Workshop meeting minutes including documentation of decisions made.*

Subtask 3.4. Odor Control Workshop

FNI will perform a quality control review of the evaluation developed by Hazen for feasible odor control treatment options. FNI will also perform a quality control review of the Hazen developed preliminary odor control system design for the preliminary treatment components at the Westside WRF. FNI will provide review activities related to the desktop alternatives evaluation of feasible odor control treatment options and the preliminary design of an odor control system for the preliminary treatment components.

FNI will attend an Odor Control Workshop led by Hazen. Two weeks in advance of the Odor Control Workshop, FNI will participate in a one-hour remote conference call with the City, WS and Hazen to review initial findings and to agree and narrow the focus of the Odor Control Workshop to include up to two (2) technologies.

Deliverable(s):

- *Workshop agenda review.*
- *Workshop meeting summary notes and review.*
- *Quality control review comments related to the draft Hazen odor control strategy evaluation.*

Subtask 3.5. Draft Preliminary Design Report

FNI will produce the draft Pump Station PDR section summarizing the findings related to the Pump Station Workshop for incorporation to the overall Hazen led Draft PDR. The draft Pump Station PDR section will provide a complete description of the proposed IPS improvements, listing of proposed IPS equipment (with design criteria, capacities, make, model, quantities, and key features), listing of existing IPS equipment and structures to be removed, preliminary IPS equipment layout drawings, along with a general narrative of the design. The draft Pump Station PDR section will also include preliminary yard piping information as well as proposed connections to the area influent sanitary sewer force mains, including the proposed LPGA Boulevard force main. The drawings will constitute a 30% design level.

The draft Pump Station PDR will incorporate the decisions made in the Pump Station Workshop. In addition to the draft Pump Station PDR section, FNI will provide IPS and yard piping information.

Hazen will review all permitting requirements with the local permitting agencies and summarize the findings in the draft PDR. FNI will attend one meeting with Hazen staff and the Florida Department of Environmental Protection (FDEP).

Deliverable(s):

- *Draft Pump Station PDR section – PDF format.*

Subtask 3.6. Draft PDR Review Meeting and Final PDR

FNI will attend a Draft PDR Review Meeting with City staff, WS staff, and Hazen staff to review the draft PDR. FNI will assist Hazen and WS in developing a PowerPoint presentation of the draft PDR components. FNI will develop meeting notes from the Draft PDR Review Meeting related to the IPS. FNI will document the IPS comments and the resolution to the IPS comments in the meeting notes prior to issuing the Final PDR. Following the Draft PDR Review Meeting, FNI will provide Hazen one electronic pdf copy of the final PDR.

Deliverable(s):

- *Meeting minutes in electronic (PDF) format.*
- *Final Pump Station PDR section and Comment Response Form – PDF format.*
- *Final Site Layout 2 PDR, and MOPO PDR related to the IPS and yard piping – PDF format.*

TASK 4 – Final Design

FNI will prepare 60%, 90%, and Final IPS and yard piping design drawings. IPS and yard piping drawings will, to the extent possible, use the City's standard technical specifications and conform to City standards. FNI will adhere to Hazen's Autodesk Revit standards for plotting and will provide Hazen with the applicable plot files along with final electronic file copies of the record drawings upon project completion. Final IPS and yard piping design drawings will be provided electronically in PDF and RVT. Preparation of technical specifications will be included in Word format.

FNI will provide Quality Assurance/Quality Control (QA/QC) reviews under Task 4.

FNI will perform the following activities to complete the final design of the project:

Subtask 4.1. 60% Design Submittal

FNI will provide a 60% IPS and yard piping design submittal. The 60% IPS design submittal will include:

- Draft IPS equipment shop drawings for all major IPS components. FNI will work with manufacturers to prepare detailed procurement IPS packages. FNI will work closely with those

manufacturers and provide assistance with completing the draft equipment shop drawings for all major IPS components. FNI will review all draft major IPS equipment submittal packages and make necessary revisions in preparation for City review and approval.

- IPS and yard piping drawings for General, and Mechanical design. Drawings will include site plans for IPS construction staging, final IPS site layout; plan and profile drawings for yard piping and the replacement force main; IPS wetwell, and major IPS sections and details.
- Technical Specifications. FNI will prepare the IPS and yard piping technical specification package utilizing City standard specifications. For those items not covered by City standards, FNI will prepare the required IPS and yard piping technical specifications.
- Control System Improvements Workshop. A Control System Improvements Workshop will be held with the City, WS, and Hazen. FNI will not provide any services with the Control System Improvements Workshop.
- Maintenance of Plant Operations (MOPO) Workshop. A workshop will be held with the City to discuss a detailed sequence of construction and maintenance of plant operations (MOPO) plan. The MOPO plan will be included as part of the draft PDR and preliminary drawings. FNI will coordinate yard piping and offsite piping connections as well as sequence of construction and MOPO related to the IPS.

Deliverable(s):

- *Workshop agenda and presentation review.*
- *Workshop meeting minutes review including documentation of decisions made.*
- *60 Percent Level of Completion Drawings and Technical Specifications related to the IPS and yard piping in electronic (PDF and RVT) format.*
- *60 Percent Level of Completion Drawings and Technical Specifications Comment Response Form in electronic (PDF) format.*

Subtask 4.2. 90% Design Submittal

FNI will prepare a 90% IPS and yard piping design submittal based on the comments received at the 60% design submittal review meeting with the City. The 90% IPS and yard piping design submittal will include:

- Final IPS equipment shop drawings. FNI will provide a detailed review of the updated and revised versions of the 60% IPS shop drawings with all schedules and specifics. FNI will make necessary revisions to final IPS shop drawings in preparation for City final review and final approval. FNI will assist the IPS equipment manufacturers in completing and preparing all final shop drawings into their final format.
- IPS and yard piping drawings for General, and Mechanical design. Drawings will include site plans for IPS construction staging, final IPS site layout; plan and profile drawings for yard piping and the replacement force main; IPS wetwell, and major IPS sections and details. Drawings will include updated 60% documents along with all remaining details, notes, and legends.
- Technical Specifications. FNI will prepare the IPS and yard piping technical specification package utilizing City standard specifications. For those items not covered by City standards, FNI will prepare the required IPS and yard piping technical specifications.

Deliverable(s):

- *90 Percent Level of Completion Drawings and Technical Specifications related to the IPS and yard piping in electronic (PDF and RVT) format.*
- *90 Percent Level of Completion Drawings and Technical Specifications Comment Response Form in electronic (PDF) format.*

Subtask 4.3. Final Design

FNI will prepare a 100% IPS and yard piping final design submittal based on the comments received at the 90% review meeting with the City. The 100% IPS and yard piping drawings and technical specifications will be submitted to Hazen.

Deliverable(s):

- *Final IPS and yard piping signed and sealed Drawings and Technical Specifications in electronic (PDF and RVT) format.*

Subtask 4.4. Review Meetings

FNI will prepare IPS design submittals and attend review meetings at the 60% and 90% milestones in the design process. FNI will review each comment related to the IPS and, if not sufficiently resolved in the meeting itself, respond back to Hazen in writing to fully address and/or provide alternatives for each unresolved comment provided in the review meeting. FNI will keep the notes of review meetings related to the IPS and will prepare and distribute a written summary of the meeting notes and all decisions rendered after the meeting to Hazen. The approved written summary will serve as the basis for proceeding with the next design milestone.

Deliverable(s):

- *60 Percent IPS and yard piping Review Meeting Summary in electronic (PDF) format.*
- *90 Percent IPS and yard piping Review Meeting Summary in electronic (PDF) format.*

TASK 5 – Permitting Services

All permit applications required for this project will be prepared and submitted by Hazen to the responsible regulatory agency for review and approval. It is anticipated that the following permits will require coordination with FNI:

- FDEP construction permit using a Minor Revision to a Wastewater Facility or Activity Permit, Form 62-620.910(9).
- FDEP construction permit using Form 62- 604.300(8a), Notification/Application for Constructing a Domestic Wastewater Collection/ Transmission System.

FNI will perform the following subtasks:

Subtask 5.1. FDEP Permitting for Westside WRF

FNI will provide engineering services to support permitting of the IPS at the Westside WRF with the FDEP. Hazen will prepare a draft Application for a Minor Revision to a Wastewater Facility or Activity Permit, Form 62-620.910(9). Hazen will submit Form 62-620.910(9) and supporting documentation to the FDEP for review. FNI will respond to up to one (1) Request for Additional Information (RAI) as needed in support of obtaining the permit.

Deliverable(s):

- *Review Draft Application for a Minor Revision to a Wastewater Facility or Activity Permit in electronic (PDF) format.*
- *Review Final Application for a Minor Revision to a Wastewater Facility or Activity Permit in electronic (PDF) format.*

Subtask 5.2. FDEP Permitting for Piping to Westside WRF

FNI will provide engineering services to support permitting of the new pipeline to Westside WRF and associated yard piping. FNI will prepare a draft Notification/Application to Place a Domestic Wastewater Collection/Transmission System, Form 62-604.300(8)(a). FNI will provide the draft application to Hazen for review. FNI will receive any feedback from the City on the draft application and edit, as necessary. FNI will submit Form 62-604.300(8)(a) and supporting documentation to the FDEP for review. FNI will respond to up to one (1) RAI as needed in support of obtaining the permit.

Deliverable(s):

- *Draft Notification/Application to Place a Domestic Wastewater Collection/Transmission System in electronic (PDF) format.*
- *Final Notification/Application to Place a Domestic Wastewater Collection/Transmission System in electronic (PDF) format.*

TASK 6 – SRF Support Services

Subtask 6.1. Services During Design

FNI will assist with preparation of applications and supporting documents for governmental grants, loans or advances in connection with the construction of the Project.

TASK 7 – Owner’s Allowance

An Owner’s Allowance is included in this work assignment for unforeseen tasks that may be required. In the event that additional work is required or requested by the City, with use requiring written direction by

the City, which may arise from unforeseen engineering services, this task is intended to provide an owner's allowance for such work.

FNI will provide design assistance and coordination with respect to our work on the LPGA Boulevard Force Main project as well as design assistance and coordination on other area sanitary sewer force main(s) terminating at Westside WRF and existing area Westside WRF yard piping.

As directed by the City, FNI will conduct a hydraulic analysis and conduct a Hydraulic Analysis Workshop. Also as directed by the City, FNI will provide SRF services during design.

Work under the task is not limited but includes the following activities:

Subtask 7.1. LPGA Boulevard Force Main Extension

Engineering design services for the extension of the LPGA Boulevard force main at Westside WRF Road 6.

Subtask 7.2. Hydraulic Modeling Assistance

Hydraulic modeling assistance with FNI staff and City staff to review impacts of the Project to the existing upstream pump stations.

Subtask 7.3. 36" Sanitary Sewer Force Main Redundancy

Engineering design services for redundancy: tie-in between an existing 36" sanitary sewer force main and the proposed LPGA Boulevard force main (note that the proposed LPGA Boulevard force main may be upsized from the proposed 30" within the Westside WRF plant site).

Subtask 7.4. 20" Sanitary Sewer Force Main Redundancy

Engineering design services for redundancy: tie-in between an existing 20" sanitary sewer force main and the proposed LPGA Boulevard force main (note that the proposed LPGA Boulevard force main may be upsized from the proposed 30" within the Westside WRF plant site).

Subtask 7.5. Hydraulic Analysis Review and Workshop

FNI will conduct a hydraulic analysis and conduct a Hydraulic Analysis Workshop. The hydraulic analysis will include a Peaking Factor Study to better understand the influent wastewater flow and the design capacity for the IPS as well as the Hazen led design of the headworks (screening and grit removal) and possible flow equalization tank, including different options for piping connectivity and unit operations sizing.

This work will utilize data collected from the City, and historical pumping conditions as available. The hydraulic analysis will also incorporate hydraulic conditions related to the Hazen led design of the headworks (screening and grit removal) and possible flow equalization tank. The hydraulics of the proposed unit operations are interconnected, and the hydraulic analysis study will review the hydraulic conditions of the unit operations as one hydraulic system.

FNI will lead a Hydraulic Analysis Workshop and will present the results to the City.

Deliverable(s):

- *Workshop agenda and presentation.*
- *Workshop meeting minutes including documentation of decisions made.*

Subtask 7.6. SRF Services During Design

FNI will assist with preparation of applications and supporting documents for governmental grants, loans or advances in connection with the construction of the Project.

2. Compensation

FNI will be compensated for the Scope of services outlined above for Tasks 1 through 6 on a Lump Sum Basis. FNI will be compensated for the Scope of services outlined above for Task 7 on a Time and Material Basis. The work will be performed for a fee of **\$584,194.17**. The hours assumed for this phase of the project have been included as an attachment to this scope. Construction phase services will be authorized under a separate, future work authorization:

Task Number	Task Name	Fee
1	TASK 1 – Project Initiation and Management	\$19,454.14
2	TASK 2 – Data Collection and Conceptual Design (15%)	\$20,926.08
3	TASK 3 – Preliminary Design Report (30%)	\$102,299.42
4	TASK 4 – Final Design	\$312,190.08
5	TASK 5 – Permitting Services	\$7,903.73
6	TASK 6 – SRF Support Services	-
7	TASK 7 – Owner’s Allowance	\$121,420.72
	Total	\$584,194.17

FNI other direct cost (ODC) for the project is for mileage. ODC for the project consist of nine (9) trips from FNI office, 100 Ashley Dr S, Tampa, Florida to Westside WRF, 3651 LPGA Boulevard, Daytona Beach, Florida at a distance of 270 miles per trip at \$0.56 per mile. Total mileage is 2,430 miles and total ODC cost is \$1,360.80.

3. Schedule

Task Number	Task Name	Duration
1	TASK 1 – Project Initiation and Management	355 Business Days from Notice to Proceed (NTP) date
2	TASK 2 – Data Collection and Conceptual Design (15%)	66 Business Days from NTP date
3	TASK 3 – Preliminary Design Report (30%)	146 Business Days from NTP date
4	TASK 4 – Final Design	180 Business Days from completion of Task 3
5	TASK 5 – Permitting Services	34 Business Days from completion of Task 4
6	TASK 6 – SRF Support Services	355 Business Days from Notice to Proceed (NTP) date
7	TASK 7 – Owner’s Allowance	355 Business Days from Notice to Proceed (NTP) date

4. Assumptions

Certain assumptions were made in development of the Scope of Services described above. To the extent possible, they are stated within the Scope of Services described above. In addition to those assumptions stated within the Scope of Services described above, this Scope of Service is based also upon the following:

- 4.1. Permitting – the Owner will sign permit applications as the Permittee.
- 4.2. FNI will not pay permit application fees.
- 4.3. Others are providing civil/site drainage, electrical, structural, and instrumentation control design services.
- 4.4. Others will be using existing as-built information, drawings, and survey information to create structural and site plan base files.
- 4.5. Others are providing and coordinating geotechnical, subsurface utility engineering (SUE), and survey work during design.
- 4.6. Others are providing and coordinating the yard piping design from the IPS to grit removal.
- 4.7. No Environmental Resource Permitting (ERP) is required and no effort related to ERP preparation is included in this Scope of Services.
- 4.8. Consolidated written client comments to be received within 14 calendar days of each milestone submittal.
- 4.9. Facilities plan for SRF funding has already been prepared and approved.

- 4.10. The two (2) week advance remote Workshop meeting provides early decision making with the City, WS and Hazen in order to narrow focus of the Workshop(s).
- 4.11. Services during construction shall be negotiated at a later date and the Scope of Services, including fee amount will be amended.

Daytona Beach
 Westside Regional Water Reclamation Facility
 In-Plant Pump Station and Headworks Design-Build Project
 Phase I Scope of Services
 Freese and Nichols, Inc.
 May 17, 2021

Phase	Task	Task Description	Engineer VII	Engineer V	Engineer III	CAD Designer II	Division Manager	Group Manager (Odor Control QA/QC)	Engineer VII (Technical Lead/QA/QC)	Engineer VII (Technical Lead/Hydraulic Model)	Support Specialist II	Operations Analyst	Total Hours	Total Labor Effort	Mileage	Total Expense Effort	Total Effort
			\$250.20	\$169.67	\$111.02	\$146.10	\$322.41	\$262.40	\$250.20	\$250.20	\$70.14	\$122.77					
1		Project Initiation and Management											-	\$ -	-	\$ -	\$ -
	1.1	Project Kick-off Meeting	8	4	4		6						22	\$ 5,058.82	270	\$ 151.20	\$ 5,210.02
	1.2	Project Coordination	40				4					24	68	\$ 14,244.12	0	\$ -	\$ 14,244.12
													-	\$ -	0	\$ -	\$ -
2		Conceptual Design (15%)											-	\$ -	0	\$ -	\$ -
	2.1	Historical Data Collection/Review	12	12	16	4		4	8		4		60	\$ 10,730.92	0	\$ -	\$ 10,730.92
	2.2	Treatment Process, Redundancy and Conceptual Site Layout Workshop	12	8	8	24	4						56	\$ 10,043.96	270	\$ 151.20	\$ 10,195.16
	2.3	Grit Characterization Study											-	\$ -	0	\$ -	\$ -
	2.4	Odor Control Data Collection											-	\$ -	0	\$ -	\$ -
													-	\$ -	0	\$ -	\$ -
3		Preliminary Design Report (30%)											-	\$ -	0	\$ -	\$ -
	3.1	Screening Options Evaluation											-	\$ -	0	\$ -	\$ -
	3.2	Grit Removal Equipment Options Evaluation											-	\$ -	0	\$ -	\$ -
	3.3	Pump Station Workshop	32	40	40	24	12		8				156	\$ 28,610.92	270	\$ 151.20	\$ 28,762.12
	3.4	Odor Control Workshop	6					24					30	\$ 7,798.80	270	\$ 151.20	\$ 7,950.00
	3.5	Preliminary Design Report (PDR)	40	60	72	40	4	8	12				236	\$ 40,416.88	0	\$ -	\$ 40,416.88
	3.6	PDR Review Meeting and Final Report	24	40	40	28	2	4	8				146	\$ 25,019.22	270	\$ 151.20	\$ 25,170.42
													-	\$ -	0	\$ -	\$ -
4		Final Design											-	\$ -	0	\$ -	\$ -
	4.1	60% Design Submittal	120	160	160	200	24		24				768	\$ 123,508.24	0	\$ -	\$ 123,508.24
	4.2	90% Design Submittal	100	120	120	160	24		24				588	\$ 98,627.04	0	\$ -	\$ 98,627.04
	4.3	Final Design Submittal	80	100	100	120	24		24				488	\$ 82,165.24	0	\$ -	\$ 82,165.24
	4.4	Review Meetings	12	8	8		4	4					36	\$ 7,587.16	540	\$ 302.40	\$ 7,889.56
													-	\$ -	0	\$ -	\$ -
5		Permitting Services											-	\$ -	0	\$ -	\$ -
	5.1	FDEP Permitting for Westside WRF	6	2		4	1						13	\$ 2,747.35	270	\$ 151.20	\$ 2,898.55
	5.2	FDEP Permitting for Piping to Westside WRF	10	4	4	4	2						24	\$ 4,853.98	270	\$ 151.20	\$ 5,005.18
													-	\$ -	0	\$ -	\$ -
6		SRF Support Services											-	\$ -	0	\$ -	\$ -
		Services During Design											-	\$ -	0	\$ -	\$ -
													-	\$ -	0	\$ -	\$ -
7		Owner's Allowance											-	\$ -	0	\$ -	\$ -
	7.1	Westside WRF Road 6 LPGA Boulevard Force Main Extension Design	20	20	20	20	2						82	\$ 14,184.62	0	\$ -	\$ 14,184.62
	7.2	Hydraulic Modeling Assistance	8				2			80			90	\$ 22,662.42	0	\$ -	\$ 22,662.42
	7.3	36" Force Main/LPGA Boulevard Force Main Design	16	20	20	20	2						78	\$ 13,183.82	0	\$ -	\$ 13,183.82
	7.4	20" Force Main/LPGA Boulevard Force Main Design	16	20	20	20	2						78	\$ 13,183.82	0	\$ -	\$ 13,183.82
	7.5	Hydraulic Analysis Review and Workshop	48	64	80	48	8		48				296	\$ 53,351.76	0	\$ -	\$ 53,351.76
	7.6	SRF Support Services During Design	8	4	4	8							32	\$ 4,854.28	0	\$ -	\$ 4,854.28
													-	\$ -	0	\$ -	\$ -
Total Hours / Quantity			618	686	716	724	127	44	156	80	172	24	3,347		2,430		
Total Effort			\$ 154,623.60	\$ 116,393.62	\$ 79,490.32	\$ 105,776.40	\$ 40,946.07	\$ 11,545.60	\$ 39,031.20	\$ 20,016.00	\$ 12,064.08	\$ 2,946.48		\$582,833.37		\$ 1,360.80	\$ 584,194.17

City of Daytona Beach
WRWRF In-Plant Pump Station & Headworks Project
SRF Loan Administration Services

Owner: City of Daytona Beach

Engineer: Hazen and Sawyer

Sub-Consultant: The Berryhill Group, LLC

The Berryhill Group, LLC (Sub-Consultant) agrees to provide services as described in the following Tasks for the City of Daytona Beach (Owner) and Hazen and Sawyer (Engineer).

General:

Services described herein relate to the capital funding services for the WRWRF In-Plant Pump Station & Headworks Project (Project) during the planning and design phases of the Project. The Sub-Consultant will represent the Owner and the Engineer and coordinate with the funding agencies, city staff, and the Engineer, in the funding administration process. Draft transmittal letters and final document submittals to the agencies to facilitate the funding will be prepared by the Sub-Consultant, or the Sub-Consultant will provide advisory services to the Owner and the Engineer as needed. The Owner and the Engineer will provide documents and information as necessary to complete these Tasks. The Sub-Consultant will advise and draft responses to questions and/or comments relative to the funding. The Sub-Consultant will be available to provide advice and consultation relative to the funding process during the term of this agreement.

All fees for these services are “not to exceed” the amount shown for each Task unless a change is requested and approved by the Owner and the Engineer. Not to exceed Tasks will be billed monthly at the Sub-Consultant’s hourly rate of \$150.00 per hour. Travel expenses will be billed at the actual cost of hotel and at the State of Florida rates for mileage and per diem.

(Additional services for SRF Loan Administration are available during the procurement, contract award, and construction phases of the work if requested and approved by the Owner and the Engineer.)

Task 1. Consultation and Advisory Services

The Sub-Consultant will be available on an as needed basis to meet with and assist the Owner and the Engineer respond to questions, and provide guidance and advice to the Owner, the Owner’s staff, and the Engineer relative to the SRF funding process. The Sub-consultant will represent the Owner and the Engineer before the Florida Department of Environmental Protection (FDEP) in settling any issues relative to the loan process during the project period. Services under this Task 1 are for services not otherwise included in the following Tasks 2 thru 4.

Task 2. Document Preparation Services

The Sub-Consultant will advise and assist the Owner and the Engineer in the preparation of plans and specifications, procurement and other documents with conditions and provisions as may be required by the FDEP to develop the GMP for the Project and obtain a construction loan. The Sub-Consultant will assist the Owner and the Engineer in obtaining appropriate wage rates and related documents for compliance with the federal Davis-Bacon Act, Buy American Iron and Steel provision, and other compliance requirements for inclusion in the documents. The Sub-Consultant will coordinate with the Owner and the Engineer to assist in gaining approval of the plans, specifications, contract documents, and supporting documents by the FDEP so that the project is ready for construction.

Task 3. Request for Inclusion (RFI)

The Sub-Consultant will review available information, become familiar with the project, and assemble the supporting documents to prepare a draft Clean Water State Revolving Fund (SRF) RFI for a construction loan for the Project in accordance with the requirements of the FDEP. The Owner and the Engineer will cooperate with and make information available to the Sub-Consultant as needed to complete the RFI. The RFI will be submitted to the Owner for review, approval, signing, and for submission to the FDEP. The Sub-Consultant will advise the Owner in the preparation of the Site Certification and other supporting documents as may be required to obtain approval of the FDEP for a listing on the fundable portion of the SRF Priority List. The Sub-Consultant will attend the SRF Priority List meeting on behalf of the Owner and report the results of the meeting to the Owner and the Engineer.

Task 4. Construction Loan Application

The Sub-Consultant will coordinate with the Owner's Finance Department and prepare the draft loan application or assist the Owner. The Sub-Consultant will provide comments and recommendations relative to the application and application process. The Sub-Consultant will assist the Owner in completing the final construction loan application and the submittal of the required documentation to the FDEP. The Sub-Consultant will assist the Owner in the preparation of draft resolutions and certifications as may be necessary to complete the application process. The Sub-Consultant will coordinate with the Owner and the FDEP to gain approval of the application. The Sub-Consultant will review the draft loan agreement that will be prepared by the FDEP. The Sub-Consultant will comment and advise the Owner as to the provisions of the draft agreement, communicate with the FDEP to negotiate any needed revisions to the draft agreement, and respond to comments and questions on the Owner's behalf. The Sub-Consultant will provide guidance on the execution and filing of the final agreement with the FDEP. The Sub-Consultant will coordinate with the FDEP to gain approval of the final construction loan agreement.

Compensation Schedule

Task 1. Consultation and Advisory Services

The Owner and the Engineer agree to pay the Sub-Consultant a *not to exceed* amount of \$5,000.00 for the scope of work herein described as Task 1. The Sub-Consultant's fee will be paid as shown below:

Fee as invoiced *not to exceed* \$5,000.00

Task 2. Document Preparation Services

The Owner agrees to pay the Sub-Consultant a *not to exceed* amount of \$3,000.00 for the scope of work herein described as Task 2. The Sub-Consultant's fee will be paid as shown below:

Fee as invoiced *not to exceed* \$3,000.00

Task 3. Request for Inclusion (RFI)

The Owner agrees to pay the Sub-Consultant a *not to exceed* amount of \$1,500.00 for the scope of work herein described as Task 3. The Sub-Consultant's fee will be paid as shown below:

Fee as invoiced *not to exceed* \$1,500.00

Task 4. Construction Loan Application

The Owner agrees to pay the Sub-Consultant a *not to exceed* amount of \$3,600.00 for the scope of work herein described as Task 4. The Sub-Consultant's fee will be paid as shown below:

Fee as invoiced *not to exceed* \$3,600.00

(Total Not to Exceed Fee – This Proposal \$13,100.00)

Owner: City of Daytona Beach
Project: WRWRF In-Plant Pump Station & Headworks Project
Engineer: Hazen and Sawyer
Sub-Consultant: The Berryhill Group, LLC

	Hours	Rate/Hour	Sub-Total	Fee Limit
<u>Task 1 - Consultation and Advisory Services</u>				
As Needed-Not to Exceed Hourly Fee	30	\$ 150.00	\$ 4,500.00	
Travel Expenses/2 meetings			\$ 500.00	
		Total	\$ 5,000.00	
		NTE Fee		\$ 5,000.00
<u>Task 2 - Document Preparation Services</u>				
Assemble Required Documents	6	\$ 150.00	\$ 900.00	
Review/Advise Engineer	8	\$ 150.00	\$ 1,200.00	
Advise Owner	4	\$ 150.00	\$ 600.00	
Coordinate with FDEP	2	\$ 150.00	\$ 300.00	
		Total	\$ 3,000.00	
		NTE Fee		\$ 3,000.00
<u>Task 3 - Request for Inclusion</u>				
Assemble Documents	4	\$ 150.00	\$ 600.00	
Prepare Draft	4	\$ 150.00	\$ 600.00	
FDEP/Owner Communication	2	\$ 150.00	\$ 300.00	
		Total	\$ 1,500.00	
		NTE Fee		\$ 1,500.00
<u>Task 5 - Construction Loan Application</u>				
Assemble Supporting Documents	6	\$ 150.00	\$ 900.00	
Prepare Draft Application	16	\$ 150.00	\$ 2,400.00	
Coordinate with the FDEP	2	\$ 150.00	\$ 300.00	
		Total	\$ 3,600.00	
		NTE Fee		\$ 3,600.00
Not to Exceed Fee Authorized This Proposal				\$ 13,100.00

May 6, 2021

Josefin E. Hirst, PE
Hazen and Sawyer

PROPOSAL FOR SUBSURFACE UTILITY ENGINEERING AND TOPOGRAPHICAL SURVEY SERVICES

Project: City of Daytona Beach, Westside WRF, Volusia County, FL

Dear Ms. Hirst:

At ECHO UES, Inc. (ECHO) we value your consideration and appreciate the opportunity to provide a technical proposal for the provision of professional services. This technical proposal, inclusive of economical offer and schedule, details the approach we consider as the most suitable for this project.

Project Synopsis: Based on the information made available to ECHO, we understand the project consisting of design services for improvements to the existing Westside WRF, specifically consisting of:

1. *Influent force main*
2. *(1) EQ Tank*
3. *New screening and pump station structure*
4. *Piping and flow meter vault to connect to new grit removal structure*
5. *Piping to the treatment basin*

ECHO's professional services were requested to provide topographic survey and subsurface utility engineering services within the area in which the improvements will be designed and constructed.

Project Limits: ECHO's proposed services will be performed within well-defined limits (i.e. Project Limits) as shown on the attached graphic representations.

Subsurface Utility Engineering (SUE) Services

Using a combination of field investigative techniques and technology, including surface geophysical instruments, including vacuum excavation if needed, ECHO will perform the following services.

1. **Identification and marking of existing utilities.** Utilities potentially in conflict with the project and located within the project limits will be investigated in the attempt to identify their position. The results will be marked on the ground surface using the most appropriate method (i.e. pin flags, paint etc.) and showing the approximate position of the identified utilities.

ECHO will attempt to identify and mark detectable utilities located within the project limits, with the exclusion of irrigation lines, services lines and sewer laterals. Gravity sewer and storm water systems will be collected during the topographic survey efforts.

2. **Verification of utility location and characteristics.** At specific locations ECHO will attempt to expose utilities via minimally intrusive methods (e.g. use of vacuum excavation) to confirm their characteristics (e.g. type, size, material, direction, configuration) and provide an accurate location. At completion of each excavation (test hole) ECHO will record all verifiable utility information, mark the utility location with the most appropriate method (e.g. wooden lathes, "X" mark on concrete, disc and nail on asphalt) and restore the field to as close as possible to its original conditions.

Test holes will be performed at Client's request.

Topographic and Utility Survey

- Set horizontal and vertical control for the purpose of collecting the topographic and subsurface utility engineering information.
- Collect aboveground and visible features within the highlighted limits as shown and described by the attached graphic, to include utility information as identified per steps above.
- Accessible drainage and sanitary sewer structures located within the limits as shown on said exhibit will be collected horizontally and vertically.
- Collect sufficient elevation data to create a digital terrain model (DTM) of the site.
- The survey will be based on the North American Datum of 1983 (NAD83), East Zone and elevations will be referenced to the North American Vertical Datum 1988 (NAVD 88).
- The horizontal and vertical survey control will be provided in the final survey in tabular format for use by the contractor during construction activities.
- All survey efforts will be conducted in accordance with the Standards of Practice set forth in Rule Chapter 5J-17, F.A.C., pursuant to Section 472.027, F.S.

Deliverables:

Subsurface Utility Engineering & Topographical Survey

- Field deliverables will consist of field marks (e.g. pin flags, paint marks, wooden lathes, nails/discs etc.) showing the position of the designated and located utilities.

- Office deliverables will consist of:
 - Images and a sketch (not to scale unless otherwise stated) based on the project plans or aerial imagery publicly available.
 - Test hole data sheets containing all the information obtained via test holes and visual verification.
 - Survey digital CADD file (AutoCAD), PDF sheet of the survey and a signed and sealed surveyor's report.

Proposed Schedule: To be discussed and agreed upon with the client following acceptance of this proposal. The proposed schedules shall be valid barring any unforeseen conditions.

Notes and Limitations:

1. Client shall facilitate access to the site and provide any relevant project information.
2. Site must be clear from obstacles impeding access to any portion of the project limits.
3. Standard work hours are from 7:00am to 4:00pm, Monday through Friday; additional charges may occur (following discussion with the Client) in case of weekend or nighttime work.
4. ECHO will not work on any site that is known to be contaminated with any hazardous or harmful substance.
5. FDOT Design Standards (Index 600 Series) will be utilized for the Maintenance of Traffic (MOT). Should the site require modification to the Index 600 for non-standard MOT arrangements, ECHO will seek the Client's concurrence to obtain signed and sealed project's specific MOT plans (to be provided by others).
6. Unless otherwise stated within this proposal, test holes have usual depth of up to eight (8) ft. from the ground surface, and diameter of up to 1 ft. Should there be a need for deeper or wider excavations, additional charges may apply.
7. The original ground surface at each test hole location will be restored to as close as possible to its original conditions, using concrete mix or asphalt cold patch as applicable. Any deviation from this standard (e.g. use of hot asphalt, flowable fill etc.) may require additional charges and the use of specialty subcontractors.
8. Regardless of the type of estimate proposed (e.g. lump sum, time and materials, etc.) such estimate should be considered indicative and based on preliminary information. Should any situation out of ECHO's control heavily impact ECHO's field work performance (e.g. adverse site conditions), ECHO reserves the right to seek additional funds to complete the work.
9. The exact location of any underground utility is not guaranteed unless clearly exposed and visually verified at a specific location. Utility characteristics, methods of installation, soil conditions and the surrounding environment all may impact adversely the results of any utility investigation with surface geophysical instruments and technology. No guarantee is made that all utilities will be found and identified.
10. Subsurface Utility Engineering, Designating and Locating terms all refer to the American Society of Civil Engineers / Construction Institute Standard for the Collection and Depiction of Subsurface Utility Data (ASCE/CI 38-02). Should ECHO adopt this standard for the performance of the scope of work and preparation of deliverables, clear mention to the Standard shall be made throughout the deliverable.

Fee: ECHO's competitive offer, which is inclusive of all field, office, materials, supplies, and equipment costs is detailed below.

- **Subsurface Utility Engineering and Topographic Survey, RED Area, Lump Sum fee: \$11,900.00**
- **Subsurface Utility Engineering and Topographic Survey, YELLOW Area, Lump Sum fee: \$8,790.00**
- **Utility verification test holes, if/when needed as directed by the EOR: \$475.00/ea. (fee inclusive of survey and update of digital CADD file), with a minimum of five (5) being requested.**

Acceptance: We will honor this proposal for 90 days. If accepted, please return to our attention together with a professional services agreement / task work order authorization and official Notice to Proceed.

At ECHO UES, Inc. we believe in collaboration and communication with our clients and are driven to understand their needs and provide time efficient and cost-effective solutions. ECHO strives to provide quality utility and survey reliable data to design better, build faster, and safely enhance Engineering, Design, Construction and Maintenance of infrastructure.

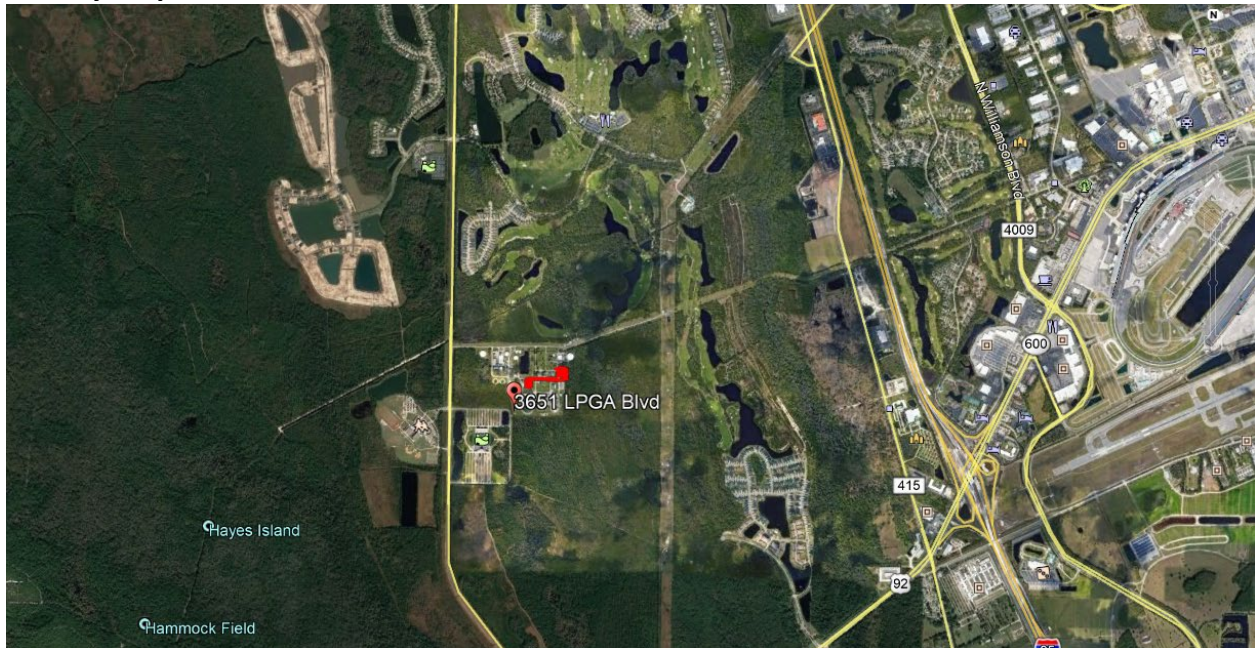
Thank you for considering ECHO for this important project and please do not hesitate to contact me directly should you have any questions or concern.

Sincerely,

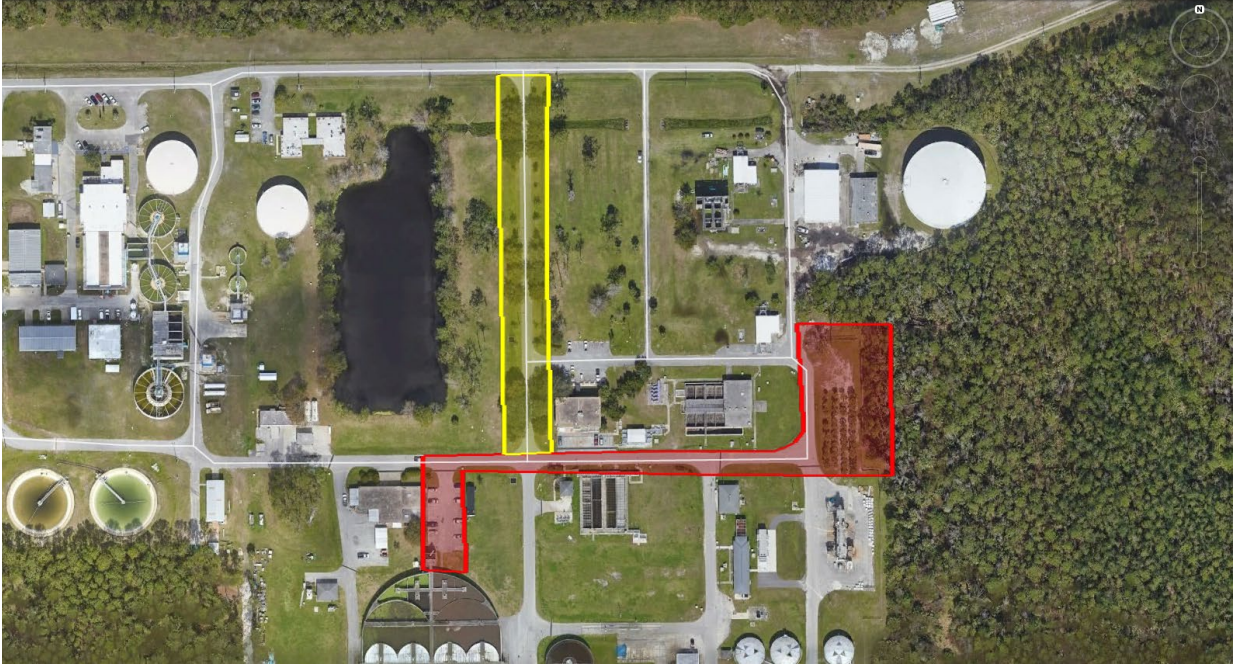


Carlo Pilia
Vice President
ECHO UES, Inc.

Vicinity Map:



Project Limits:





New Influent
FM Route

Project Area



UNIVERSAL ENGINEERING SCIENCES

Consultants In: Geotechnical Engineering • Environmental Sciences
Geophysical Services • Construction Materials Testing • Threshold Inspection
Building Inspection • Plan Review • Building Code Administration

LOCATIONS:

- Atlanta
- Daytona Beach
- Fort Myers
- Fort Pierce
- Gainesville
- Jacksonville
- Miami
- Ocala
- Orlando (Headquarters)
- Palm Coast
- Panama City
- Pensacola
- Rockledge
- Sarasota
- St. Petersburg
- Tampa
- Tifton
- West Palm Beach

April 23, 2021

Hazen and Sawyer
999 Ponce de Leon Boulevard, Suite 1150
Coral Gables, Florida 33134

Attention: Mr. Josefin Hirst, P.E.

Reference: **Proposal for Geotechnical Exploration**
Daytona Beach Westside Regional WWTP Expansion
3651 LPGA Blvd.
Daytona Beach, Volusia County, Florida
UES Proposal No.: 2021D-512
UES Opportunity No.: 0430.0421.00035

Dear Mr. Hirst:

Universal Engineering Sciences, Inc. (UES) is pleased to submit our proposal to conduct a Geotechnical Exploration for the above-referenced property in Daytona Beach, Florida. Our understanding of this project, with our proposed scope of services and costs, is presented in the following paragraphs.

PROJECT UNDERSTANDING

Project information was provided to us during correspondence with you. We were provided with an aerial photograph indicating the layout of the proposed construction and the requested geotechnical engineering scope of services. In addition to the requested scope we were also provided with the approximate existing ground elevation, structure bearing elevation and desired soil bearing pressures for the structures. We understand the project will consist of constructing a screening structure, a wet well, a grit structure and an Equalization (EQ) tank. The screening structure, wet well, and grit structure will consist of reinforced concrete construction. The EQ tank will consist of pre-stressed concrete construction. We have been provided with two potential locations for the EQ tank. The location of the EQ tank has not been finalized at this time.

Our proposal does not include an allowance for horizontal and vertical survey control for the test boring locations. Our field crew will locate the test locations based upon estimated distances and relationships to obvious landmarks. Therefore, the test locations and depths should be considered accurate to the degree of the methodologies used.

UES will contact Sunshine State One Call (1-800-432-4770) for public utility clearance prior to the start of drilling activities. It is our experience that this service does not mark the locations of privately owned utilities. Our proposal requires that private utility lines and other subsurface appurtenances be located in the field by others prior to our mobilization. UES shall not be held responsible for service interruptions or damage to private utility lines or



other buried structures. Further we have assumed that there is no hazardous materials contamination at the site and no major utility lines crossing the subject site. In the event they exist, please inform us so that we may make arrangements for taking adequate precautions and locating the utilities on the site, prior to the drilling operations.

Due to the nature of the equipment required to perform the test borings, some property disturbance should be expected. Our proposal does include limited site clean up including backfilling the boreholes with sand for safety considerations. No other restoration services (i.e. pressure washing, landscaping, repairing wheel ruts, etc.) are included in this proposal. We understand that rights of entry and access to the property will be provided to us prior to and at commencement of field activities.

Should any of the above information or assumptions made by UES be inconsistent with the planned development and construction, we request that you contact us immediately to allow us the opportunity to review the new information in conjunction with our proposal and revise or modify our scope of service and/or fee estimate accordingly, if needed.

GEOTECHNICAL SCOPE OF SERVICES

Based on our understanding of the project, the proposed scope will consist of:

- Performing two (2), 40-foot deep Standard Penetration Test (SPT) borings within Screening structure.
- Performing two (2), 60-foot deep SPT borings within the Wet Well structure.
- Performing two (2) 30-foot deep SPT borings within the Grit structure.
- Performing one (1) 60-foot deep and four (4) 30-foot deep SPT borings within the EQ Tank structure.

Standard Penetration Tests (SPT) will be performed continuously in the upper 10-feet of each boring and on 5-foot centers after that to the bottom of the borings. Each recovered soil sample will be visually classified in the field and a geologic log prepared for the soil borings. Groundwater depth and any unusual subsurface conditions will be recorded on the boring logs. Representative portions of the recovered soil samples from the borings will be sealed and packaged for transportation to our laboratory for a more detailed analysis, as required. All soil samples will be classified in general accordance with ASTM D 2487 (Standard Classification of Soils for Engineering Purposes Unified Soil Classification System) guidelines.

Reporting

At the completion of the field and laboratory testing services, our project engineer will prepare a geotechnical report under the direction of a registered professional engineer who specializes in geotechnical engineering consulting. The report shall contain the following information at a minimum:

- Boring location plan and soil boring logs with USCS soil classifications;
- Presence or lack of marginal soils;



- Existing groundwater levels and estimated seasonal high groundwater levels at the boring locations;
- Foundation recommendations;
- Site preparation recommendations.

SCHEDULE

Based upon our current backlog at the time of this proposal, we anticipate completing the field exploration and laboratory testing program and issuing a geotechnical report within two to three weeks upon receipt of written authorization to proceed. Preliminary findings can be provided via email prior to the release of the final report upon completion of the field and laboratory testing program to expedite your civil engineering design schedule.

FEE & TERMS

Universal Engineering Sciences will complete the Geotechnical scope of work outlined within this proposal for a **LUMP SUM FEE of \$9,300.00**. We will not exceed our budget unless the scope of work is varied or the soil or groundwater conditions encountered are significantly different from those anticipated, in which event you will be notified prior to any increase in costs.

Enclosed you will find our General Contract Conditions with a copy of our Work Authorization/Proposal Acceptance Form. If you would like to proceed, please sign and return an executed copy of the enclosed work authorization form to our office. We will initiate the field work upon receipt of the executed work authorization form.

CLOSURE

Universal Engineering Sciences, Inc. appreciates this opportunity to offer our services, and we are looking forward to the assignment. Please do not hesitate to contact the undersigned at 386-756-1105 if you have any questions.

Sincerely,
Universal Engineering Sciences, Inc.

Cody Wilson, E.I.
Project Engineer
cwilson@universalengineering.com

Brian C. Pohl, P.E.
Branch Manager
bpohl@universalengineering.com

Attachments
CW/BCP/cme

Enclosures: General Conditions
 Work Authorization/Proposal Acceptance Form

UNIVERSAL ENGINEERING SCIENCES, INC.

Work Authorization / Proposal Acceptance Form

IF PROPOSAL IS ACCEPTED, SIGN BOTH FORMS, RETURN ONE FORM TO UNIVERSAL AND RETAIN ONE FOR YOUR FILES.

Universal Engineering Sciences, Inc. (UES) is pleased to provide the services described below. The purpose of this document is to describe the terms under which the services will be provided and to obtain formal authorization.

PROJECT NAME: Daytona Beach Westside Regional WWTP Expansion
PROJECT LOCATION: 3651 LPGA Blvd., Daytona Beach, Florida
CLIENT NAME: Hazen and Sawyer
CLIENT ADDRESS: 999 Ponce de Leon Boulevard, Suite 1150, Coral Gables, Florida 33134
EMAIL: jhirst@hazenandsawyer.com

I. Scope of Services and Understanding of Project (See attached proposal or as indicated below)

UES PROPOSAL NO.: 2021D- UES OPPORTUNITY NO.: 0430.0421.00035

Geotechnical Exploration Program

\$9,300.00 LUMP SUM

II. Contract Documents. The following documents form part of this Agreement and are incorporated herein by referral:

- A. UES General Conditions.
- B. UES Proposal Dated: April 23, 2021
- C. Plans, reports, specifications and other documents provided by the Client prior to this Agreement date.
- D. Other exhibits marked and described as follows: _____

In the event of any inconsistency or conflict among the Contract Documents, the provision in the Contract Document first listed above shall govern.

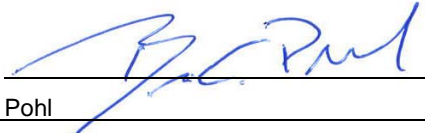
III. Authority to proceed and for payment. (To be completed by Client)

If the invoice is to be mailed for approval to someone other than the account charged, please indicate where below:

Firm: _____ Social Security Number or Federal Identification No.: _____
 Address: _____
 Attention: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duty authorized representatives this _____ day of _____ 2021.

CLIENT: _____ **UNIVERSAL ENGINEERING SCIENCES, INC.**

BY (signature): _____ **BY (signature):** 
NAME: _____ **NAME:** Brian C. Pohl
TITLE: _____ **TITLE:** Branch Manager

Return Executed Copy to:
ceberhardt@universalengineering.com
 Universal Engineering Sciences, Inc.



PROPOSAL NOTES:

Additional services, consultations, or meetings if requested, will be invoiced at Universal Engineering Sciences' standard rates.

This fee proposal will remain effective for 60 days. If you should require more than 60 days to formally authorize us to proceed, we request that you permit us to update our proposal to account for any changes in costs.

We have made a good faith effort to work with you to develop a work scope and fee estimate. Because of the possibility of unknown, discovered, underground conditions and/or the need for additional services that neither you nor we can currently foresee, we recommend that you budget a contingency equal to 15% of the total fee estimate. We will not use the contingency amount without first notifying you.

The Client will be responsible for all applicable taxes.



Universal Engineering Sciences, LLC
GENERAL CONDITIONS

SECTION 1: RESPONSIBILITIES 1.1 *Universal Engineering Sciences, LLC*, and its subsidiaries and affiliated companies ("UES"), is responsible for providing the services described under the Scope of Services. The term "UES" as used herein includes all of UES's agents, employees, professional staff, and subcontractors. 1.2 The Client or a duly authorized representative is responsible for providing UES with a clear understanding of the project nature and scope. The Client shall supply UES with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, and designs, to allow UES to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product. 1.3 The Client acknowledges that UES's responsibilities in providing the services described under the Scope of Services section is limited to those services described therein, and the Client hereby assumes any collateral or affiliated duties necessitated by or for those services. Such duties may include, but are not limited to, reporting requirements imposed by any third party such as federal, state, or local entities, the provision of any required notices to any third party, or the securing of necessary permits or permissions from any third parties required for UES's provision of the services so described, unless otherwise agreed upon by both parties in writing.

SECTION 2: STANDARD OF CARE 2.1 Services performed by UES under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of UES's profession practicing contemporaneously under similar conditions in the locality of the project. No other warranty, express or implied, is made. 2.2 Execution of this document by UES is not a representation that UES has visited the site, become generally familiar with local conditions under which the work is to be performed, or correlated personal observations with the requirements of the Scope of Services. It is the Client's responsibility to provide UES with all information necessary for UES to provide the services described under the Scope of Services, and the Client assumes all liability for information not provided to UES that may affect the quality or sufficiency of the services so described.

SECTION 3: SITE ACCESS AND SITE CONDITIONS 3.1 Client will grant or obtain free access to the site for all equipment and personnel necessary for UES to perform the work set forth in this Agreement. The Client will notify any possessors of the project site that Client has granted UES free access to the site. UES will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur, and the correction of such damage is not part of this Agreement unless so specified in the Scope of Services. 3.2 The Client is responsible for the accuracy of locations for all subterranean structures and utilities. UES will take reasonable precautions to avoid known subterranean structures, and the Client waives any claim against UES, and agrees to defend, indemnify, and hold UES harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate UES for any time spent or expenses incurred by UES in defense of any such claim with compensation to be based upon UES's prevailing fee schedule and expense reimbursement policy.

SECTION 4: BILLING AND PAYMENT 4.1 UES will submit invoices to Client monthly or upon completion of services. Invoices will show charges for different personnel and expense classifications. 4.2 Payment is due 30 days after presentation of invoice and is past due 31 days from invoice date. Client agrees to pay a finance charge of one and one-half percent (1 ½ %) per month, or the maximum rate allowed by law, on past due accounts. 4.3 If UES incurs any expenses to collect overdue billings on invoices, the sums paid by UES for reasonable attorneys' fees, court costs, UES's time, UES's expenses, and interest will be due and owing by the Client.

SECTION 5: OWNERSHIP AND USE OF DOCUMENTS 5.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES, as instruments of service, shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. 5.2 Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose. 5.3 UES will retain all pertinent records relating to the services performed for a period of five years following submission of the report or completion of the Scope of Services, during which period the records will be made available to the Client in a reasonable time and manner. 5.4 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES, are prepared for the sole and exclusive use of Client, and may not be given to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Client is the only entity to which UES owes any duty or duties, in contract or tort, pursuant to or under this Agreement.

SECTION 6: DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS 6.1 Client represents that a reasonable effort has been made to inform UES of known or suspected hazardous materials on or near the project site. 6.2 Under this agreement, the term hazardous materials include hazardous materials, hazardous wastes, hazardous substances (40 CFR 261.31, 261.32, 261.33), petroleum products, polychlorinated biphenyls, asbestos, and any other material defined by the U.S. EPA as a hazardous material. 6.3 Hazardous materials may exist at a site where there is no reason to believe they are present. The discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. The discovery of unanticipated hazardous materials may make it necessary for UES to take immediate measures to protect health and safety. Client agrees to compensate UES for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. 6.4 UES will notify Client when unanticipated hazardous materials or suspected hazardous materials are encountered. Client will make any disclosures required by law to the appropriate governing agencies. Client will hold UES harmless for all consequences of disclosures made by UES which are required by governing law. In the event the project site is not owned by Client, Client it is the Client's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials. 6.5 Notwithstanding any other provision of the Agreement, Client waives any claim against UES, and to the maximum extent permitted by law, agrees to defend, indemnify, and save UES harmless from any claim, liability, and/or defense costs for injury or loss arising from UES's discovery of unanticipated hazardous materials or suspected hazardous materials including any costs created by delay of the project and any cost associated with possible reduction of the property's value. Client will be responsible for ultimate disposal of any samples secured by UES which are found to be contaminated.

SECTION 7: RISK ALLOCATION 7.1 Client agrees that UES's liability for any damage on account of any breach of contract, error, omission, or professional negligence will be limited to a sum not to exceed \$50,000 or UES's fee, whichever is greater. If Client prefers to have higher limits on contractual or professional liability, UES agrees to increase the limits up to a maximum of \$1,000,000.00 upon Client's written request at the time of accepting UES's proposal provided that Client agrees to pay an additional consideration of four percent of the total fee, or \$400.00, whichever is greater. If Client prefers a \$2,000,000.00 limit on contractual or professional liability, UES agrees to increase the limits up to a maximum of \$2,000,000.00 upon Client's written request at the time of accepting UES's proposal provided that Client agrees to pay an additional consideration of four percent of the total fee, or \$800.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance. 7.2 Client shall not be liable to UES and UES shall not be liable to Client for any incidental, special, or consequential damages (including lost profits, loss of use, and lost savings) incurred by either party due to the fault of the other, regardless of the nature of the fault, or whether it was committed by Client or UES, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statutory, or any other cause of action. 7.3 As used in this Agreement, the terms "claim" or "claims" mean any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or any other act giving rise to liability.

SECTION 8: INSURANCE 8.1 UES represents it and its agents, staff and consultants employed by UES, is and are protected by worker's compensation insurance and that UES has such coverage under public liability and property damage insurance policies which UES deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, UES agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by UES, its agents, staff, and consultants employed by it. UES shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save UES harmless for loss, damage or liability arising from acts by Client, Client's agents, staff, and others employed by Client. 8.2 Under no circumstances will UES indemnify Client from or for Client's own actions, negligence, or breaches of contract. 8.3

To the extent damages are covered by property insurance, Client and UES waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance.

SECTION 9: DISPUTE RESOLUTION **9.1** All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement will be submitted to mediation or non-binding arbitration, before and as a condition precedent to other remedies provided by law. **9.2** If a dispute arises and that dispute is not resolved by mediation or non-binding arbitration, then: (a) the claim will be brought in the state or federal courts having jurisdiction where the UES office which provided the service is located; and (b) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness fees, and other claim related expenses.

SECTION 10: TERMINATION **10.1** This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or in the case of a force majeure event such as terrorism, act of war, public health or other emergency. Such termination shall not be effective if such substantial failure or force majeure has been remedied before expiration of the period specified in the written notice. In the event of termination, UES shall be paid for services performed to the termination notice date plus reasonable termination expenses. **10.2** In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by the Agreement, UES may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of UES in completing such analyses, records, and reports.

SECTION 11: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS **11.1** Plan review, private provider inspections, and building inspections are performed for the purpose of observing compliance with applicable building codes. Threshold inspections are performed for the purpose of observing compliance with an approved threshold inspection plan. Construction materials testing ("CMT") is performed to document compliance of certain materials or components with applicable testing standards. UES's performance of plan reviews, private provider inspections, building inspections, threshold inspections, or CMT, or UES's presence on the site of Client's project while performing any of the foregoing activities, is not a representation or warranty by UES that Client's project is free of errors in either design or construction. **11.2** If UES is retained to provide construction monitoring or observation, UES will report to Client any observed work which, in UES's opinion, does not conform to the plans and specifications provided to UES. UES shall have no authority to reject or terminate the work of any agent or contractor of Client. No action, statements, or communications of UES, or UES's site representative, can be construed as modifying any agreement between Client and others. UES's performance of construction monitoring or observation is not a representation or warranty by UES that Client's project is free of errors in either design or construction. **11.3** Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the project site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety conditions at the project site. Client acknowledges that Client or its contractor is solely responsible for project jobsite safety. **11.4** Client is responsible for scheduling all inspections and CMT activities of UES. All testing and inspection services will be performed on a will-call basis. UES will not be responsible for tests and inspections that are not performed due to Client's failure to schedule UES's services on the project, or for any claims or damages arising from tests and inspections that are not scheduled or performed.

SECTION 12: ENVIRONMENTAL ASSESSMENTS Client acknowledges that an Environmental Site Assessment ("ESA") is conducted solely to permit UES to render a professional opinion about the likelihood or extent of regulated contaminants being present on, in, or beneath the site in question at the time services were conducted. No matter how thorough an ESA study may be, findings derived from the study are limited and UES cannot know or state for a fact that a site is unaffected by reportable quantities of regulated contaminants as a result of conducting the ESA study. Even if UES states that reportable quantities of regulated contaminants are not present, Client still bears the risk that such contaminants may be present or may migrate to the site after the ESA study is complete.

SECTION 13: SUBSURFACE EXPLORATIONS **13.1** Client acknowledges that subsurface conditions may vary from those observed at locations where borings, surveys, samples, or other explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by UES will be based solely on information available to UES at the time of service. UES is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed or provided by UES. **13.2** Subsurface explorations may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated zone and links it to an aquifer, underground stream, or other hydrous body not previously contaminated. UES is unable to eliminate totally cross-contamination risk despite use of due care. Since subsurface explorations may be an essential element of UES's services indicated herein, Client shall, to the fullest extent permitted by law, waive any claim against UES, and indemnify, defend, and hold UES harmless from any claim or liability for injury or loss arising from cross-contamination allegedly caused by UES's subsurface explorations. In addition, Client agrees to compensate UES for any time spent or expenses incurred by UES in defense of any such claim with compensation to be based upon UES's prevailing fee schedule and expense reimbursement policy.

SECTION 14: SOLICITATION OF EMPLOYEES Client agrees not to hire UES's employees except through UES. In the event Client hires a UES employee within one year following any project through which Client had contact with said employee, Client shall pay UES an amount equal to one-half of the employee's annualized salary, as liquidated damages, without UES waiving other remedies it may have.

SECTION 15: ASSIGNS Neither Client nor UES may delegate, assign, sublet, or transfer its duties or interest in this Agreement without the written consent of the other party.

SECTION 16: GOVERNING LAW AND SURVIVAL **16.1** This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the UES office performing the services hereunder is located. **16.2** In any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities will survive termination of this agreement for any cause.

SECTION 17: INTEGRATION CLAUSE **17.1** This Agreement represents and contains the entire and only agreement and understanding among the parties with respect to the subject matter of this Agreement, and supersedes any and all prior and contemporaneous oral and written agreements, understandings, representations, inducements, promises, warranties, and conditions among the parties. No agreement, understanding, representation, inducement, promise, warranty, or condition of any kind with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein. **17.2** This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

SECTION 18: WAIVER OF JURY TRIAL Both Client and UES waive trial by jury in any action arising out of or related to this Agreement.

SECTION 19: INDIVIDUAL LIABILITY PURSUANT TO FLORIDA STAT. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF UES MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

ID	Task Name	Duration	Start	Finish	2022											
					1st Quarter	2nd Quarter	3rd Quarter	4th Quarter								
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	1 Project Initiation and Management	356 days	Wed 6/16/21	Wed 10/26/22												
2	1.1 Kick-Off Meeting	1 day	Wed 6/16/21	Wed 6/16/21												
3	1.1.1 Kick-Off Meeting	0 days	Wed 6/16/21	Wed 6/16/21												
4	1.2 Project Coordination	355 days	Thu 6/17/21	Wed 10/26/22												
5	2 Data Collection and Conceptual Design	66 days	Wed 6/16/21	Thu 9/16/21												
6	2.1 Data Collection and Review	5 days	Wed 6/16/21	Wed 6/23/21												
7	2.1.1 Data Request to City	0 days	Wed 6/16/21	Wed 6/16/21												
8	2.1.2 Data Acquisition	0 days	Wed 6/16/21	Wed 6/16/21												
9	2.1.3 Data Review	5 days	Thu 6/17/21	Wed 6/23/21												
10	2.2 Treatment Process, Redundancy and Conceptual Site Layout Workshop	17 days	Thu 6/24/21	Fri 7/16/21												
11	2.2.1 Develop Process, Redundancy, Site Layout Workshop	16 days	Thu 6/24/21	Thu 7/15/21												
12	2.2.2 Treatment Process, Redundancy and Conceptual Site Layout Workshop	1 day	Fri 7/16/21	Fri 7/16/21												
13	2.2.3 Treatment Process, Redundancy and Conceptual Site Layout Workshop	0 days	Fri 7/16/21	Fri 7/16/21												
14	2.3 Grit Characterization Study	31 days	Thu 6/24/21	Thu 8/5/21												
15	2.3.1 Sampling Plan	10 days	Thu 6/24/21	Wed 7/7/21												
16	2.3.2 Sampling and Analysis	20 days	Thu 7/8/21	Wed 8/4/21												
17	2.3.3 Grit Characterization Review Meeting	1 day	Thu 8/5/21	Thu 8/5/21												
18	2.3.4 Grit Characterization Review Meeting	0 days	Thu 8/5/21	Thu 8/5/21												
19	2.4 Odor Control Data Collection	61 days	Thu 6/24/21	Thu 9/16/21												
20	2.4.1 Draft Sampling Plan	10 days	Thu 6/24/21	Wed 7/7/21												
21	2.4.2 City Review and Comment	5 days	Thu 7/8/21	Wed 7/14/21												
22	2.4.3 Final Sampling Plan	5 days	Thu 7/15/21	Wed 7/21/21												
23	2.4.4 Sampling Event	15 days	Thu 7/22/21	Wed 8/11/21												
24	2.4.5 Desktop Evaluation	25 days	Thu 8/12/21	Wed 9/15/21												
25	2.4.6 Odor Control Data Workshop	1 day	Thu 9/16/21	Thu 9/16/21												
26	2.4.7 Odor Control Data Workshop	0 days	Thu 9/16/21	Thu 9/16/21												
27	2.5 Conceptual Design	10 days	Tue 8/10/21	Mon 8/23/21												
28	2.6 Wharton-Smith Design Evaluations Costing	25 days	Mon 7/19/21	Fri 8/20/21												
29	3 Preliminary Design Report (30%)	138 days	Thu 6/24/21	Mon 1/3/22												
30	3.1 Screening Options Evaluation	69 days	Thu 6/24/21	Tue 9/28/21												
31	3.1.1 Screening Options Evaluation	53 days	Thu 6/24/21	Mon 9/6/21												
32	3.1.2 Screening Options Workshop	1 day	Tue 9/7/21	Tue 9/7/21												
33	3.1.3 Screening Options Workshop	0 days	Tue 9/7/21	Tue 9/7/21												
34	3.1.4 City of Daytona Beach Site Visits	15 days	Wed 9/8/21	Tue 9/28/21												

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Date: Mon 5/17/21

Task		Inactive Task		Manual Summary Rollup		External Milestone		Manual Progress	
Split		Inactive Milestone		Manual Summary		Deadline			
Milestone		Inactive Summary		Start-only		Critical			
Summary		Manual Task		Finish-only		Critical Split			
Project Summary		Duration-only		External Tasks		Progress			

ID	Task Name	Duration	Start	Finish	2022																						
					1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter															
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
35	3.2 Grit Removal Equipment Options Evaluation	38 days	Fri 8/6/21	Tue 9/28/21																							
36	3.2.1 Grit Removal Options Evaluation	22 days	Fri 8/6/21	Mon 9/6/21																							
37	3.2.2 Grit Removal Options Workshop	1 day	Tue 9/7/21	Tue 9/7/21																							
38	3.2.3 Grit Removal Equipment Options Workshop	0 days	Tue 9/7/21	Tue 9/7/21																							
39	3.2.4 City of Daytona Beach Site Visits	15 days	Wed 9/8/21	Tue 9/28/21																							
40	3.3 Pump Station Workshop	26 days	Tue 8/10/21	Tue 9/14/21																							
41	3.3.1 Pump Station Evaluation	25 days	Tue 8/10/21	Mon 9/13/21																							
42	3.3.2 Pump Station Workshop	1 day	Tue 9/14/21	Tue 9/14/21																							
43	3.3.3 Pump Station Workshop	0 days	Tue 9/14/21	Tue 9/14/21																							
44	3.4 Odor Control Workshop	21 days	Fri 9/17/21	Fri 10/15/21																							
45	3.4.1 Odor Control Workshop	20 days	Fri 9/17/21	Thu 10/14/21																							
46	3.4.2 Odor Control Workshop	1 day	Fri 10/15/21	Fri 10/15/21																							
47	3.4.3 Odor Control Workshop	0 days	Fri 10/15/21	Fri 10/15/21																							
48	3.5 Preliminary Design Report	44 days	Wed 9/15/21	Mon 11/15/21																							
49	3.5.1 Develop Preliminary Design Report	20 days	Wed 9/15/21	Tue 10/12/21																							
50	3.5.2 Develop P&ID and PFD	15 days	Wed 9/15/21	Tue 10/5/21																							
51	3.5.3 Develop site layout, grading and drainage	15 days	Wed 9/15/21	Tue 10/5/21																							
52	3.5.4 Develop yard piping	15 days	Wed 9/15/21	Tue 10/5/21																							
53	3.5.5 Assemble draft PDR	3 days	Wed 10/13/21	Fri 10/15/21																							
54	3.5.6 PDR QC and Revisions	10 days	Mon 10/18/21	Fri 10/29/21																							
55	3.5.7 Draft Preliminary Design Report	1 day	Mon 11/1/21	Mon 11/1/21																							
56	3.5.8 City PDR Review	10 days	Tue 11/2/21	Mon 11/15/21																							
57	3.6 PDR Review Meeting and Final Report	10 days	Tue 11/16/21	Mon 11/29/21																							
58	3.6.1 PDR Review Meeting	1 day	Tue 11/16/21	Tue 11/16/21																							
59	3.6.2 PDR Review Meeting	0 days	Tue 11/16/21	Tue 11/16/21																							
60	3.6.3 Finalize PDR	10 days	Tue 11/16/21	Mon 11/29/21																							
61	3.6.4 Final PDR	0 days	Mon 11/29/21	Mon 11/29/21																							
62	3.7 Survey and Geotech	100 days	Mon 7/19/21	Fri 12/3/21																							
63	3.7.1 Survey, Geotech early info	80 days	Mon 7/19/21	Fri 11/5/21																							
64	3.7.2 Survey, Geotech final info	20 days	Mon 11/8/21	Fri 12/3/21																							
65	3.8 Wharton-Smith 30% Cost Estimate	25 days	Tue 11/30/21	Mon 1/3/22																							
66	4 Final Design	207 days	Tue 11/30/21	Wed 9/14/22																							
67	4.1 60% Design Submittal	115 days	Tue 11/30/21	Mon 5/9/22																							
68	4.1.1 Mechanical Design	60 days	Tue 11/30/21	Mon 2/21/22																							
69	4.1.2 Structural Design	60 days	Tue 11/30/21	Mon 2/21/22																							
70	4.1.3 Architectural Design	60 days	Tue 11/30/21	Mon 2/21/22																							

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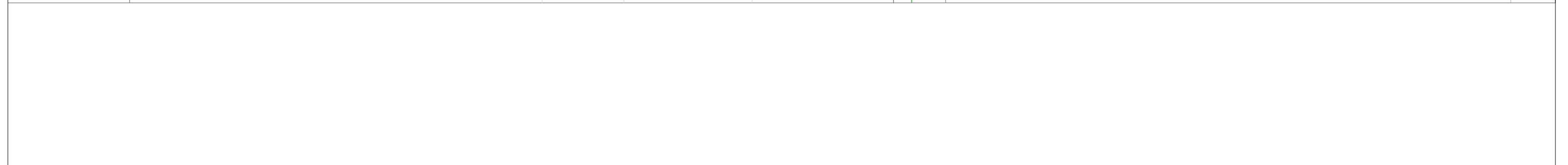
Task		Inactive Task		Manual Summary Rollup		External Milestone		Manual Progress	
Split		Inactive Milestone		Manual Summary		Deadline			
Milestone		Inactive Summary		Start-only		Critical			
Summary		Manual Task		Finish-only		Critical Split			
Project Summary		Duration-only		External Tasks		Progress			

ID	Task Name	Duration	Start	Finish	2022											
					1st Quarter	2nd Quarter	3rd Quarter	4th Quarter								
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
71	4.1.4 Electrical Design	70 days	Tue 11/30/21	Mon 3/7/22												
72	4.1.5 I&C Design	66 days	Tue 11/30/21	Tue 3/1/22												
73	4.1.5.1 Control System Improvements Workshop	66 days	Tue 11/30/21	Tue 3/1/22												
74	4.1.5.1.1 Control System Improvements Workshop Evaluation	20 days	Tue 11/30/21	Mon 12/27/21												
75	4.1.5.1.2 Control System Improvements Workshop	1 day	Tue 12/28/21	Tue 12/28/21												
76	4.1.5.1.3 Control System Workshop	0 days	Tue 12/28/21	Tue 12/28/21												
77	4.1.5.1.4 I&C Design	45 days	Wed 12/29/21	Tue 3/1/22												
78	4.1.6 Yard Piping Design	70 days	Tue 11/30/21	Mon 3/7/22												
79	4.1.7 Assemble Design Documents	3 days	Tue 3/8/22	Thu 3/10/22												
80	4.1.8 QC and Revisions	10 days	Fri 3/11/22	Thu 3/24/22												
81	4.1.9 60% Design Submittal	0 days	Thu 3/24/22	Thu 3/24/22												
82	4.1.10 City Review	10 days	Fri 3/25/22	Thu 4/7/22												
83	4.1.11 60% Design Workshop	1 day	Fri 4/8/22	Fri 4/8/22												
84	4.1.12 60% Design Workshop	0 days	Fri 4/8/22	Fri 4/8/22												
85	4.1.13 MOPO Workshop	21 days	Mon 4/11/22	Mon 5/9/22												
86	4.1.13.1 MOPO Evaluation	20 days	Mon 4/11/22	Fri 5/6/22												
87	4.1.13.2 MOPO Workshop	1 day	Mon 5/9/22	Mon 5/9/22												
88	4.1.13.3 MOPO Workshop	0 days	Mon 5/9/22	Mon 5/9/22												
89	4.1.14 Wharton-Smith 60% Cost Estimate (Preliminary GMP)	25 days	Fri 3/25/22	Thu 4/28/22												
90	4.2 90% Design Submittal	124 days	Fri 3/25/22	Wed 9/14/22												
91	4.2.1 Mechanical Design	70 days	Fri 3/25/22	Thu 6/30/22												
92	4.2.2 Structural Design	70 days	Fri 3/25/22	Thu 6/30/22												
93	4.2.3 Architectural Design	70 days	Fri 3/25/22	Thu 6/30/22												
94	4.2.4 Electrical Design	70 days	Fri 3/25/22	Thu 6/30/22												
95	4.2.5 I&C Design	80 days	Fri 3/25/22	Thu 7/14/22												
96	4.2.6 Yard Piping Design	80 days	Fri 3/25/22	Thu 7/14/22												
97	4.2.7 Assemble Design Documents	3 days	Fri 7/15/22	Tue 7/19/22												
98	4.2.8 QC and Revisions	10 days	Wed 7/20/22	Tue 8/2/22												
99	4.2.9 90% Design Submittal	0 days	Tue 8/2/22	Tue 8/2/22												
100	4.2.10 City Review	10 days	Wed 8/3/22	Tue 8/16/22												
101	4.2.11 90% Design Workshop	1 day	Wed 8/17/22	Wed 8/17/22												
102	4.2.12 90% Design Workshop	0 days	Wed 8/17/22	Wed 8/17/22												
103	4.2.13 Wharton-Smith 90% Cost Estimate (Revised GMP)	30 days	Wed 8/3/22	Tue 9/13/22												
104	4.2.14 Design Revisions	15 days	Thu 8/18/22	Wed 9/7/22												
105	4.2.15 Develop SRF Submittal	5 days	Thu 9/8/22	Wed 9/14/22												

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Task		Inactive Task		Manual Summary Rollup		External Milestone		Manual Progress	
Split		Inactive Milestone		Manual Summary		Deadline			
Milestone		Inactive Summary		Start-only		Critical			
Summary		Manual Task		Finish-only		Critical Split			
Project Summary		Duration-only		External Tasks		Progress			

ID	Task Name	Duration	Start	Finish	2022																		
					1st Quarter	2nd Quarter	3rd Quarter	4th Quarter															
					May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
106	4.2.16 SRF Submittal	0 days	Wed 9/14/22	Wed 9/14/22																			
107	4.3 Final Design Submittal	5 days	Thu 9/8/22	Wed 9/14/22																			
108	4.3.1 Submit 100% drawings and specifications	5 days	Thu 9/8/22	Wed 9/14/22																			
109	5 Permitting Services	35 days	Thu 9/8/22	Wed 10/26/22																			
110	5.1 FDEP Permitting for Westside WRF	35 days	Thu 9/8/22	Wed 10/26/22																			
111	5.1.1 Develop FDEP Minor Mod permit	5 days	Thu 9/8/22	Wed 9/14/22																			
112	5.1.2 FDEP Minor Mod permit submittal	0 days	Wed 9/14/22	Wed 9/14/22																			
113	5.1.3 Receive FDEP Minor Mod Permit	30 days	Thu 9/15/22	Wed 10/26/22																			
114	5.2 FDEP Environmental Resource Permitting	35 days	Thu 9/8/22	Wed 10/26/22																			
115	5.2.1 Develop FDEP ERP permit	5 days	Thu 9/8/22	Wed 9/14/22																			
116	5.2.2 FDEP ERP permit submittal	0 days	Wed 9/14/22	Wed 9/14/22																			
117	5.2.3 Receive FDEP ERP Permit	30 days	Thu 9/15/22	Wed 10/26/22																			
118	6 SRF Support Services	1 day?	Wed 6/16/21	Wed 6/16/21																			
119	6.1 Consultation and Advisory Services	1 day?	Wed 6/16/21	Wed 6/16/21																			
120	6.2 Document Preparation Services	1 day?	Wed 6/16/21	Wed 6/16/21																			
121	6.3 Request for Inclusion (RFI)	1 day?	Wed 6/16/21	Wed 6/16/21																			
122	6.4 Construction Loan Application	1 day?	Wed 6/16/21	Wed 6/16/21																			
123	7 Owner's Contingency	50 days?	Wed 6/16/21	Tue 8/24/21																			
124	7.1 LPGA Blvd FM Extension	1 day?	Wed 6/16/21	Wed 6/16/21																			
125	7.2 Offsite Hydraulic Modeling Assistance	1 day?	Wed 6/16/21	Wed 6/16/21																			
126	7.3 Onsite Redundancy Tie-in (36" FM and LPGA Blvd FM)	1 day?	Wed 6/16/21	Wed 6/16/21																			
127	7.4 Onsite Redundancy Tie-in (20" FM and LPGA Blvd FM)	1 day?	Wed 6/16/21	Wed 6/16/21																			
128	7.5 Hydraulic Analysis Workshop	16 days	Mon 7/19/21	Mon 8/9/21																			
129	7.5.1 Develop Hydraulic Analysis Workshop	15 days	Mon 7/19/21	Fri 8/6/21																			
130	7.5.2 Hydraulic Analysis Workshop	1 day	Mon 8/9/21	Mon 8/9/21																			
131	7.5.3 Hydraulic Analysis Workshop	0 days	Mon 8/9/21	Mon 8/9/21																			
132	7.6 Additional SRF Services During Design	1 day?	Wed 6/16/21	Wed 6/16/21																			
133	7.7 Odor Control System Design Services	1 day?	Wed 6/16/21	Wed 6/16/21																			
134	7.8 Printing Contract Documents	1 day?	Wed 6/16/21	Wed 6/16/21																			



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Project Summary		Duration-only		External Tasks		Progress			