

ST. PETERSBURG CITY COUNCIL
Report
Meeting of April 8, 2021

To: The Honorable Ed Montanari, Chair, and Members of City Council

Subject: Approving a contract with Horus Construction Services, Inc. (“Horus”), for Design Build at Risk Agreement (“DBAR”), with a Guaranteed Maximum Price (“GMP”) for preconstruction and construction management services for the new Deuces Rising Townhomes and Commercial Development (“DBAR Agreement”); authorizing the City Attorney to make non-substantive changes to the DBAR Agreement; authorizing the Mayor, or his designee, to execute the DBAR Agreement; authorizing payment to Horus in an amount not to exceed \$540,964 for the partial preconstruction phase services for Schematic Design and Design Development phases of the project; approving a rescission of an unencumbered appropriation in the General Fund (0001) in the amount of \$740,964 from the Finance Department, Revenues and Transfers Division (320-3201); approving a transfer in the amount of \$740,964 from the unappropriated balance of the General Fund (0001), resulting from the above rescission, to the Housing Capital Improvements Fund (3000); approving a supplemental appropriation in the amount of \$740,964 from the increase in the unappropriated balance of the Housing Capital Improvements Fund (3000), resulting from the above transfer, to the Deuces T/H & Comm Development Project (18286); and providing an effective date.

Explanation: The City intends to develop, in collaboration with the Sankofa Vision Group, LLC, approximately 2.8 acres generally located on the west side of 22nd Street South between 6th Avenue South and 7th Avenue South (formally known as the “Eurocycle Site”). The development will consist of approximately 26 townhomes affordable to qualified buyers at 120% of the Area Median Income or below, and approximately 28,000 square feet of commercial space.

On November 5, 2020, the City issued Request for Qualifications, RFQ No. 7898 for Progressive Design Build Services at Risk, Deuces Rising Townhomes and Commercial Development. On December 3, 2020, the City received four statements of qualifications from:

1. Construct Two Construction Managers, Inc.
2. Domain Homes, Inc.
3. Horus Construction Services, Inc.
4. Intelligent Line A+D LLC. A joint venture

Evaluation of the statements of qualifications was conducted by the following staff:

- Brejesh Prayman, Engineering and Capital Improvements Director
- Rob Gerdes, Neighborhood Affairs Administrator
- James Corbett, Codes Compliance Assistance Director
- George Smith, Economic Development Coordinator
- Evan Birk, Engineering and Capital Improvements Design Manager

The Statement of Qualifications were evaluated based on the following criteria:

- Team background and experience
- Project approach
- Relevant project examples
- Small, Minority, Women and Disadvantaged Business Enterprise

On December 15, 2020, the evaluation committee met to shortlist the statements of qualifications. The committee recommended the following four firms be shortlisted for interviews:

1. Construct Two Construction Managers, Inc.
2. Domain Homes, Inc.
3. Horus Construction Services, Inc.
4. Intelligent Line A+D LLC. A joint venture

Subsequent to the shortlisting and prior to the presentations and interviews, Domain Homes, Inc, withdrew from further consideration. On January 6, 2021, the evaluation committee heard presentations from Construct Two Construction Managers, Inc., Horus Construction Services, Inc. and Intelligent Line A+D LLC. The committee ranked Horus Construction Services, Inc. as the top-ranked firm, Construct Two Construction Managers, Inc. the second-ranked firm; and Intelligent Line A+D. LLC, third-ranked.

Horus was determined to be the most qualified firm, taking into consideration their years in business, team experience, proposed project examples, and the evaluation criteria set forth in RFQ No. 7898. They have been in business for 22 years. The principals of Horus are Jonathan Graham, president, and James Graham vice president.

Once City Council acknowledges the selection of Horus, the City and Horus will enter into a design build at risk agreement with a GMP ("DBAR Agreement") for the design of up to 26 residential townhome units and approximately 28,000 square feet of commercial development for the Deuces Rising development. The scope of services includes partial preconstruction phase services consisting of concept development and public engagement, schematic design, design development, cost estimation and constructability reviews.

These partial preconstruction services begin with Horus working closely with the Architect, Howard and Associates, Inc. ("A/E") to develop the project design and a cost plan. Further, Horus will provide partial preconstruction services that include, but are not limited to, refinement of cost estimates during the design phases, constructability reviews, value engineering, project scheduling and procurement coordination. The partial preconstruction phase fees are as follows:

Total Partial Preconstruction Phase Fee: \$540,964

Remaining preconstruction phase services consisting of complete construction documents, construction administration, final estimation and development of a GPM proposal will be brought to City Council for approval as a future amendment in accordance with the terms and conditions set forth in the DBAR Agreement. At the conclusion of the full preconstruction phase, Horus shall provide a GMP proposal which shall become a part of the DBAR Agreement via a Guaranteed Maximum Price Amendment that shall not exceed the City's construction cost budget. Horus shall also comply with the City's local hiring ordinance provisions.

The construction phase shall commence upon the City Council's approval of a Guaranteed Maximum Price Amendment ("GMP Amendment") and the issuance of a Notice to Proceed. The GM Amendment will include the Cost of the Work plus the Design Builder's Fee. During the Construction Phase, the Design Build firm will assume the responsibility as the contractor and will proceed to construct the new Deuces Rising Townhomes and Commercial Development. All construction work will be competitively bid out by Horus in accordance with the terms and conditions set forth in the DBAR Agreement.

Horus Construction Services is a State of Florida Certified Minority Business Enterprise (MBE), and a City of St. Petersburg Certified SBE. Horus has agreed to comply with the City's Responsible Wage Ordinance (Section 2-277), the City's Apprenticeship Ordinance (Section 2-263), and the City's Disadvantaged Worker Ordinance (Section 2-270) upon the award of the GMP Construction Amendment. The City's Living Wage Ordinance (Section 2-276) will be the floor wage rate for the initial Pre-Construction and Design Services scope of work contained in the current award.

In addition to the contract amount, there are city costs associated with the project in the amount of \$200,000 for design services for staff project management, other consulting and contingency.

Cost/Funding/Assessment Information: Funding for this project was previously appropriated in the FY21 Adopted Budget in a debt payment line item in the General Fund (0001), Finance Department (320). Funding will be available after the approval of a rescission of this appropriation in the General Fund (0001) in the amount of \$740,964 from the Finance Department, Revenues and Transfers Division (320-3201), the approval of a transfer in the amount of \$740,964 from the unappropriated balance of the General Fund (0001), resulting from the above rescission, to the Housing Capital Improvements Fund (3000), and a supplemental appropriation in the amount of \$740,964 from the increase in the unappropriated balance of the Housing Capital Improvements Fund (3000), resulting from the above transfer, to the Deuces T/H & Comm Development Project (18286).

Attachments: Technical Evaluation (3 pages)
Project Presentation Documents (14 pages)
Form, Design-Build Agreement (44 pages)
Resolution

Technical Evaluation for RFQ 7898
906-25 Progressive Design Build, Deuces Rising Townhomes & Commerce Park

Summary Work Statement

The City received four Statements of Qualifications (SOQs) for RFQ 7898 Progressive Design Build, Deuces Rising Townhomes and Commercial Development at Commerce Park. The City is seeking a qualified Design Build contractor to design and construct a mixed use residential and commercial project. The four SOQs were received from:

1. Construct Two Construction Managers Inc.
2. Domain Homes, Inc.
3. Horus Construction Services Inc.
4. Intelligent Line A+D LLC

Evaluation Committee

Evaluation of the SOQs was conducted by the following team members:

- Brejesh Prayman, Engineering and Capital Improvements Director
- Rob Gerdes, Neighborhood Affairs Administrator
- James Corbett, Codes Compliance Assistance Director
- George Smith, Economic Development Coordinator
- Evan Birk, Engineering and Capital Improvements Design Manager

Evaluation Criteria

The SOQs were evaluated based on the following criteria:

- Team background and experience
- Project approach
- Relevant project examples
- Small, Minority, Women and Disadvantaged Business Enterprise

Offerors' Profiles

Below is a profile of each firm and a summary of the strengths and weaknesses of each as reported after the initial, independent review.

Construct Two Construction Managers, Inc. is a Florida corporation, founded in 1990, headquartered in Orlando. They have been in business for and operating under the current name for 30 years and employs 11 people.

Strengths include: The firm experience includes townhome and multi-family construction; the team included a sustainability consultant; their project approach that focused on the process of design build, addressed cost control and cost measuring during the project; their firm's bonding capacity is substantial which is a strong reflection of the firm's financial health; the Florida A&M dormitory project showed recent experience in multi-dwelling construction and the Promenade at Westlake project is an example of a mixed-use project similar in scale to the Deuces Rising project; their use of ProCore software for communication and requests for information processing is a plus; the firm is a member of the Design Build Institute of America their team's commitment to 30% SBE participation; their project executive has connection to St. Petersburg and the team emphasized the need to understand the scope early on in the process.

Weaknesses include: None of the project examples defined the role of Construct Two in the project, nor the timeline for beginning and end of project and this lack of detail made it difficult to determine their role

and whether they performed in a timely manner; the team experience includes Ohio design projects for Moody-Nolan, the architect, though none in Florida; noted use of AutoCad 3 for their design software, the team did exhibit construction management as opposed to design build construction delivery methods and the role of the design consultants was not clearly defined; the firm lacked experience in constructing commercial tenant build out improvements; their generic SOQ; lack of knowledge of the historical importance of "The Deuces"; the certifications of their proposed use of several M/WBEs was not substantiated; their team's possible unavailability could be an issue because of their office being located in Orlando; the team experience did not include examples of mixed-use developments; the architect of record in the SOQ, Quaxado is located in Orlando; and it is not clear how Quaxado's role blends with Moody-; and the formation of GMP development was not clearly explained.

The Statement of Qualifications meets the RFQ requirements.

Domain Homes, Inc. was founded in 2010 as a Georgia corporation. They are headquartered in Tampa and have been in business for over 10 years and employ 27 people.

Strengths include: The firm has a successful large residential single-family home development in Tampa; the SOQ addressed the design process and how the team would organize the project; and they have constructed homes in St. Petersburg as well.

Weaknesses: The SOQ lacked detail and did not include resumes of any key personnel, just an organization chart and did not include any commercial or townhome development; the project approach and proposed communication among the team members and between the team and the City was not explained; and their SOQ was generic rather than specific to the City's project.

The Statement of Qualifications marginally meets the RFQ requirements.

Horus Construction Services, Inc. is a Florida S corporation, with its headquarters in Tampa. They were incorporated in 2001 and have been in business for 20 years, operating under the current name and employ 40 people.

Strengths include: The project team have worked on numerous developments relevant to this project and the staff experience is strong; their certification as a State Certified MBE; their subconsultant, Volt-Aire had a great deal of relevant residential project experience; their variety of trade experience, including roofing, drywall, stucco, concrete, door installation and others; they demonstrated a strong ability to source their subcontractors; their team members positive contribution to the presentation; several team members reside in St. Petersburg and have existing relationships with community leaders; their Engineering team members are familiar with the existing utilities in the area; the architect is local, well versed in the history of the prevailing styles in the area and was well informed of the architectural style in the area; the team demonstrated how its mentoring program helped bolster the business success of the firms they have mentored; they proposed a minimum SBE participation goal of 35%; their discussion of the permitting process and the potential delay to the project displayed their understanding and knowledge of working with municipalities; and they proposed a responsibility matrix that would be established to define the roles and responsibilities of the team members.

Weaknesses include: They did not clearly define their role as General Contractor, Construction Manager or Design Builder in prior projects and appears that their role is mostly in a subcontractor capacity rather than the lead contractor with coordination responsibilities; the project examples were more governmental structures, such as schools, than mixed-use development; and the project approach portion of the SOQ seemed to be missing from the SOQ.

The Statement of Qualifications meets the RFQ requirements.

Intelligent Line A+D LLC, a joint venture between Exact Architects and Professional Concrete Services LLC is headquartered in Kansas City with a St. Petersburg Beach office to primarily serve the City. They have been in business for 10 years. The submittal was made on behalf of a joint venture which

included Exact Architects and Professional Concrete and Construction Services of St. Petersburg. Exact Architects employs 5 people.

Strengths include: The SOQs list several comparable projects; their demonstrated local knowledge, strong community outreach and the ability to work cooperatively with project stakeholders; local subcontractors were included on the project team; their project approach was simple and to the point and addressed the community and cost control; strong local subcontracting efforts were evident in the SOQ and addressed resiliency as part of a very analytical approach; their demonstrated thought in their preliminary concept for the community design; the team demonstrated its engagement with local stakeholders and the inclusion of a local real estate professional with area data driven trends and information was insightful.

Weaknesses include: None of the firms comprising the joint venture have a license issued by the Florida Department of Business and Professional Regulation which oversees architectural and construction services in Florida; their prior project experience is Kansas City area based, and not local to the Tampa Bay area; the SOQ did not clarify whether their role was in designing and constructing the reference projects, or design only; the project architect is licensed in Missouri but it's not clear he's licensed in Florida; the absence of an executed joint venture agreement explaining the roles and responsibilities of the joint venturers For A Design-Build Project; Professional Concrete Services intent to self-perform aspects of the project does raise questions of cost control and the concept of maintaining a guaranteed maximum price; the team had not collaborated together on a project; there seemed to be a question of leadership and who to turn to for answers when questions arise; and the proposed general contractor has not constructed a project of this scope and magnitude.

The Statement of Qualifications meets the RFQ requirements.

Shortlisting and Oral Presentations

On December 15, 2021, the SOQs were initially evaluated solely on the evaluation criteria established in the RFQ. All four firms were invited to participate in presentations and interviews. Thereafter, Domain Homes Inc. withdrew from further consideration.

Recommendation for Award

On January 6, 2021, the evaluation committee heard presentations from Construct Two Construction Managers, Inc., Horus Construction Services, Inc., and Intelligent Line A+D LLC, a joint venture between Exact Architects and Professional Concrete Services.

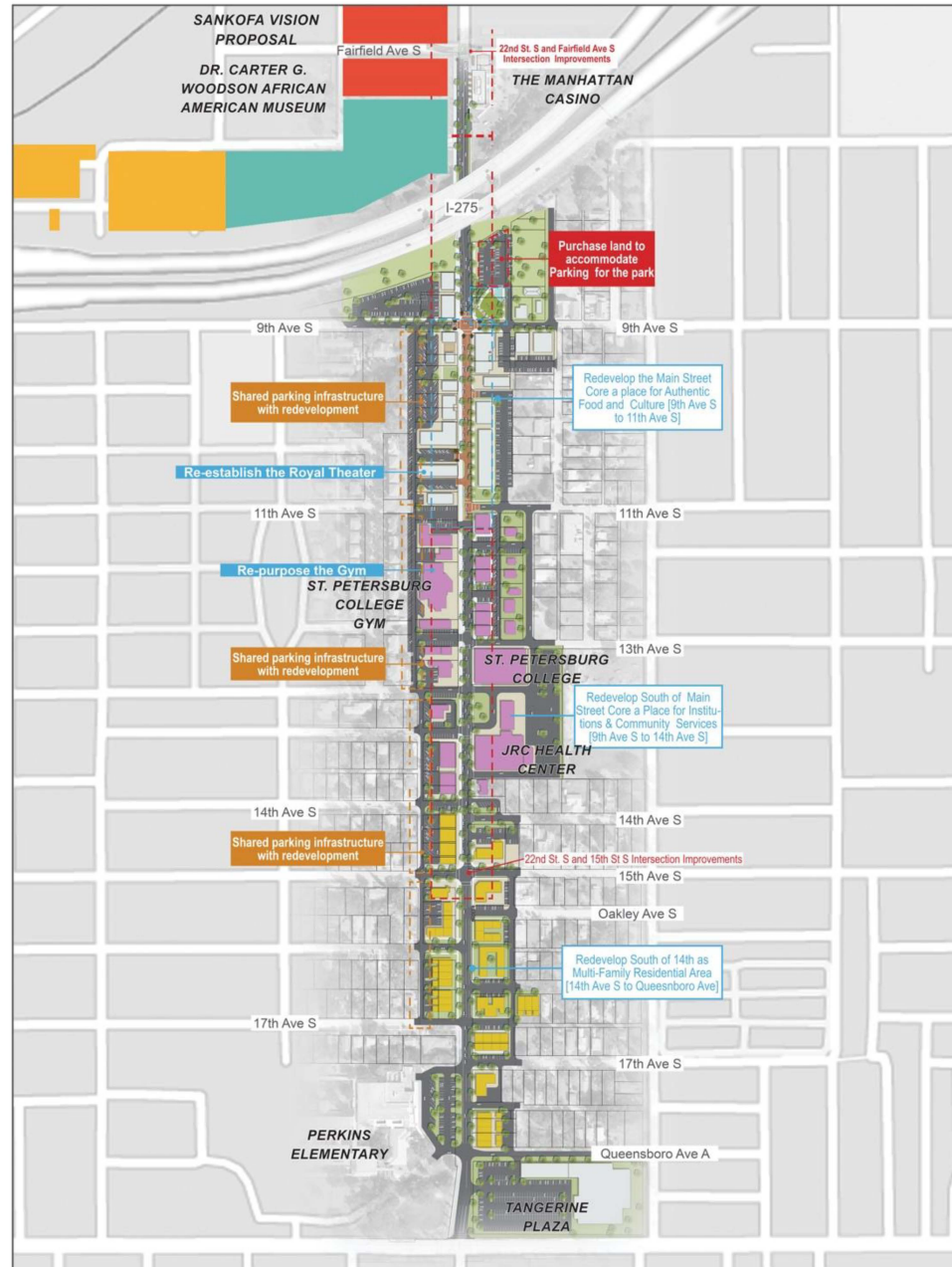
On January 8, 2021 the evaluation committee convened to rank the three remaining finalist firms. Horus Construction Services, Inc. was recommended for award. The firm has met the requirements of RFQ No. 7898 and have been determined to be the most qualified firm taking into consideration their years of providing these services and the evaluation criteria set forth in the RFQ.

Horus Construction Services, Inc. was selected for the following reasons:

- Their qualifications.
- Their project relevant project experience and construction trades experience.
- The local connections and local knowledge of several team members.
- Their team includes multiple SBE's and MBE's with significant local experience.
- Their successful mentoring program for small businesses.
- Their commitment of 35% SBE participation on this project.



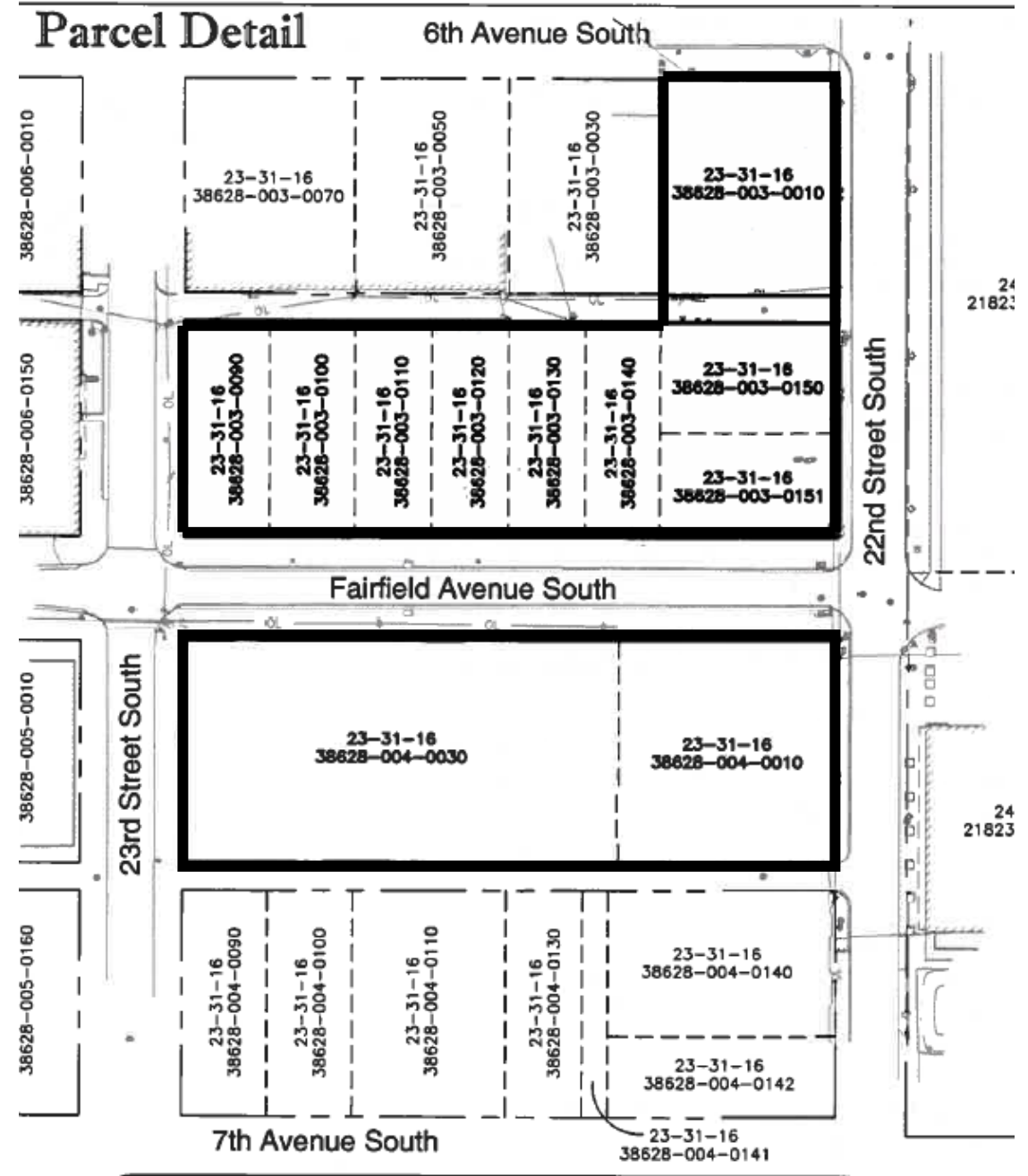
DEUCES RISING DEVELOPMENT DESIGN BUILD CONTRACT



Subject Property

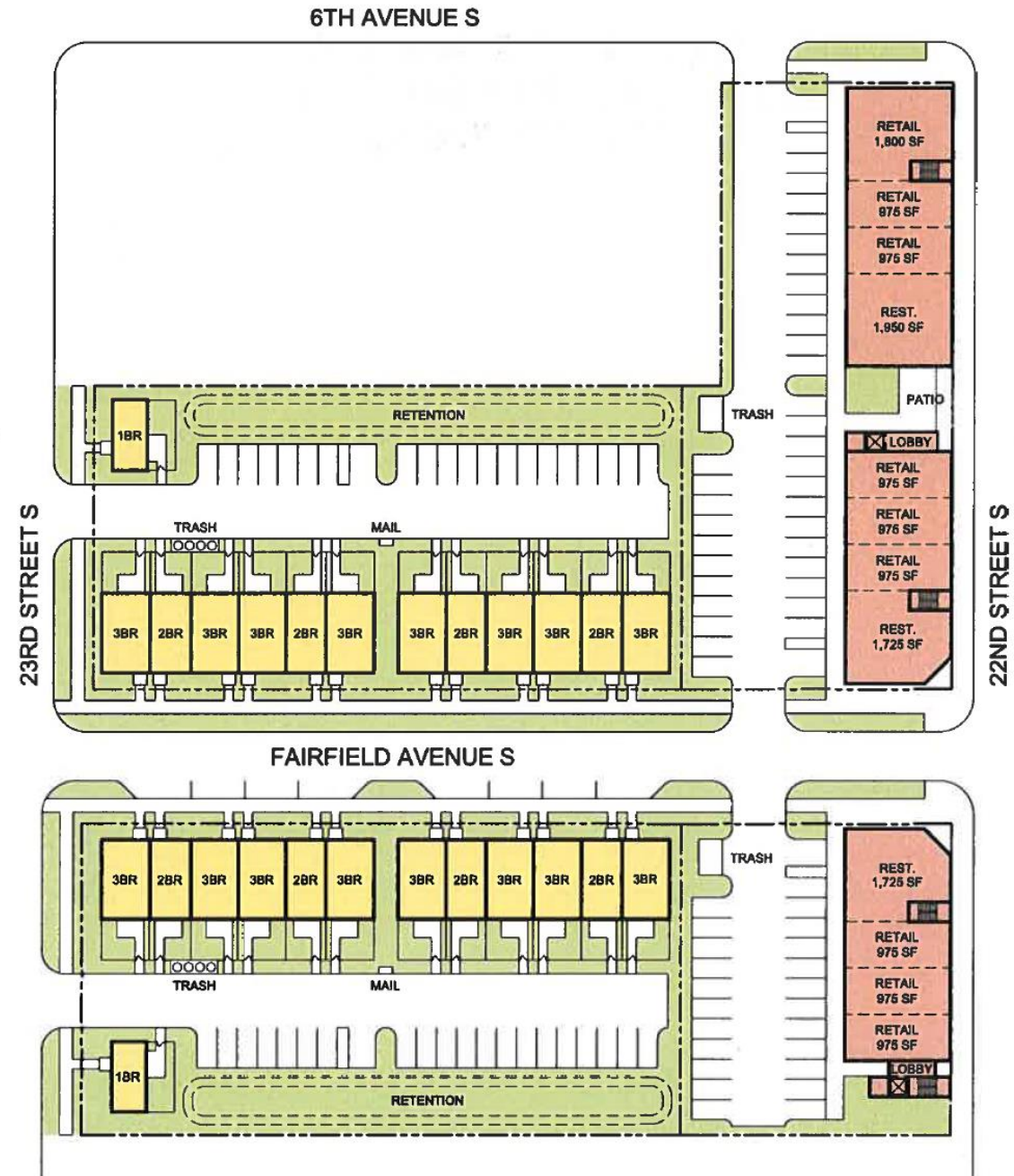


- Zoning is CCT-1
- Site is approximately 2.8 acres



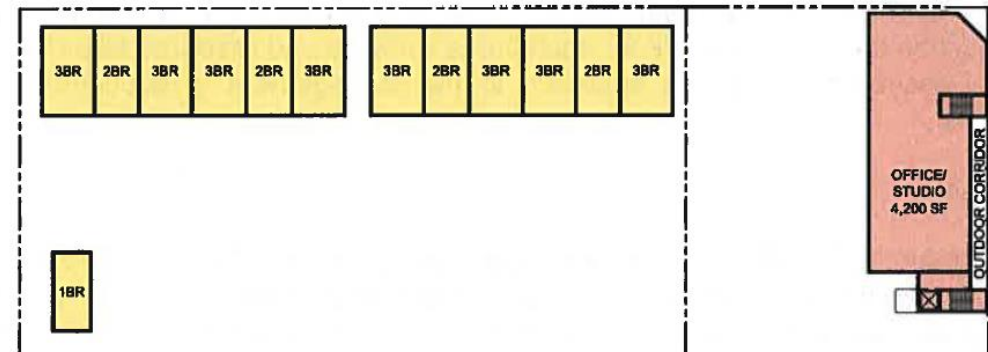
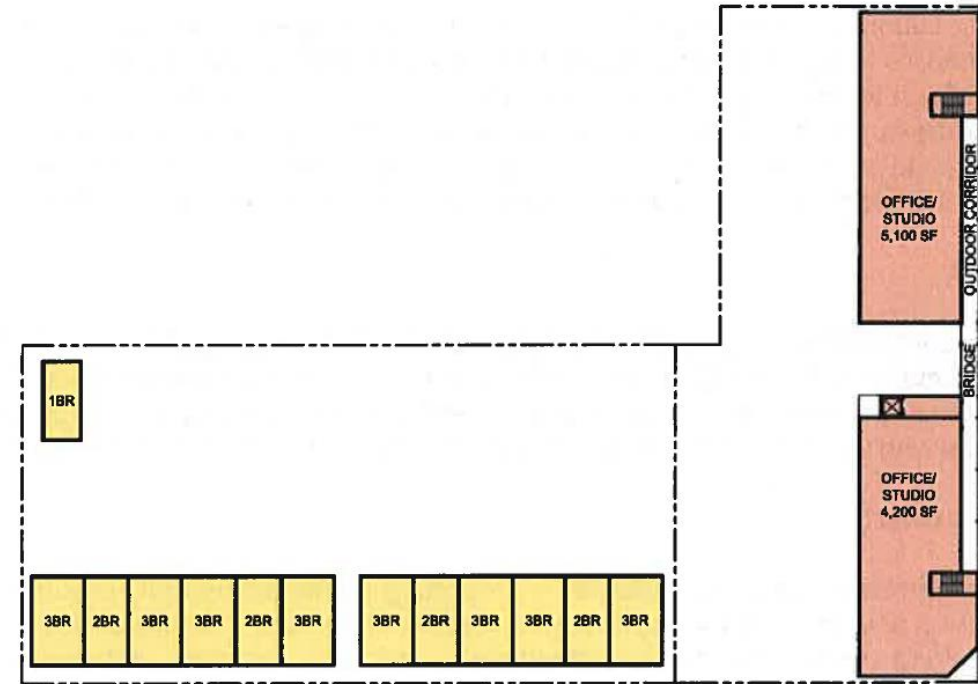
Potential Site Plan

- 24-26 two-story townhomes – Home Ownership
- Mix of bedroom types
- 120% AMI or below
- Surface Parking and retention
- Reconstructed Fairfield Ave w/ street parking



Potential Site Plan

- Approximately 28,000 sq. ft. of commercial space
- Two-story fronting 22nd Street South
- Opportunity to configure space for retail, office and restaurant/café with outdoor seating
- Affordable commercial space for local business



Request & Process

- Administration requests approval of a contract with Horus Construction Services, Inc. as the Design Build Firm for the proposed development
 - 11.5.20 – City issues RFQ for Design Build Services
 - City received four statements of qualifications
 - Construct Two Construction Managers, Inc.
 - Domain Homes, Inc.
 - Horus Construction Services, Inc.
 - Intelligent Line A+D LLC. A joint venture.
 - 12.15.20 – Evaluation Committee shortlisted
 - 1.6.21 – Presentation by firms
 - Evaluation Committee selected Horus Construction Services, Inc.



Request & Process

- Current Funding Allocation Request
 - Partial preconstruction phase services: concept development, public engagement, schematic design, design development, cost estimation and constructability review - \$540,964
 - Additional funding request for staff time for project management, other consulting and contingency - \$200,000
 - Total current funding request \$740,964 which is available in unappropriated balance of General Fund
- Future request to complete Preconstruction Phase
 - Construction Documents, GMP preparation, Construction Administration - \$750,648
 - Timing of construction documents and completion of preconstruction after results of Phase II Environmental Report
- Estimated Total Cost of Development - \$16 Million



Scope of Work

- **Zoning Requirements**
 - Completing Vacation Process
 - Completing Re-Plat of property including townhome plat
- **Right-of-Way Improvements**
 - Size utilities appropriately for planned development and provide dedicated connection points
 - Coordinate with multiple departments on both proposed development and right-of-way improvement
 - Replace Sewer and Water Mains on Fairfield Avenue
 - Resurface Fairfield Avenue
- **Development of the Property**
 - Preconstruction Services
 - Site and Utility work including any necessary environmental remediation
 - Construction of the Development



Environmental Update

- **Phase I Environmental Site Assessment**
 - Completed in August 2020
 - Several recognized environmental conditions (RECs) identified
 - Dry cleaning facility one located north of Fairfield
 - Industrial warehouse with a metal shop once located south of Fairfield
 - Adjacent lands included auto repair and auto salvage uses
 - Underground storage tank was once located in close proximity
 - Recommended additional assessments (Phase II) to determine impacts of RECs, if any
- **Phase II Environmental Site Assessment**
 - Task Order Amendment authorized for additional surveys, soil and groundwater assessments
 - Soil samples and collection of groundwater samples scheduled and underway
 - Approximate 60 days to receipt of Final Report with conclusions and recommendations



[illegible]

Preliminary Plan of Finance

- Current Year Appropriation
 - +/- \$1.7 million is available for this project (approved in the FY21 adopted budget)
 - Postpones the issuance of debt until it is needed to fund the vertical construction
 - Future borrowing is anticipated

Preliminary Plan of Finance

- Future Borrowing --We anticipate needing to issue debt (bank loan) in two series to fund the vertical construction
 - **Series A estimated at \$7 million -- 26 Townhomes**
 - We expect this to be a short-term borrowing (24 - 36 months max)
 - Interest only for 24 months (during construction)
 - Designed so that as units are sold principal reduction payments are made
 - May have some residual principal to pay off after all sales (subsidy)
 - Interest carry cost during the construction phase
 - Potential subsidy from SSP CRA TIF
 - Potential subsidy from Pinellas County – Penny for Pinellas Workforce Housing Funding

Preliminary Plan of Finance

- Future Borrowing
 - **Series B estimated at \$7.5 million – Commercial Site**
 - Longer term financing – (15 or 20 years)
 - City responsible for annual debt service from General Fund and/or TIF Revenue

Questions & Comments



Modified AIA Documents A141™ - 2014 and A141™ - 2014 - Exhibit A
Standard form of Agreement between Owner and Design-Builder
and Form of Design-Build Amendment

The above referenced AIA Documents have been substantially modified for this Request for Qualifications. This agreement combined with the design-build documents (which includes A141™ - 2014 - Exhibit A after its execution) will constitute the contract between the City and the Design-Builder.

At any time prior to execution of the agreement, the City reserves the right to add, delete or modify the terms and conditions. The Design-Builder will be giving an opportunity to take exception.

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

« »
« »
« »
« »

and the Design-Builder:
(Name, legal status, address and other information)

« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

« »
« »
« »

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« »

§ 1.1.5 Intentionally Left Blank.

« »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

« »

.5 Other milestone dates:

« »

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

« »

.2 Consultants

« »

.3 Contractors will be identified in the Design-Build Proposal.

« »

§ 1.1.9 Intentionally Left Blank.

« »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable Laws (as defined herein).

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable Laws, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they will comply with procedures established and agreed upon by the parties in writing.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

« »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

« »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[☐] Arbitration pursuant to Section 14.4

[☒] Litigation in a court of competent jurisdiction

[☐] Other: *(Specify)*

« »

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment or (2) a Change Order.

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

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Contract, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Contract may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

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

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Contract for those portions of the Work for which the Contract requires Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

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

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

§ 1.4.11 Contractors. Contractors are a persons or entities performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located..

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Contract shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Pre-Construction Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 For Work performed by the Design-Builder prior to execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder an amount not to exceed _____ dollars (\$XXXXXX). Compensation for Work performed by the Design-Builder prior to execution of the Design-Build Amendment is inclusive of all out of pocket expenses, including but not limited to transportation, lodging, meals, and materials.

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§ 2.1.2 The Design-Builder shall invoice the Owner on a monthly basis and the Owner shall pay the Design-Builder within twenty (20) business days of receipt of such invoice (provided the Design-Builder is in compliance with the terms and conditions of the Contract). The monthly invoice shall detail the Work provided by the Design-Builder. The fixed amount set forth in § 2.1.1 may be increased only in strict accordance with the Contract.

§ 2.1.3 If the Owner wants the Design-Builder to provide additional services prior to the execution of the Design-Build Amendment beyond those services required by the Contract, the Owner and the Design-Builder shall mutually agree in writing to such additional services and the costs and fees for such additional services. Once agreed to in writing, the Owner and the Design-Builder shall execute a written amendment to the Contract.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

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

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

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Contract. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Contract by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable Laws. If the Design-Builder performs Work contrary to applicable L, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractors, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable Laws. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable Laws, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

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

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

§ 3.1.6 When applicable Laws require that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Architect and the Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

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

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders;
- .6 Pending Change Order status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation;
- .11 Current Project cash-flow and forecast reports
- .12 Additional information as agreed to by the Owner and Design-Builder;
- .13 Cost summary, comparing actual costs to updated cost estimates; and
- .14 Contingency log to include pending and authorized requests.

§ 3.1.8.2 Intentionally Left Blank.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Contract, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract, except to the extent specifically identified in the certificate, and (ii) comply with applicable Laws governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

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

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Contract requires Submittals until the Owner has approved the respective Submittal.

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

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract requires or permits otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Contract and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

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

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and its separate contractors and consultants harmless from loss on account thereof. If

the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 The Design-Builder agrees to indemnify, hold harmless, assume legal liability for, save and defend the Owner, its officers, employees, contractors, consultants, elected and appointed officials, and representatives (collectively, "Indemnified Parties") from and against any and all claims, liens, suits, actions, damages, liability, assertions of liability, losses, costs and expenses in law or in equity, of every kind and nature whatsoever, (collectively, "Claims"), whether or not a lawsuit is filed, including but not limited to costs, expenses and attorneys' and experts' fees at trial and on appeal and Claims for bodily injury or death of persons and or damage to property, which Claims may occur or be alleged to have occurred by or on account of or arising out of (i) the negligence, recklessness, or intentional wrongful misconduct of the Design-Builder and its employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities in the performance of the Contract; or (ii) the failure of the Design-Builder and its employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities to comply with applicable Laws arising out of the Contract; or (iii) any act, omission, or default of the Design-Builder and its employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities arising from performance of the Contract.

§ 3.1.14.2 The Owner will promptly notify the Design-Builder of any Claims against the Indemnified Parties. The Design-Builder shall have the right to control the defense of any Claims subject to the foregoing indemnification to the extent of the indemnification. The Design-Builder also shall have the right to settle any such Claims provided that the Design-Builder pays the entire amount of such settlement and there is no finding of fault against the Indemnified Parties.

§ 3.1.14.3 The Design-Builder's indemnifications obligations re independent of, and will not be limited by, any insurance required to be obtained by the Design-Builder to the Contract or otherwise obtained by the Design-Builder.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, at the Owner's sole discretion, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Section 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 3.1.15.2

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

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

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations,

consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

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

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

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§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Design and Other Services

§ 4.3.1 The detailed design and other services to be performed and provided by the Design-Builder prior to the execution of the Design-Build Amendment are set forth in Exhibit _.

§ 4.3.2 At a time mutually agreed upon in writing by the Owner and Design-Builder, the Design-Builder shall prepare a Design-Builder's proposal with a guaranteed maximum price for the Owner's review and acceptance.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 The Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of Drawings (to be identified in Design-Build Amendment), Specifications (to be identified in the Design-Build Amendment) and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 A statement of the proposed Guaranteed Maximum Price, including a statement of the Cost of the Work organized by trade categories or systems, allowances, contingencies (including Design-Builder's and Owner's contingencies), insurance, bonds, and Design-Builder's Fee;
- .3 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .4 A date by which the Owner must accept the Design-Build proposal; provided however that the Owner's acceptance of the Design-Build proposal is subject to the St. Petersburg City Council's approval of the Design-Build Amendment;
- .5 The Design-Builder shall supply any additional information reasonably requested by Owner to allow the Owner to fully evaluate the proposed Guaranteed Maximum Price. Such information shall include utilization of Small Businesses, apprentices and disadvantaged workers, along with the payment of a responsible wage;
- .6 An enumeration of any qualifications and exclusions, if applicable; and

.7 A list of the Design-Builder's key personnel, Contractors and suppliers; and

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. Familiarity with the site and local conditions includes, without limitation, (1) the condition and layout of the Project site and surrounding locale (2) available labor supply and costs (3) available subcontractors and suppliers (4) the prevailing climate, including the impact on construction operations of rain and other weather events, based upon averages documented by the National Weather Service (5) available material and equipment and related costs and (6) other similar issues. Contractor shall make no claim whatsoever for additional time or money arising from its failure to comply with this Section 4.4.2.

§ 4.4.3 The Owner shall notify the Design-Builder in writing when the Owner has accepted the Design-Build proposal and once accepted the Owner shall be preparing the Design-Build Amendment, in substantially the form set forth in Exhibit A. Following approval of the Design-Build Amendment by the St. Petersburg City Council, the Owner and the Design Builder shall execute such amendment amending the Contract.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

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§ 5.1.1 Intentionally Left Blank.

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§ 5.2 Construction

§ 5.2.1 Commencement. Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 Intentionally Left Blank.

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

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

§ 5.3 Labor and Materials

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

§ 5.3.2 When a material or system is specified in the Contract, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. The Design-Builder shall coordinate with the Owner regarding the implementation of the Owner's Direct Purchase Tax Savings Program set forth in Exhibit ____.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Contract, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable Laws applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, the Design-Builder shall promptly provide written notice to the Owner before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Contract,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

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

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

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

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable Laws, and the Contract, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under a separate contract with certain terms and conditions identical or substantially similar to this Contract. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "contractor" shall mean the in each case shall mean the individual or entity that executes each separate agreement with the Owner.

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

§ 5.13.1.4 Intentionally Left Blank.

§ 5.14 Mutual Responsibility

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

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work.

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by a Change Order, subject to the limitations stated in this Article 6 and elsewhere in the Contract.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Contract, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order.

§ 6.2 Change Orders

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

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

§ 6.3 Intentionally Left Blank

§ 6.3.1 Intentionally Left Blank.

§ 6.3.2 Intentionally Left Blank.

§ 6.3.3 Intentionally Left Blank.

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

§ 6.3.5 Intentionally Left Blank.

§ 6.3.6 Intentionally Left Blank.

§ 6.3.7 If the Design-Builder does not respond within forty-eight (48) hours or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount Unless otherwise provided in the Contract, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Intentionally Left Blank.

§ 6.3.10 When the Design-Builder agrees with a determination made by the Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner will prepare a Change Order.

§ 6.3.11 Any agreement on an execution of any Change Order shall constitute a final settlement and full accord and satisfaction of all matter of whatever nature relating to the Change Order and to the impact of the Change Order on unchanged Work, including without limitation, all direct and indirect costs or claims of whatever nature, and all adjustments to the Design-Builder's schedule.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

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§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Contract with reasonable promptness.

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

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project, so long as Design-Builder has provided the Owner with all necessary documents.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in the Contract or to the extent the Owner advises the Design-Builder to the contrary in writing, the Owner provides such information without warranty or guarantee of its accuracy. The Design-Builder relies upon such information at its own risk and further represents that after the exercise of due diligence and review, it is not aware of any inaccuracies in such information unless it has timely notified Owner of such inaccuracies in writing.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Contract, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Design-Builder may only request such evidence if the Owner fails to make payments to the Design-Builder as the Contract requires..

§ 7.2.8 Except as otherwise provided in the Contract when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

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§ 7.2.10 Intentionally Left Blank.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Contract, all of which remain the responsibility of the Design-Builder as required by the Contract. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Contract, the Owner shall notify the Design-Builder of any non-conformance with the Contract the Owner discovers.

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

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the Contract. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract as required by Section 11.2 or repeatedly fails to carry out Work in accordance with the Contract, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for its consultants and/or contractors additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Contract are of the essence. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the

Design-Builder's control; or by delay authorized by the Owner pending mediation, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 Notwithstanding Section 8.2.1, if the Work is unavoidably delayed by any of the events or actions set forth in Section 8.2.1, the Design-Builder may make claim for its actual direct field costs arising out of any such delay provided that the total amount of all such claims shall not exceed the Guaranteed Maximum Price. If approved by the Owner, the Contract Sum shall be adjusted for such actual direct field costs only (provided that the total amount for all such approved adjustments shall not exceed the Guaranteed Maximum Price, but in no event shall indirect, impact, inefficiency, offsite or home office overhead, loss of productivity or efficiency, consequential damages, legal or consulting costs be paid on account of any such delay. Except for actual direct field costs up to that shall not exceed the Guaranteed Maximum Price, the Design-Builder hereby expressly waives its rights to such delay or time-related costs or damages. Further, the Design-Builder shall make no claim whatsoever for additional compensation for its actual direct field costs arising out of a delay by any of the events or actions set forth in Section 8.2.1 beyond the Guaranteed Maximum Price. The Design-Builder expressly assumes the risk of such additional costs.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment. THE DESIGN-BUILDER ACKNOWLEDGES THAT THE CONTRACT SUM SHALL NOT EXCEED THE GUARANTEED MAXIMUM PRICE IDENTIFIED IN THE DESIGN-BUILD AMENDMENT.

§ 9.2 Schedule of Values

Since the Contract Sum is based on a Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Contract.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract, payments shall be made for services provided as well as materials and equipment delivered and incorporated in the Work. If approved in advance by the Owner, payment may be made for materials and equipment suitably stored on site or off the site at a location agreed upon in writing subject to the following conditions:

- .1 The material or equipment is in conformity with approved Shop Drawings and has been inspected by the Owner;
- .2 The material or equipment is to be specifically manufactured for the Project and cannot be readily utilized or diverted to another project;
- .3 The fabrication period is greater than six months;
- .4 The storage of materials or equipment shall meet the Owner's requirements for security, insurance, bonding, licensing, and title;
- .5 The Owner reserves the right to make payment on a progress or total basis of up to 75% of the invoice amount, to be paid in full or monthly installments;

- .6 The Design-Builder shall furnish evidence that materials or equipment, suitably stored and paid by the Owner, has been paid in full and that the Design-Builder has good title to the materials or equipment free of liens, claims, or encumbrances. This proof shall be submitted to the Owner within thirty (30) days of receipt of payment by the Owner for the materials or equipment; and
- .7 The Design-Builder shall furnish a breakdown of labor and material at the time of submittal of schedule of values.

Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner will, within seven days after receipt of the Design-Builder's Application for Payment, either issue to the Design-Builder a Certificate for Payment for such amount as the Owner determines is properly due, or notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Contract. If the Owner is unable to certify payment in the amount of the Application for Payment, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions described in Section 3.1.4, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract; or
- .8 failure to comply with SBE Program requirements, Disadvantaged Worker requirements, apprentices requirements and/or responsible wage requirements.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder

failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner make payment by joint check, the Owner shall reflect such payment on the next Certificate of Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 Intentionally Left Blank.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Guaranteed Maximum Price, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within twenty-one days after receipt of the Design-Builder's Application for Payment, or if the Owner does not pay the Design-Builder within seven days after the date established in the Contract the amount certified by the Owner, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not

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

§ 9.8.4 Intentionally Left Blank.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; shall establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will issue a final Certificate for Payment stating that on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Design-Builder's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the construction documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and

maintenance and operations manuals, (7) Instruments of Service, and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests, SBE utilization, apprentice utilization, disadvantaged worker utilization or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, or encumbrances. If such liens, claims, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract; or
- .3 terms of special warranties required by the Contract.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall take precautions for the safety of, and shall provide protection to prevent damage, injury or loss to

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

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable Laws bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall erect, and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in

part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately.

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§ 10.3.4 Intentionally Left Blank.

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

§ 10.3.6 Intentionally Left Blank.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Article 6 and Article 14.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Contract. If such Work is in accordance with the Contract, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time, as appropriate. If such Work is not in accordance with the Contract, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused

by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract, any of the Work is found not to be in accordance with the requirements of the Contract, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Contract.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Contract. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, Specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. Upon Final Payment or termination, the Owner shall solely own all Instruments of Service, including the copyright and all other associated intellectual property rights, produced and developed pursuant to the Contract. Design-Builder shall execute all documents necessary to effectuate the Owner's ownership of the Instruments of Service.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 The Owner acknowledges that Instruments of Service are not intended or represented to be suitable for revision by the Owner, or others, for purposes other than that for the Project pursuant to the Contract. Any reuse or modification of Instruments of Service without written verification or adaptation by the Design-Builder for the specific purpose intended will be at the Owner's sole risk and the Design-Builder will not be liable or responsible for any Claims arising from the Owner's reuse or modification of Instruments of Service without written verification or adaptation by the Design-Builder.

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ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

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§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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§ 13.1.5 The Owner may terminate the Contract upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination pursuant to Section 13.1.5, the Owner shall pay the Design-Builder for Work performed up to the effective date of termination, provided such costs and fees are owed to the Design-Builder pursuant to the Contract. In no event shall the Design-Builder's compensation under this Section exceed the compensation set forth in Section 2.1.1. The foregoing payment shall constitute the Design-Builder's sole compensation in the event of termination of the Contract by the Owner for convenience and the Owner shall have no other liability to the Design-Builder related to termination of the Contract by the Owner for convenience.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

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§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Design-Build Proposal by the date required by the Contract, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable Laws; or
- .5 is otherwise guilty of breach of a provision of the Contract.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder or Design-Builder's surety. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

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

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

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

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination but in no event shall Design-Builder be entitled to overhead or profit on Work not executed. The Owner shall have no liability to the Design-Builder for lost profits, lost opportunity costs or any business loss expenses that may be incurred based on reliance of completing the Work. .

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** Claim means (i) a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract, (2) other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract, or (3) as defined in Section 3.1.14 1.

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§ 14.1.3 Notice of Claims

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

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

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

§ 14.1.6.2 If adverse weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating that weather conditions were unusually abnormal for the period of time, could not have been reasonably anticipated, and had an unavoidable adverse impact on the schedule critical path. Such substantiated adverse weather shall be the basis for an adjustment to the Contract Time only with no adjustment to the Contract Sum. The Design-Builder's planned schedule for completion shall include an allowance for days lost to inclement weather conditions based upon what can reasonably be expected based upon the historical data published by the National Weather Service for the St. Petersburg area.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner 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.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

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

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

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

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law and Venue

The Contract shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in

Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and the Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract. The Design-Builder shall make no assignment of any of its rights, duties, or obligations under the Contract without the Owner's prior written consent, which consent may be withheld by City Council in its sole and absolute discretion.

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§ 15.3 Written Notice

Unless and to the extent otherwise provided in the Contract, all notices, demands, requests for approvals and other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided in the Contract. Either party may change its authorized representative or address for receipt of notices by providing the other with written notice of such change. The change shall become effective five (5) days after receipt by the non-changing party of the written notice of change. Unless otherwise agreed to by the Owner and Contractor in writing, electronic submission of notices does not relieve either party of the requirement to provide notice in writing as required in this Section 15.3. Written notice as required herein is a non-waivable condition precedent to applicable contractual remedies.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Contract, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

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

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Contract, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Contract shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

Each party ("Receiving Party") shall not disclose, publish, or disseminate the Confidential Information of the other party ("Disclosing Party") to anyone other than those of such Receiving Party's employees, Architects, Consultants, Contractors and other persons or entities providing services or Work pursuant to the Contract with a need to know, or as may be required by legal process or applicable Laws (including but not limited to Chapter 119, Florida Statutes, and the court decisions construing the same). Each party agrees to accept the other party's Confidential Information for the sole purpose of carrying out such Receiving Party's authorized activities under the Contract. Each party agrees not to make copies of the other party's Confidential Information except to the extent permitted pursuant to the Contract. Each party agrees not to use the Confidential Information of the other party for its own or any third party's benefit without the prior written approval of an authorized representative of the Disclosing Party in each instance. In the event a Receiving Party is required to disclose the Disclosing Party's Confidential Information in accordance with applicable Laws or by an order of a court or governmental agency, the Receiving Party shall give written notice to the Disclosing Party to enable the Disclosing Party to make a reasonable effort to obtain a protective order or other confidential treatment for the confidential Information. Such notice shall be provided prior to disclosure unless otherwise required by court order or applicable Laws. The Design-Builder acknowledges that, in the event in of a public records request, the Owner may be limited in the amount of notice that it may be able to provide the Design-Builder prior to disclosure of records and agrees that the City Attorney shall have the sole and absolute discretion to determine when public records must be released in order to comply with Florida laws regarding public records. By designating information as Confidential Information, the Design-Builder agrees to indemnify and hold harmless the Indemnified Parties for any award to a plaintiff for damages, costs and reasonable attorney's fees incurred by the Owner by reason of any legal action challenging the Design-Builder's claim. Design-Builder shall include the same confidentiality requirements by which the Design-Builder is bound under the Contract in contracts with Architects, Contractors, Consultants and other persons or entities providing services or work for the Design-Builder. For purposes of this section, notice may be given by facsimile provided that notice is also sent by overnight courier the same day (or the next day on which overnight courier service is available.)

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§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Contract frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Contract, words which have well-known technical or construction industry meanings are used in the Contract in accordance with such recognized meanings.

§ 15.9 Other Provisions

§ 15.9.1 Instruments of Service and other documents created or related to the Project and the Contract shall be made available to the Owners upon request and shall be considered public records in accordance with Chapter 119, Florida Statutes, unless exempt therefrom. Design-Builder shall comply with the Florida laws regarding public records (e.g., Chapter 119, Florida Statutes, and specifically Chapter 119.0701 (2)-(3)). **IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119,**

FLORIDA STATUTES, AS TO DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

§ 15.9.2 No other person or entity is intended to be nor shall be deemed as a third party beneficiary of any provisions of this Contract nor shall its provisions be interpreted or construed to create a third party right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

§ 15.9.3 The Owner and Design-Builder, respectively, bind themselves, their agents, successors, assigns and legal representatives to the Contract.

§ 15.9.4 The Design-Builder shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including all Laws related to licensing and permitting, the Americans with Disabilities Act, the Florida Building Code, and Florida Public Records Laws (e.g., Chapter 119, Florida Statutes). The Design-Builder shall also comply with the Owner's policies and procedures, executive orders and any technical standards provided to the Design-Builder by the Owner.

§ 15.9.5 The Contract has been prepared by the Owner and reviewed by the Design-Builder and its professional advisors. The Owner, Design-Builder and Design-Builder's professional advisors believe that the Contract expresses their agreement and that it should not be interpreted in favor of either the Owner or the Design-Builder or against the Owner or the Design-Builder merely because of their efforts in preparing it.

§ 15.9.6 The obligations of the Owner as to any funding required pursuant to the Contract shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential city services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the Owner shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the Owner pursuant to the Contract.

§ 15.9.7 Should any section or portion of any section of the Contract be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of the Contract.

§ 15.9.8 All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of the Contract, including but not limited to those obligations and rights related to indemnification, shall survive such expiration or earlier termination.

§ 15.9.9 Each exhibit to the Contract, including all attachments to each exhibit and materials referenced in each exhibit, is an essential part hereof and is incorporated herein by reference.

§ 15.9.10 Small Business Enterprise Program

The Design-Builder agrees to be subject to and shall comply with the requirements for designating a percentage of the Work for small business enterprises (as defined in Section 2-232 of the St. Petersburg City Code), or making a good faith effort to do so, as those requirements are set forth in Chapter 2, Article V, Division 4, of the St. Petersburg City Code, as may be amended from time to time (collectively, "SBE Requirements"). The SBE Requirements are hereby incorporated into the Contract as the Design-Builder's obligations under the Contract. Accordingly, the Design-Builder shall ensure that the Small Business Enterprise Percentage requirement set forth in the Qualification Requirements section of the Solicitation, including the cost of materials, goods and supplies, be performed or provided by City-certified Small Business Enterprises and comply with all other SBE Requirements. Failure to comply with the SBE Requirements will result in consequences for non-compliance set forth in Chapter 2, Article V, Division 4 of the St. Petersburg City Code.

§ 15.9.11 Disadvantaged Workers Requirements

The Design-Builder agrees to be subject to and shall comply with the requirements for employing disadvantaged workers, or demonstrating and documenting good faith efforts to do so, as those requirements are set forth in Chapter 2, Article V, Division 8 of the St. Petersburg City Code, as may be amended from time to time (collectively, "Disadvantaged Worker Requirements"). The Disadvantaged Worker Requirements are incorporated into the Contract as the Design-Builder's obligations under the Contract. Accordingly, the Design-Builder shall ensure that at least 15 percent of all hours of work be performed by disadvantaged workers (as defined in Section 2-269 of the St. Petersburg City Code) in accordance with the Disadvantaged Worker Requirements and comply with all other Disadvantaged Worker Requirements. The Design-Builder's failure to comply with the Disadvantaged Worker Requirements will result in consequences for non-compliance set forth in Chapter 2, Article V, Division 8 of the St. Petersburg City Code.

§ 15.8.12 Apprentice Requirements

The Design-Builder agrees to be subject to and shall comply with the requirements for employing apprentices, or demonstrating and documenting good faith efforts to do so, as those requirements are set forth in Chapter 2, Article V, Division 7 of the St. Petersburg City Code, as may be amended from time to time (collectively, "Apprentice Requirements"). The Apprentice Requirements are incorporated into the Contract as the Design-Builder's obligations under the Contract. Accordingly, the Design-Builder shall ensure that at least 15 percent of all hours of work be performed by apprentices (as defined in Section 2-262 of the St. Petersburg City Code) in accordance with the Apprentice Requirements and comply with all other Apprentice Requirements. The Design-Builder's failure to comply with the Apprentice Requirements will result in consequences for non-compliance set forth in Chapter 2, Article V, Division 7 of the St. Petersburg City Code.

§ 15.9.13 Responsible Wage Requirements

The Design-Builder agrees to be subject to and shall comply with the responsible wage requirements set forth in St. Petersburg City Code Chapter 2, Article V, Division 9, as those requirements may be amended from time to time, (collectively, the "Responsible Wage Requirements"). The Responsible Wage Requirements are incorporated into the Contract as the Design-Builder's obligations under the Contract. Accordingly, the Design-Builder shall pay its employees for any hours worked pursuant to the Contract in accordance with the Responsible Wage Requirements and comply with all other Responsible Wage Requirements. The Design-Builder's failure to comply with the Responsible Wage Requirements will result in consequences for non-compliance set forth in Chapter 2, Article V, Division 9 of the St. Petersburg City Code.

§ 15.9.14 Green Certification Requirements

Since this is a Contract for the construction of a new Qualified City Infrastructure Project (as defined in Chapter 2, Article 5, Division 5 of the St. Petersburg City Code), the Design-Builder agrees to be subject to and shall comply with the applicable requirements for incorporating sustainable design practices, as those requirements are set forth in Chapter 2, Article V, Division 5 of the St. Petersburg City Code, as may be amended from time to time ("collectively "Green Certification Requirements"). Without limiting the generality of the foregoing, the Design-Builder shall appoint a qualified person and shall provide the required documentation in accordance with the applicable Green Certification Requirements.

§ 15.9.15 Prohibition Against Contracting with Scrutinized Companies

The Design-Builder hereby makes all certifications required under Florida Statute section 287.135, and the Owner may terminate the Contract as provided in Florida Statute section 287.135.

§ 15.9.15 Discharges by the Design-Builder and Corrective Action Plans

The spill or discharge of any substance (e.g., wastewater, fully or partially treated reclaimed water, line or tank washwater, etc.) by the Design-Builder, its employees, Contractors, Consultants, Architects or other individuals or entities providing services or Work for the Design-Builder in violation of applicable laws ("Discharge") shall constitute a default of the Contract. In the event of a Discharge, the Design-Builder shall immediately (i) report the Discharge to the Owner's Emergency Dispatch Center (727-893-7261) and (ii) control, contain, and stop the Discharge. Within fifteen (15) days of a Discharge, the Design-Builder shall submit to the Owner a proposed corrective action plan for preventing future Discharges. Upon the Owner's acceptance of a corrective action plan, the Design-Builder's compliance with such plan shall automatically become a term of the Contract. The Design-Builder's failure to comply with the corrective action plan, or the Design-Builder's failure to prepare a corrective action plan

that is acceptable to the Owner, shall constitute a default of the Contract. The Design-Builder's compliance with a corrective action plan shall not relieve the Design-Builder of liability for damages as set forth below. In the event of a conflict between the Contract and the corrective action plan, the Contract shall prevail.

In addition to the Design-Builder's indemnity obligations under the Contract that may arise in connection with a Discharge, the Design-Builder agrees that the following damages will be readily ascertainable and that the appropriate remedy is the recovery of actual damages from Contractor. Such actual damages include: (i) damage to property (Owner and third-party) arising from a Discharge, (ii) fines imposed on the Owner by the Florida Department of Environmental Protection ("FDEP"), including fines imposed on the Owner pursuant to Consent Order OGC 16-1280 between the Owner and FDEP, and (iii) costs incurred by the Owner as a result of such Discharge, including costs imposed on the Owner pursuant to Consent Order OGC 16-1280 between the Owner and FDEP. In addition to those readily ascertainable damages set forth above, the Design-Builder acknowledges that the Owner will suffer other indirect damages (including reputational damages) due to a Discharge that are not readily ascertainable and agrees that the Design-Builder shall pay the aggregate amount of \$5,000 per Discharge to the Owner as agreed reasonable and proportionate liquidated damages, not as a penalty. The parties acknowledge that the recovery of liquidated damages and actual damages constitutes a combination of remedies rather than an impermissible election of remedies under Florida law.

The Owner shall deduct all damages owed by the Design-Builder pursuant to this section from amounts due to Contractor under the Contract. In the event that the amount owed to the Design-Builder is less than the amount of damages the Design-Builder is required to pay the Owner pursuant to this section, the Design-Builder shall remit the amount of such damages owed to the Owner pursuant to this article within ten (10) days after receipt of an invoice from the City.

The obligations and liabilities of the Design-Builder resulting from a Discharge as set forth in this paragraph shall not limit the Design-Builder's other obligations and liabilities set forth in the Contract or under applicable Laws.

§ 15.9.15 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design Builder's records and accounts, including complete documentation supporting payment, accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractors' proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Design-Builder shall preserve these records for the retention periods set forth in the most recent General Records Schedule GS1-SL for State and Local Government Agencies, following termination or expiration of the Contract. Personnel rates, multipliers and other fixed percentages and amounts to be charged by Construction Manager as a Cost of the Work are deemed to constitute the Design-Builder's "Cost of the Work" under the Contract and are auditable only to determine their proper application under the Contract and not their composition.

§ 15.9.15 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by the Contract and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Design-Builder has informed the Owner, and hereby represents to the Owner, that it has extensive experience in constructing projects similar to the Project identified in the Contract, and that it is well acquainted with the components that are properly and customarily included within such a Project and the requirements of laws, ordinances, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the Project, including building, labor, safety, licensing or environmental laws and local building codes, building standards, and trade practices affecting the Project. The Owner agrees to furnish or approve, in a timely manner, information required by the Design-Builder and to make payments to the Design-Builder in accordance with the requirements of the Contract.

§ 15.10 Liquidated Damages

The parties agree that it would be extremely difficult and impractical under known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if Design-Builder does not achieve timely Substantial Completion. Therefore, the Design-Builder and its surety shall be liable for and shall pay to the Owner the sums hereafter stipulated as fixed, agreed and acknowledged as reasonable liquidated damages, not as a penalty, for each calendar day of delay until the Work is substantially complete in the aggregate amount of five thousand dollars (\$5,000) per calendar day. The liquidated damages shall be capped at One Hundred Percent (100%) of the Design-Builder's Fee. These liquidated damages shall be the Owner's sole and exclusive remedy for the Design-Builder's delay of the Work.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 Exhibit B, Insurance and Bonds
- .4

« »

- .6 Other:

« »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

ATTEST

DESIGN-BUILDER (Signature)

« »« »

(Printed name and title)

(SEAL)

City Clerk (Designee)

Approved as to Form and Content:

City Attorney (Designee)

00539223

DRAFT AIA® Document A141™ - 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

« »
« »

THE OWNER:

(Name, legal status and address)

« »
« »

THE DESIGN-BUILDER:

(Name, legal status and address)

« »
« »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

[« »] Stipulated Sum, in accordance with Section A.1.2 below

[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

[**«X»**] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

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§ A.1.2.2 Intentionally Left Blank
§ A.1.2.3 Intentionally Left Blank

§ A.1.3 Intentionally Left Blank
§ A.1.3.1 Intentionally Left Blank
§ A.1.3.2 Intentionally Left Blank

« »

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum is of the Cost of the Work and the Design-Builder's Fee, subject to additions and deductions for changes in the Work as provided in the Contract, and is guaranteed by the Design-Builder not to exceed **« »** (\$ **« »**). Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

« »

§ A.1.4.3.2 Design-Builder's Proposal with Guaranteed Maximum Price

The Design-Builder's Proposal with a Guaranteed Maximum Price is forth in Exhibit __, which exhibit is attached hereto and made a part of the Contract.

« »

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§ A.1.4.3.5 Intentionally Left Blank

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Contract. Payments shall be made in accordance with the Florida Prompt Payment Act.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 The Owner shall make payment of the certified amount set forth in an Application for Payment to the Design-Builder not later than the **«20th» business** day after receipt.

§ A.1.5.1.4 With each Application for Payment, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that

cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Design-Builder in accordance with the Contract. The schedule of values shall allocate the Guaranteed Maximum Price among the various portions of the Work, except that compensation for design services, if any, and the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Contract, including but not limited to retainage withheld by the Owner, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values..2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of ~~five~~ percent (~~« 5 »~~ %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~five~~ percent (~~« 5 »~~ %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Design-Builder shall compensate the Architect, Consultants, and Contractors in a similar manner as it is being compensated by the Owner, unless otherwise agreed upon by the Owner in writing.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 The Owner will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after it finalizes the written report, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » (« ») days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

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

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 Intentionally Left Blank

§ A.3.1.5 Allowances and Contingencies are identified in the Design-Build Proposal with a Guaranteed Maximum Price.

§ A.3.1.6 Design-Builder's assumptions and clarifications are identified in the Design-Build Proposal with a Guaranteed Maximum Price.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified in the Design-Build Proposal with a Guaranteed Maximum Price.:

§ A.4.2 The Design-Builder's Consultants, Contractors and suppliers are identified in the Design-Build Proposal with a Guaranteed Maximum Price. ,

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior written approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by applicable Laws 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 wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Intentionally Left Blank.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Intentionally Left Blank.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval and consistent with those prevailing in the area.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, long distance phone calls and facsimile transmissions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored, insured and bonded off the site at a mutually acceptable location, with the Owner's prior written approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds that can be directly attributed to the Contract. With the Owner's prior written approval self-insurance for either full or partial amounts of the coverages required by the Contract. Premiums for the Builder's Risk Insurance and Public Construction Bond required by the Contract that are obtained by the Design-Builder and passed directly through to the Owner are considered reimbursable as Cost of the Work, however are not for the purpose of applying the Design-Builder's Fee.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Contract to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Contract, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Contract, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Intentionally Left Blank

§ A.5.1.5.6 With the Owner's prior written approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Contract.

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§ A.5.1.5.10 Intentionally Left Blank

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property as provided in the Contract.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to provide written authorization of the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred prior to the execution of the Design-Build Amendment with a Guaranteed Maximum Price;
- .9 Legal costs of whatever nature; and
- .10 Cost arising from the Design-Builder's delays in completing the construction and Contract permit conditions; and
- .11 Damages associated with a Force Majeure Event.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash

discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner, provided that such Change Order does cause the Guaranteed Maximum Price to be exceeded.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Contract, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing and shall contain provisions consistent with the requirements of this Agreement. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Intentionally Left Blank

§ A.5.6 Intentionally Left Blank

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

« »« »

(Printed name and title)

DESIGN-BUILDER *(Signature)*

« »« »

(Printed name and title)

ATTEST

(SEAL)

City Clerk (Designee)

Approved as to Form and Content:

City Attorney (Designee)
00534916



A RESOLUTION ACKNOWLEDGING THE SELECTION OF HORUS CONSTRUCTION SERVICES, INC. ("HORUS") AS THE MOST QUALIFIED FIRM TO PROVIDE DESIGN-BUILD SERVICES AT RISK FOR THE NEW DEUCES RISING TOWNHOMES AND COMMERCIAL DEVELOPMENT PROJECT ("PROJECT"); AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A DESIGN-BUILD AGREEMENT WITH A GUARANTEED MAXIMUM PRICE ("AGREEMENT") BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA AND HORUS; AUTHORIZING THE CITY ATTORNEY'S OFFICE TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; AUTHORIZING PAYMENT TO HORUS IN AN AMOUNT NOT TO EXCEED \$540,964 FOR CERTAIN PRECONSTRUCTION PHASE SERVICES TO INCLUDE (i) CONCEPT DEVELOPMENT AND PUBLIC ENGAGEMENT, (ii) SCHEMATIC DESIGN, (iii) DESIGN DEVELOPMENT, (iv) COST ESTIMATION, AND (v) CONSTRUCTABILITY REVIEWS; RESCINDING AN UNENCUMBERED APPROPRIATION IN THE AMOUNT OF \$740,964 IN THE GENERAL FUND (0001), FINANCE DEPARTMENT, REVENUES AND TRANSFERS DIVISION (320-3201); APPROVING A TRANSFER FROM THE UNAPPROPRIATED BALANCE OF THE GENERAL FUND (0001) IN THE AMOUNT OF \$740,964 TO THE HOUSING CAPITAL IMPROVEMENTS FUND (3000) RESULTING FROM THE ABOVE RESCISSION; APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$740,964 FROM THE INCREASE IN THE UNAPPROPRIATED BALANCE OF THE HOUSING CAPITAL IMPROVEMENTS FUND (3000) RESULTING FROM THE ABOVE TRANSFER TO THE DEUCES T/H & COMM DEVELOPMENT PROJECT (18286) TO PROVIDE THE NECESSARY FUNDING FOR THOSE PRECONSTRUCTION PHASE SERVICES IDENTIFIED ABOVE AND CITY COSTS ASSOCIATED WITH THE PROJECT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of St. Petersburg, Florida ("City") through its Procurement and Supply Management Department, issued Request for Qualifications ("RFQ") No. 7898 dated November 5, 2020, for Progressive Design-Build Services at Risk, Deuces Rising Townhomes and Commercial Development Project ("Project"); and

WHEREAS, the City received four (4) statements of qualifications ("SOQs") in response to the RFQ; and

WHEREAS, the selection committee (Brejesh Prayman, Rob Gerdes, James Corbett, George Smith, and Evan Birk) met on December 15, 2020 to discuss the SOQs,

shortlisted all four (4) firms, and motioned to hear presentations and conduct interviews on January 6, 2021 with the four (4) firms who submitted SOQs; and

WHEREAS, after shortlisting, Domain Homes, Inc. withdrew from further consideration; and

WHEREAS, on January 6, 2021, the remaining three (3) shortlisted firms 1) Construct Two Construction Managers, 2) Horus Construction Services, Inc. (“Horus”), and 3) Intelligent Line A+D LLC made presentations to the selection committee; and

WHEREAS, based on the presentations, interviews, deliberations, and SOQs submitted by the remaining three (3) shortlisted firms, the selection committee met on January 6, 2021 and ranked Horus as the most qualified firm to provide design-build services at risk for the Project; and

WHEREAS, funding for those preconstruction phase services identified herein and City costs associated with the Project will be available after (i) rescinding an unencumbered appropriation in the amount of \$740,964 in the General Fund (0001), Finance Department, Revenues and Transfers Division (320-3201), (ii) approving a transfer from the unappropriated balance of the General Fund (0001) in the amount of \$740,964 to the Housing Capital Improvements Fund (3000) resulting from the above rescission, and (iii) approving a supplemental appropriation in the amount of \$740,964 from the increase in the unappropriated balance of the Housing Capital Improvements Fund (3000) resulting from the above transfer to the Deuces T/H & Comm Development Project (18286); and

WHEREAS, Administration recommends City Council acknowledge the selection of Horus as the most qualified firm to provide design-build services at risk for the Project and authorize the Mayor or his designee to execute a design-build agreement with a guaranteed maximum price; and

WHEREAS, the remaining pre-construction phase services (e.g. construction documents) and construction phase services will require an amendment to the agreement, which is subject to City Council approval.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the selection of Horus Construction Services, Inc. (“Horus”) as the most qualified firm to provide design-build services at risk for the new Deuces Rising Townhomes and Commercial Development Project (“Project”) is hereby acknowledged.

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute a design-build agreement with a guaranteed maximum price (“Agreement”) between the City of St. Petersburg, Florida and Horus.

BE IT FURTHER RESOLVED that the City Attorney’s office is authorized to make non-substantive changes to the Agreement.

BE IT FURTHER RESOLVED that payment to Horus in an amount not to exceed \$540,964 for certain preconstruction phase services to include (i) concept development and public engagement, (ii) schematic design, (iii) design development, (iv) cost estimation, and (v) constructability reviews is hereby approved.

BE IT FURTHER RESOLVED that an unencumbered appropriation in the amount of \$740,964 from the General Fund (0001), Finance Department, Revenues and Transfers Division (320-3201) is hereby rescinded.

BE IT FURTHER RESOLVED that there is hereby approved the following transfer from the unappropriated balance of the General Fund (0001) to the Housing Capital Improvements Fund (3000) for FY21:


<u>General Fund (0001)</u>	
Housing Capital Improvements Fund (3000)	\$740,964

BE IT FURTHER RESOLVED that there is hereby approved from the increase in the unappropriated balance of the Housing Capital Improvements Fund (3000), resulting from the above transfer, the following supplemental appropriation for FY21 to provide funding for certain preconstruction phase services identified herein and City costs associated with the Project:

<u>Housing Capital Improvements Fund (3000)</u>	
Deuces T/H & Comm Development Project (18286)	\$740,964

This resolution shall become effective immediately upon its adoption.

Approved by:



City Attorney (designee)
00555049



Budget Director

-- City of St. Petersburg Authorization Request -- General Authorization					Request #
					98739
Name:	Pocengal, Nicholas W	Request Date:	17-MAR-2021	Status:	APPROVED

Authorization Request	
Subject:	Prog. Design Build, Deuces Rising, April 1 Council
Message:	Submitted for your approval, please find attached Report Write-up for Progressive Design Build, Deuces Rising, scheduled to go before City Council on April 1, 2021. Should you have any questions, please contact me at extension 3387. Thank you
Supporting Documentation:	906-25 Progressive Design Build Deuces Rising Report - Approval Request.pdf

	Approver	Completed By	Response	Response Date	Type
0	Pocengal, Nicholas W		SUBMITTED	17-MAR-2021	
1	McKee, Stacey Pevzner	McKee, Stacey Pevzner	APPROVE	17-MAR-2021	User Defined
2	Gerdas, Robert M	Gerdas, Robert M	APPROVE	18-MAR-2021	User Defined