Harbor Bay
Community Development District

Board of Supervisors’ Meeting
November 15, 2018

District Office:
9428 Camden Field Parkway
Riverview, Florida 33578
813-533-2950

www.harborbaycdd.org
All cellular phones and pagers must be turned off while in the meeting room.

The Audience Comment portion of the agenda is where individuals may make comments on matters that concern the District. Individuals are limited to a total of three (3) minutes to make comments during this time.

Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting/hearing/workshop is asked to advise the District Office at least forty-eight (48) hours before the meeting/hearing/workshop by contacting the District Manager at (813) 533-2950. If you are hearing or speech impaired, please contact the Florida Relay Service by dialing 7-1-1, or 1-800-955-8771 (TTY) 1-800-955-8770 (Voice), who can aid you in contacting the District Office.

A person who decides to appeal any decision made at the meeting/hearing/workshop with respect to any matter considered at the meeting/hearing/workshop is advised that person will need a record of the proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.
Dear Board Members:

The regular meeting and public hearing of the Board of Supervisors of the Harbor Bay Community Development District will be held on **Thursday, November 15, 2018 at 6:00 PM** at the MiraBay Clubhouse located at 107 Manns Harbor Drive, Apollo Beach, Florida 33572. The following is the agenda for this meeting:

1. **CALL TO ORDER/ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **AUDIENCE COMMENTS ON AGENDA ITEMS**
4. **PRESENTATION OF AUDIENCE COMMENT FOLLOW-UP SHEET**
5. **CHAIRMAN’S PERSPECTIVE ON AGENDA ITEMS**
6. **BUSINESS ITEMS**
   A. **Seawall**
      i. Emergency repair
      ii. Master project RFP
   B. **Park Square Introduction**
   C. Upland Claims
   D. **Major Project Update**
      ii. Cardno managed
         a. Pool
            a. Pool resurfacing
            b. Landscape design and installation
            c. WTS plans for “grand opening”
         b. Street signs
      iii. Rizzetta managed
         a. Playground shades
         b. Tiki Huts
         c. Docker’s window and door repair
         d. Fountain repair
         e. Painting of buildings and monuments
   E. **Save the Manatee Agreement**
   F. **District Policy on Disbursements**
      iv. Consideration of Resolution 2019-01, Authorizing the Disbursement of Funds
   G. **Consideration of Advertising policies**
   H. **Bay Breeze Soil Issue**
   I. **Canal Conveyances**
   J. **2018 District Accomplishments**
7. CONSENT AGENDA ITEMS/BUSINESS ADMINISTRATION

A. Consideration of Minutes of the Board of Supervisors’ Continued Meeting Held on August 30, 2018 ........................................ Tab 13
B. Consideration of Minutes of the Board of Supervisors’ Workshop Meeting Held on October 11, 2018 ...................................... Tab 14
C. Consideration of Minutes of the Board of Supervisors’ Regular Meeting Held on October 18, 2018 ........................................ Tab 15
D. Consideration of Minutes of the Board of Supervisors’ Workshop Meeting Held on November 8, 2018 ............................. Tab 16
E. Consideration of Operation & Maintenance Expenditures for October 2018 ........................................................................ Tab 17
F. Consideration of Operations & Maintenance Expenditures for October 2018– Reserve Fund ...................................................... Tab 18
G. Consideration of Operations & Maintenance Expenditures for October 2018– MiraBay Amenity Center ................................. Tab 19
H. Consideration of Operations & Maintenance Expenditures for October 2018– Evergreen Fund .................................................. Tab 20
I. Consideration of Resolution 2019-02, Reimbursement for Emergency Work from Bond Proceeds .............................................. Tab 21
J. Consideration of Website Questions & Answers ................................. Tab 22
K. Consideration of Supplemental Project Requisition (if any)
L. Presentation of Monthly Staff Report: MiraBay Club Manager ........ Tab 24
M. Presentation of Monthly Staff Report: Club Director ....................... Tab 25
N. Dock and Boat Lift Approvals (if any)

8. STAFF REPORTS
A. District Counsel
B. District Engineer
C. District Manager

9. SUPERVISOR REQUESTS

10. AUDIENCE COMMENTS

11. ADJOURNMENT

I look forward to seeing you at the meeting. In the meantime, if you have any questions please do not hesitate to contact me at (813)533-2950.

Sincerely,

Joseph Roethke
Joseph Roethke
District Manager
<p>| Tab 1 |</p>
<table>
<thead>
<tr>
<th>MEETING DATE</th>
<th>COMMENT(S)</th>
<th>ACTION/RESPONSE</th>
<th>FOLLOW-UP REQUIRED</th>
<th>COMPLETION DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/19/17</td>
<td>Several comments regarding financial issues and potential special assessment</td>
<td>BOS approved $2 million special assessment</td>
<td>NO</td>
<td>10/19/17</td>
</tr>
<tr>
<td>10/19/17</td>
<td>Establish a reserve or &quot;sink hole&quot; fund to repair/replace capital assets</td>
<td>Reserve study completed in 2014 and being updated in 2017. A reserve fund has already been established</td>
<td>NO</td>
<td>10/19/17</td>
</tr>
<tr>
<td>10/19/17</td>
<td>A local seawall firm is interested in RFP but hasn’t been contacted</td>
<td>Cardno to contact</td>
<td>NO</td>
<td>10/19/17</td>
</tr>
<tr>
<td>10/19/17</td>
<td>Rip rap can encourage algae bloom or red tide</td>
<td>In evaluating bids versus the &quot;Evaluation Criteria&quot; included in the RFP, the Board will consider this and other relevant issues</td>
<td>NO</td>
<td>10/19/17</td>
</tr>
<tr>
<td>11/16/17</td>
<td>Concerns regarding palm tree diseases</td>
<td>LTX has been treating palms for diseases on a regular basis</td>
<td>NO</td>
<td>11/17/17</td>
</tr>
<tr>
<td>11/16/17</td>
<td>Seawall weep hole maintenance</td>
<td>Engineer provided maintenance plan and will train on site staff</td>
<td>NO</td>
<td>7/19/18</td>
</tr>
<tr>
<td>11/16/17</td>
<td>Issue with pond maintenance</td>
<td>If WTS decides to sponsor such an activity, they will work with District Counsel and others to implement</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>11/16/17</td>
<td>Problems with boat show</td>
<td>Cardno reviewing</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>12/14/17</td>
<td>Request to look at additional vendors for community security</td>
<td>Staff is looking for other vendors and proposals will be presented at the next meeting</td>
<td>NO</td>
<td>12/14/17</td>
</tr>
<tr>
<td>1/18/18</td>
<td>Informed District staff that prior geotechnical reports regarding the pool crack should be available</td>
<td>DM sent report to Engineer</td>
<td>NO</td>
<td>1/18/18</td>
</tr>
<tr>
<td>2/8/18</td>
<td>Question about additional mangrove plantings</td>
<td>Developer not planting new mangroves at this time</td>
<td>NO</td>
<td>3/15/18</td>
</tr>
<tr>
<td>3/15/18</td>
<td>Question about Bay Estates Preserve gates</td>
<td>Gates are open for construction traffic</td>
<td>NO</td>
<td>3/15/18</td>
</tr>
<tr>
<td>3/15/18</td>
<td>Question to have café open during CDD meetings</td>
<td>WTS is not staffed during these hours</td>
<td>NO</td>
<td>3/15/18</td>
</tr>
<tr>
<td>3/15/18</td>
<td>Question about maintenance on pilings in canal restrictions</td>
<td>CDD will be budgeting for maintenance</td>
<td>NO</td>
<td>4/10/18</td>
</tr>
<tr>
<td>4/9/18</td>
<td>Question about boat use restrictions</td>
<td>Staff is responding to resident on limits</td>
<td>NO</td>
<td>4/10/18</td>
</tr>
<tr>
<td>4/19/18</td>
<td>Question about enterprise bond subordinating</td>
<td>Board will be reviewing during budget process</td>
<td>NO</td>
<td>4/10/18</td>
</tr>
<tr>
<td>5/17/18</td>
<td>Issue with seawall irrigation and landscape pest control</td>
<td>Steve reviewing with landscaper</td>
<td>NO</td>
<td>5/17/18</td>
</tr>
<tr>
<td>5/17/18</td>
<td>Question about home lots to be built on developer lots</td>
<td>MARC guidelines are in place</td>
<td>NO</td>
<td>5/17/18</td>
</tr>
<tr>
<td>5/21/18</td>
<td>Request for better guard house upkeep</td>
<td>Staff will increase maintenance</td>
<td>NO</td>
<td>6/21/18</td>
</tr>
<tr>
<td>6/22/18</td>
<td>Comments on use of consultants</td>
<td>Board will continue using consultants when needed</td>
<td>NO</td>
<td>6/21/18</td>
</tr>
<tr>
<td>6/21/18</td>
<td>Comments on landscape issues</td>
<td>Board will prioritize landscaping renovations as funds are available</td>
<td>NO</td>
<td>6/21/18</td>
</tr>
<tr>
<td>6/21/18</td>
<td>Comments on speed bumps/trade cameras</td>
<td>Board will be researching pros/cons</td>
<td>NO</td>
<td>6/21/18</td>
</tr>
<tr>
<td>7/19/18</td>
<td>Request for additional pickleball courts</td>
<td>This will be considered if/when amenities are expanded</td>
<td>NO</td>
<td>6/21/18</td>
</tr>
<tr>
<td>7/19/18</td>
<td>Request for additional CDD communication</td>
<td>This will be added to the next meeting agenda for further discussion</td>
<td>NO</td>
<td>7/19/18</td>
</tr>
<tr>
<td>7/19/18</td>
<td>Request for replacement of playground shade structures</td>
<td>Proposals will be reviewed by the Board at the next meeting</td>
<td>NO</td>
<td>7/19/18</td>
</tr>
<tr>
<td>8/16/18</td>
<td>Questions regarding community security</td>
<td>The Board passed a motion to move forward with roving security</td>
<td>NO</td>
<td>8/16/18</td>
</tr>
<tr>
<td>10/18/18</td>
<td>Questions regarding vessel registration fees</td>
<td>District Counsel working on Save the Manatee agreement updates and looking at fees</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
Tab 2
Chairman’s Perspective on Agenda Decisions for 11-15-18

What follows is the Chairman’s perspective on what decisions need to be made at the meeting as well as any other relevant annotated notes.

1. Seawall
   a. Status of emergency repairs
   b. Approve RFP for Master Project
2. Seawall Upland Claims
   a. Approve settlement offers
3. Major Project Update
   a. Pool
      i. T-date for opening the pool
      ii. T-date for approving landscape design
      iii. T-date for installation of landscaping
      iv. Review WTS plans for grand re-opening
   b. T-dates for start and completion of street sign update
   c. T-date for completing installation of playground shades
   d. T-date for replacing roofs on Tiki Huts
   e. T-date for start and completion of the repair of Docker windows and doors
   f. Review power washing schedule for the community
   g. T-date for completing the installation of the new fountain
   h. Review schedule for outdoor painting of buildings and monuments
4. Save Manatee Agreement
   a. Status update
5. Chairman’s spending authority
   a. Establish appropriate limits on the spending authority of the Chairman
6. 2018 District accomplishments
   a. Make edits as appropriate
7. Approve resolution to facilitate reimbursement for emergency work from bond proceeds
Tab 3
When we receive the responses to the District’s Design Build RFP, the Board will want to make a quick but thoughtful decision on how to proceed; therefore, it behooves us to define what information we will need to support the decision process. Outlined below are some initial thoughts. We can refine the plan at the November and December Board meetings.

- Assess the merits of each bid response
  - At the November meeting, I would like Cardno to review the structure of the comparative analysis they were prepared to complete for the prior Design Build RFP
- Assess whether the District can sequence repairs over multiple years or whether we need to repair all walls ASAP
  - Using the data already available to Cardno, provide your best assessment of the pessimistic, optimistic and realistic date of seawall failure (date ranges are fine) for each distinct section (not every lot) of the seawall. I realize I am asking for a judgement call and that there is no quantitative way to provide these estimates; however, the Board needs your informed assessment.
    - What markers would indicate your initial judgement was overly optimistic for a specific section of the wall, e.g., cap rotation exceeds X within the next 5 years or the change in cap rotation varies by more than X% over the next X months.
    - Based on your experience, a review of the literature or the available data, how quickly could a seawall move from being “reasonable stable” to “likely to rupture within the next 6-12 months”.
  - Cardno has already stated that interim repairs, e.g., installing new weep holes, would not be a cost-effective option
- Financial analysis
  - Assume the total cost of the seawall repair is $2X million
  - We need to assess the benefits/risks of different ways of paying for the repair
    - Obtain one bond for the total amount
      - Repair all walls at once
      - Repair some sections immediately; repair other sections once they meet a pre-selected threshold
- Obtain a bond for X% of the $2X$ million cost of repairing the entire seawall. Increase CDD fees commensurate with paying off a bond equal to the full cost of repairs and put the excess cash in a seawall reserve account
  - Use the bond money to complete initial repairs
    - Use all of the bond money to complete initial repairs
    - Retain X% of the bond money to ensure the seawall reserve account has a minimum balance of $X$ million to handle unanticipated emergencies
  - After depleting the bond money, use the cash already raised to complete the remaining repairs
- Obtain two separate bonds at differing times for the $2X$ million repair
  - How do changes in interest rate affect the analysis
October 10, 2018

Chris and Greg,

Over the past year and a half, the Board has been trying to come up with a solution for the seawall. I have no engineering experience and wouldn’t know where to start. I think we as a Board are going about getting a plan the wrong way. Cardno is on our staff as the engineer of record. I believe you should be setting the path for us, not the other way around.

As the election for three Board seats approaches on November 6, we know that we will have 2 or possibly 3 new Board members. With the new members, there will be plenty of questions and suggestions. Now is the time to get ahead of the situation.

I am asking you to put together a plan that includes as many viable solutions that you can think of. These solutions should take cost, safety, useful life, aesthetics and any other issue that you think is warranted.

After you come up with the potential solutions, I will ask you to address the pros and cons of each solution. The Board should be charged with selecting the plan we like best. This plan would then become a working document for the Board, staff and the community.

Steve Lockom
Tab 4
PROJECT MANUAL

REQUEST FOR PROPOSALS FOR
DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

DISTRICT ENGINEER AND
DESIGN CRITERIA PROFESSIONAL:

CHRISTOPHER GAMACHE, P.E.
CARDNO LIMITED
PHONE: (727) 431 -1615
380 PARK PLACE BLVD, SUITE 300
CLEARWATER, FLORIDA 33759
CHRISTOPHER.GAMACHE@CARDNO.COM
WWW.CARDNO.COM

GREGORY WOODCOCK
CARDNO LIMITED
PHONE: (352) 754 - 1240
20215 CORTEZ BLVD
BROOKSVILLE, FLORIDA 34601
GREG.WOODCOCK@CARDNO.COM
WWW.CARDNO.COM

November ___, 2018
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

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   d. Financial Capacity
   e. Guaranteed Maximum Pricing
   f. Guaranteed Schedule
   g. Legal Concerns
      i. Sworn Statement on Public Entity Crimes
      ii. Sworn Statement Regarding Scrutinized Companies
   h. Affidavit Regarding Proposal

III. Form of Agreement
   a. Standard Form of Agreement
   b. General Conditions
   c. Supplementary Conditions
   d. Performance Bond
   e. Payment Bond

IV. Technical Documents (see separate CD)

V. Design Criteria Package
The Harbor Bay Community Development District ("District") hereby requests proposals from firms to provide labor, materials, equipment and construction services necessary for the District’s master stormwater and retaining wall stabilization project ("Project"), as more particularly described in the Project Manual, as herein defined, and in accordance with design criteria package ("Design Criteria Package") specifications prepared by Cardno Limited (the “Design Criteria Professional”). The District is a special-purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida. Portions of the District’s community retaining wall, which is integral to and a component of the District’s stormwater management system, and which covers approximately 7 miles in length, is in need of stabilization reconstruction due to certain prior construction defects. Toward that end, the District is seeking proposals from qualified firms.

The Project is divided into three sections – Sections I, II, and III. Each section is being advertised as a stand-alone request for proposal. Proposals may be submitted for one, two, or all three sections, although each proposal should be submitted individually for each section. This Request for Proposals (“RFP”) is for Section I (13,142 LF) of the Project only (the “RFP Work”). Proposers have the option to provide a solution to reconstruct the existing wall that is consistent with the Design Criteria Package included within the Project Manual.

To be eligible to submit a proposal, and in addition to any other requirements set forth in the Project Manual, an interested firm must hold all required local, state and federal licenses in good standing and be authorized to do business in Hillsborough County and the State of Florida. TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK.

The instructions to proposers, contract, proposal form, and other materials ("Project Manual") will be available for public inspection and may be obtained beginning November 29, 2018 at 10 a.m. and until January 31, 2019 at 12:00p.m. Please contact the District Manager (using the e-mail addresses below) for the cost of the package, and to obtain pick-up information. Proposers must provide contact information at the time of pick-up of the Project Manual, and may purchase as many Project Manuals as they would like. No partial Project Manual or plans will be available. The District reserves the right in its sole discretion to make changes to the Project Manual up until the time of the bid opening, and to provide notice of such changes only to those proposers who have purchased a Project Manual.

There will be a pre-proposal conference at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and announced), on December 14, 2018 at 10:00 a.m. Attendance at the pre-proposal conference is
not mandatory, but is strongly encouraged, and attendees must purchase a Project Manual to attend.

No later than **February 1, 2019 at 12:00 p.m.**, each firm desiring to submit a proposal for the RFP Work must submit one (1) original of the firm’s proposal to the District Manager’s Office, Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, Florida 33625, as well as one (1) electronic copy of the firm’s proposal to Joseph Roethke at jroethke@rizzetta.com. It is anticipated that the proposals will be publicly opened at that time, though the proposals otherwise may be maintained on a confidential basis throughout the procurement process and to the extent permitted by Florida law. Additionally, and as further described in the Project Manual, each proposer shall supply a bid bond or cashier’s check made payable to the District and in the amount of $100,000 with its proposal. Proposals shall be in the form provided in the Project Manual and submitted in a sealed envelope, marked with a notation “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION I (13,142 LF).” The District reserves the right to return unopened to the proposer any proposals received after the time and date stipulated above. Each proposal shall remain binding for a minimum of one hundred fifty (150) days after the proposal opening.

Proposals will be evaluated in accordance with the criteria included in the Project Manual. **The District reserves the right to reject any and all proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any proposal, as it deems appropriate, and if the District determines in its discretion that it is in the District’s best interests to do so.** Any protest of the Project Manual, including, but not limited to the terms and specifications, must be filed with the District within 72 hours of pickup of the Project Manual, together with a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. Failure to timely file a protest, or failure to timely post a protest bond, will result in a waiver of proceedings under Chapter 190, *Florida Statutes*, and other law. Additional requirements for filing a protest can be found in the District’s Rules of Procedure (available upon request).

The successful proposer will be required upon award to furnish a payment and performance bond for one hundred percent (100%) of the value of the contract (as described in the Project Manual), with a surety acceptable to the District, and in accordance with Section 255.05, *Florida Statutes*.

Any and all questions relative to this Request for Proposals or the RFP Work shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District Manager, at jroethke@rizzetta.com; and Michael Eckert, District Counsel, at michaele@hgslaw.com. No phone inquiries please.

Joseph Roethke, District Manager
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

PART I. GENERAL INFORMATION – (B) INSTRUCTIONS TO PROPOSERS

ANY PROTEST OF THIS PROJECT MANUAL MUST BE FILED WITH THE DISTRICT WITHIN 72 HOURS OF PICKUP OF THE PROJECT MANUAL, TOGETHER WITH A PROTEST BOND IN A FORM ACCEPTABLE TO THE DISTRICT AND IN THE AMOUNT OF $100,000, AND FOLLOWED WITHIN SEVEN (7) CALENDAR DAYS BY A FORMAL WRITTEN PROTEST STATING WITH PARTICULARITY THE FACTS AND LAW UPON WHICH SUCH PROTEST IS BASED. FAILURE TO TIMELY FILE A PROTEST, OR FAILURE TO TIMELY POST A PROTEST BOND, WILL RESULT IN A WAIVER OF PROCEEDINGS UNDER CHAPTER 190, FLORIDA STATUTES, AND OTHER LAW. ADDITIONAL REQUIREMENTS FOR FILING A PROTEST CAN BE FOUND IN THE DISTRICT’S RULES OF PROCEDURE, WHICH ARE AVAILABLE UPON REQUEST.

General Instructions

1. OVERVIEW. The Harbor Bay Community Development District (“District”) is seeking proposals (“Proposal(s)”) from firms (“Proposer(s)”) capable of providing labor, materials, equipment and construction services for Section I (13,142 LF) (the “RFP Work”) of the community’s master stormwater and retaining wall stabilization project (“Project”). The District is a special purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida.

The District is undertaking the Project in order to stabilize the community seawall, which is more accurately described as a “retaining wall.” The retaining wall, which extends approximately 7 miles in length, was constructed in the years following the District’s establishment in 1999, and is an integral part of the District’s stormwater management system. The retaining wall consists of sheet piling, tie-rod anchors, a dead-man system, and a concrete cap securing certain of the other components. (As a remedial action, certain areas within the community also have a waler installed along the retaining wall to further secure the wall.) The canals established by the retaining wall connect to the District’s master stormwater system, and serve to collect and release water through the system and into Tampa Bay.

After the retaining wall was installed, it became apparent that it was failing at certain locations within the community, causing the retaining wall sheets to bend and the concrete cap at the top of the wall to rotate.

Thereafter, the District retained Ingenium, Inc. (“Ingenium”), a structural engineering firm, to conduct a pilot project and propose various options for stabilizing the community retaining wall. As part of the pilot project, Ingenium considered and field tested three different

The District also commissioned a peer review of the Pilot Project Report. This analysis of the Pilot Project Report, based on a number of criteria, is available online at http://harborbaycdd.org/projects/procurements/.

In the fall of 2015 and through the current date, the District has proceeded on an emergency basis to stabilize portions of the retaining wall. Emergency work is ongoing at the time of this Request For Proposals – Design-Build of Master Seawall Project, Section I (13,142 LF) (“RFP”).

At a public workshop in December 2015, the District’s Board of Supervisors (“Board”) was presented with a plan for addressing the balance of the community, which was divided into three sections. (Refer to the Technical Documents.)

In Section I, located in the eastern portion of the community, the retaining wall cap has rotated significantly and requires reconstruction or stabilization. Virtually all of the lots located within Section I have homes located on them. For Section I, either one of two solutions, including what are referred to herein as the “Rip Rap Reconstruction Solution” and “New Wall Reconstruction Solution,” was recommended.

The New Wall Reconstruction Solution involves installation of new sheet piling and additional tie-rod anchors at the face of the existing wall, which components would be bound to the existing wall with a new concrete cap that would envelop the existing cap. Flowable fill would be injected between the old wall and the new sheet piling, and a drainage system would be installed behind the existing wall. For purposes of this RFP, the “New Wall Alternative” refers to installation of the New Wall Reconstruction Solution within Section I.

The Rip Rap Reconstruction Solution is similar to the New Wall Reconstruction Solution with the exception that instead of installing new sheet piling and additional tie-rod anchors, the Rip Rap Reconstruction Solution involves placing rip-rap against the existing sheet piling. Like the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution also involves the installation of a new cap over the existing cap, as well as installation of a drainage system behind the existing wall. For purposes of this RFP, the “Rip Rap Alternative” refers to installation of the New Wall Reconstruction Solution at some locations, and the Rip Rap Reconstruction Solution at most locations, within Section I.

The Board is committed to finding and implementing the proper reconstruction solution. The Board has continuously worked to ensure that the retaining wall will undergo reconstruction work in the near future.

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1 In the event that Proposers are reviewing other District documents, it’s worth noting that the District’s prior documents refer to the Rip Rap Reconstruction Solution as “Modified Option 1,” and the New Wall Reconstruction Solution as “Option 3.”
In April 2017, the Board, by majority vote, issued the Phase 1 Reconstruction RFP, which included reconstruction work along the retaining wall for approximately twenty-three lots within the community. Despite interest among contractors, the District received only one proposal in response to the Phase 1 Reconstruction RFP. At its June 15, 2017 meeting, the Board rejected the proposal because it (i) exceeded the budgeted amount for the Project; and (ii) there were not enough proposals received to be competitive. In rejecting the sole Phase 1 Reconstruction RFP proposal, the Board reiterated the importance of receiving as many proposals as possible.

Consequently, in October 2017, the Board decided to pursue and issue a design-build RFP for all three sections of the Project (the “2017 RFP”), which would allow Proposers to develop and specify a solution. Design-Builders were given the flexibility to propose the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution, and/or one or more other solution(s). Moreover, Design-Builders were also given the flexibility to implement different solutions for different areas of the Project, as different areas of the Project have different characteristics. The District encouraged Proposers to consider the merits of a wide variety of repair solutions, including but not limited to rip rap, vinyl, and fiber reinforced polymer (FRP) composite sheet pile solutions (see Technical Documents for details). The District received no responsive bids to the 2017 RFP and post-bid efforts to negotiate a contract for the entire Project failed.

Unlike the Phase 1 Reconstruction RFP or the 2017 RFP, this design-build RFP (the “Design-Build Proposal”) allows Proposers to develop and specify a solution for Section I (13,142 LF) of the Project (i.e. the RFP Work) only. The Board welcomes, and strongly encourages, submission of any solution that is in accordance with the Design Criteria Package. The Board looks forward to reviewing all received Proposals.

All interested Proposers shall be required to comply with the design-build requirements pursuant to Section 287.055, Florida Statutes. For purposes of this RFP, the Design-Build refers to the design and reconstruction of a proposed solution within Section I (13,142 LF) (i.e. the RFP Work) only. For Proposers’ reference, the District’s Design Criteria Professional has prepared, and included within this Project Manual, a Design Criteria Package containing concise, performance-oriented drawings and/or specifications for the Project, including the RFP Work.

TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK. Each Proposer should provide detailed design and construction schedules for the Design-Build Proposal and detail how the Proposer intends to use its equipment and personnel to meet that schedule.

The District may elect to authorize the RFP Work in phases or otherwise take steps to address any funding related items. The District, as a special-purpose unit of local government, is authorized to levy and impose special assessments to generate revenue for capital projects such as the instant Project. See Chapters 170, 190, and 197, Florida Statutes. The District currently has $2.9 million in various accounts, a portion of which will be used to finance the RFP Work. The District also plans to sell bonds to further finance the RFP Work and has the ability to levy and impose additional special assessments to finance the RFP Work.
For additional information, please refer to the District’s web-site at www.harborbaycdd.org.

2. **DUE DATE.** Sealed Proposals must be received no later than **February 1, 2019** at **12:00p.m.**, at the offices of Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, FL 33625 (“**District Manager’s Office**”), attention Joseph Roethke, and one (1) electronic copy of the same should be delivered no later than such date and time to Joseph Roethke via e-mail, at jroethke@rizzetta.com. Proposals will be publicly opened at that time, provided however that, subject to such public opening and announcements, all Proposals may be kept confidential for a period of time to the extent permitted by Florida law.

3. **SUMMARY OF SCHEDULE.** The District anticipates the following RFP schedule, though certain dates may be subject to change:

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>November ___, 2018</td>
<td>Notice of RFP Published &amp; Posted</td>
</tr>
<tr>
<td>November 29, 2018 at 10:00a.m.</td>
<td>RFP Available for Pick-Up</td>
</tr>
<tr>
<td>December 14, 2018 at 10:00a.m.</td>
<td>Pre-Proposal Meeting</td>
</tr>
<tr>
<td>January 18, 2019 at 5:00p.m.</td>
<td>Deadline for Questions</td>
</tr>
<tr>
<td>February 1, 2019 at 12:00p.m.</td>
<td>Proposals Due / Public Opening</td>
</tr>
<tr>
<td>February 21, 2019 at 6:00p.m.</td>
<td>Board Meeting to Evaluate Proposals &amp; Award Contract</td>
</tr>
</tbody>
</table>

4. **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference will be held regarding the RFP Work on **December 14, 2018 at 10:00a.m.**, at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and announced). The pre-proposal conference may include, but not be limited to, a discussion of contract requirements, inspections, evaluations and submittal requirements. Attendance at the pre-proposal conference is not mandatory, but is strongly encouraged.

5. **FAMILIARITY WITH THE LAW.** By submitting a Proposal, the Proposer is assumed to be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the Proposer will in no way relieve it from responsibility to perform the work covered by the Proposal in compliance with all such laws, ordinances and regulations.

6. **INTERPRETATIONS AND ADDENDA; COMMUNICATION.** Any and all questions relative to this RFP or the Project shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District Manager, at jroethke@rizzetta.com; and Michael Eckert, District Counsel, at michaele@hgslaw.com. No phone inquiries please. All questions must be received no later than **January 18, 2019 at 5:00p.m.** to be considered. Interpretations or clarifications considered necessary by the District in response to such questions will be issued by addenda e-mailed, faxed or otherwise delivered to all parties recorded as having received the Project Manual. Only questions answered by formal written addenda will be binding. No
interpretations will be given verbally. All questions and answers will be distributed to all Proposers.

Except as set forth in this Section, Proposers should not communicate with any District Supervisor, staff member, or other representative during the submission and evaluation process. COMMUNICATION WITH ANY DISTRICT REPRESENTATIVE FOR ANY PURPOSE OTHER THAN THOSE EXPRESSLY DESCRIBED HEREIN MAY CAUSE AN INDIVIDUAL FIRM, OR TEAM, TO BE DISQUALIFIED FROM PARTICIPATING.

Completing the Proposal

7. PROPOSAL FORM. All blanks in the Project Manual must be completed in ink or typewritten. The Proposal shall contain an acknowledgement of receipt of all documents and addenda (the number of which must be filled in on the Affidavit Regarding Proposal). In making its Proposal, each Proposer represents that it has read and understands the Project Manual and that the Proposal is made in accordance therewith, including verification of the contents of the Project Manual against the Table of Contents.

8. DESIGN CRITERIA PACKAGE. The District has retained the firm of Cardno Limited to provide Design Criteria Professional services for the Project, including the RFP Work. The Design Criteria Package, which describes the minimum scope and required quality for design and construction of the Project and also provides information about the Project, is attached to the Project Manual. The Design Criteria Package is not represented as being construction documents. The Design Criteria Package has not undergone any regulatory review. It will be the Design-Builder’s responsibility to develop complete construction documents with all necessary details commensurate with the scope and quality indicated in the Design Criteria Package and to meet all regulatory requirements. Each Proposer acknowledges, understands, and agrees that the Design Criteria Package, and other Project information provided, do not constitute construction documents and do not reflect all of the design, permitting, regulatory, and construction requirements for the Project, and that, notwithstanding the above, these documents are sufficient in all respects for purposes of the Proposer’s preparation and submittal of its Proposal.

9. PROPOSAL REQUIREMENTS. All Proposals shall include the following information in addition to any other requirements of the Project Manual:

A. A narrative description of the Proposer’s approach to completing the RFP Work described in the scope of work provided herein. The narrative approach should specifically address and describe all components of the Design-Build Proposal, including but not limited to separate descriptions, schedules, and costs for each component of same (design, permitting, construction, and operation and maintenance) for the RFP Work. The narrative should also specify all permits, licenses, certificates of occupancy, and other approvals of governmental authorities that Proposer will require to complete the RFP Work using its proposed solution(s).
B. A completed Proposal Form, including but not limited to, the forms addressing: General Information, Personnel & Equipment, Experience & Capacity, Unit Pricing, Guaranteed Maximum Price, Guaranteed Schedule, Sworn Statement on Public Entity Crimes, Sworn Statement Regarding Scrutinized Companies, and Affidavit Regarding Proposal. If additional permitting is required, the Proposer shall include the price of permitting in their proposal.

C. In connection with completing the Proposal Form, Proposer shall:

1. List position or title and corporate responsibilities of key management or supervisory personnel. For each manager and/or supervisor who will work on the RFP Work:
   i. Proposer should include resumes with applicable certifications.
   ii. Proposer should supply information regarding the Project manager’s / supervisor’s background and experience with projects similar to the RFP Work. (Supply at least 2 examples of experience on similar projects.)
   iii. Proposer should supply at least 3 references for each Project manager / supervisor from someone other than individuals affiliated with the Proposer.

2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work.

3. Describe proposed equipment that will be used for the RFP Work. Among other things, provide the following:
   i. The age of the equipment
   ii. Whether the equipment is owned or leased/rented
   iii. Whether the equipment will be pledged to only the RFP Work or also to other projects and, if the latter, what percentage of time the equipment will be available to the RFP Work

4. Provide a list of all engineers, subcontractors, and suppliers that will be hired by Proposer for the RFP Work. For each engineer / subcontractor / supplier, provide the following:
   i. A description of the engineer / subcontractor / supplier’s role in the RFP Work.
   ii. A description of the engineer / subcontractor / supplier’s background and experience, as it relates to the RFP Work.
   iii. The engineer/subcontractor / supplier’s geographic location.
      1. For suppliers, identify also the location where the goods will be produced and shipped.
   iv. At least three references, including identifying the name, address and phone number for the reference.
v. For all major engineers / subcontractors / suppliers, information regarding the financial capability of the engineer / subcontractor / supplier.

5. Describe how the proposed staffing and equipment will be used in order to meet the schedule, as proposed by Proposer.

6. Describe at least two projects similar to the RFP Work that Proposer has undertaken.

7. Describe previous or currently contracted work with other community development districts.

IN COMPLETING THE APPLICABLE FORMS UNDER SECTION B ABOVE, AND ADDRESSING THE ITEMS UNDER SECTION C ABOVE, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING WHAT PERSONNEL, EQUIPMENT & CAPACITY THAT THE PROPOSER HAS RELATING TO THE DESIGN-BUILD PROPOSAL. ADDITIONALLY, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING THE PROPOSER’S EXPERIENCE RELATING TO THE DESIGN-BUILD PROPOSAL, AS WELL AS EXPERIENCE WORKING IN ENVIRONMENTALLY SENSITIVE AREAS (E.G., THOSE THAT INCLUDE PROTECTED MANGROVES).

D. Information regarding the financial capability of the Proposer. In particular, Proposer should supply the following:
   1. Copies of financial statements for the past three years, and an interim balance sheet not more than 60 days old.
   2. Information regarding current contracts on hand.
   3. Information regarding contracts completed during the last three years.
   4. Information regarding personnel hired by, and equipment owned by, the Proposer.

E. Guaranteed Maximum Pricing for the Design-Build Proposal, with unit pricing. GMP shall include all permitting costs associated with the Design-Build Proposal.

F. Detailed Guaranteed Schedule for the Design-Build Proposal, as well as descriptions of how the Proposer intends to use its equipment and personnel to meet that schedule.

G. Proposed insurance and bonding levels, above and beyond the minimum proposed under the forms of contract. Include Certificate of Insurance and proof that the Proposer is able to obtain payment and performance bonds for 100% of the amount of the RFP Work.
H. Copies of all major material warranties (e.g., for sheet piling and other large purchases), and proof of assignability.

I. Bid bond or other form of security permitted under the Project Manual.

J. Copies of all applicable business licenses.

K. Completed copies of all other forms / documents, and all other information, required under the Project Manual.

10. QUALIFICATIONS OF THE PROPOSER. The contract, if awarded, will only be awarded to a responsible Proposer who is qualified by experience to do the work specified herein. The Proposer shall submit with its Proposal satisfactory evidence of experience in similar work and show that it is fully prepared with the necessary organization, capital, and equipment to complete the work to the satisfaction of the District.

11. INSURANCE. All Proposers shall include as part of the Proposal a current Certificate of Insurance detailing the company’s insurance coverage, or some other evidence of insurance or insurability. In the event the Proposer is notified of award, it shall provide proof of insurance in the form required under the form of contract, within fourteen (14) calendar days after notification, or within such approved extended period as the District may grant.

The form of contract sets forth certain minimum insurance requirements, including but not limited to commercial general liability insurance at a minimum of $2,000,000.00, and umbrella liability insurance at a minimum of $5,000,000.00. Moreover, these insurance policies shall list, as additional insureds, the following: the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees. PROPOSERS ARE ENCOURAGED TO PROVIDE INSURANCE AMOUNTS HIGHER THAN WHAT IS CALLED FOR IN THE MINIMUM REQUIREMENTS. Proposers who are unable to meet the insurance requirements set forth in the form of contract may still apply, but the failure to meet such requirements may result in the District’s rejection of the Proposal or deductions in scoring.

12. WARRANTIES. The form of contract includes various warranties that shall be provided by the successful Proposer ("Design-Builder") to the District. Among other requirements, any warranties provided by material suppliers must be assignable to the District. If an assignment of warranty requires the material supplier to consent to same, then the Design-Builder agrees that it will secure the material supplier’s consent to assign said warranties to the District. The District may, but is not obligated to, help the Design-Builder secure such consent from any subcontractors and/or material suppliers. As part of its Proposal, each Proposer must provide copies of any major material warranties to the District (e.g., for sheet piling and other large purchases), as well as warranties for the RFP Work.
13. **FINANCIALS.** The Proposer shall include as part of its Proposal proof of financial capability. In the event the Proposer is notified of award, it shall provide sufficient proof of financial capability, including, if requested, audited financial statements from the last three years, as required in the sole discretion of the District.

14. **SIGNATURE ON PROPOSAL.** In addition to executing all forms, affidavits, and acknowledgments for which signature and notary blocks are provided, the Proposer must correctly sign the Affidavit Regarding Proposals. If the Proposer is a corporation, the Proposal should bear the seal of the corporation. Anyone signing the Proposal as agent shall file with the Proposal legal evidence of his or her authority to do so.

15. **PROPOSAL GUARANTY.** A certified or cashier’s check on any national or state bank, or a proposal bond, in the amount of $100,000, and payable to the District, must accompany each Proposal as a guarantee that the Proposer will promptly enter into an agreement to do the work following award of the contract. The proposal guaranty shall be submitted with the understanding that the Proposer will not withdraw its Proposal for a period of one hundred fifty (150) days after the due date for the Proposals.

16. **SUBMISSION OF PROPOSALS.** Each Proposer shall submit one (1) original copy and one (1) electronic copy of a completed Project Manual, including any Addenda thereto, at the time and to the addresses indicated herein. Such Proposal shall be enclosed in an opaque, sealed envelope, marked with the project title and name and address of the Proposer and accompanied by the required documents. If the Proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with a notation, “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION I (13,142 LF).”

17. **SUBMISSION OF ONLY ONE PROPOSAL.** Proposers may be disqualified and their Proposals rejected if the District has reason to believe that collusion may exist among Proposers, the Proposer has defaulted on any previous contract, or is in arrears on any previous or existing contract, or for failure to demonstrate proper licensure and business organization.

18. **PROPOSAL MODIFICATION; INQUIRIES BY THE DISTRICT; WITHDRAWAL.** Proposals may be modified by an appropriate document duly executed and delivered to the place where Proposals are to be submitted at any time prior to the time Proposals are due. The District reserves the right to ask clarification questions and seek additional information from any of the Proposers at any time. No proposal may be withdrawn for a period of one hundred and fifty (150) days from the due date for the Proposals.

Acknowledgments

19. **SITE INSPECTIONS & CONDITIONS.** Please contact the District Engineer, using the information herein, to schedule a site visit. Proposers should inform District Engineer in writing prior to conducting any explorations, investigations, tests, and studies of the site, and shall be responsible for filling all holes and restoring the site to its former condition upon completion of such activities.
By submitting its Proposal, the Proposer acknowledges that they have visited the RFP Work site and have become familiar with the existing site conditions. Among other things, Proposer agrees to obtain and carefully study all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the site which may affect cost, progress, or performance of the work. By submitting its Proposal, Proposer agrees to take responsibility for any and all issues arising from the site conditions, including but not limited to any unsuitable soils, varying soil conditions, etc. No additional costs or time will be charged by Proposer for matters associated with unsuitable soils or any other matters associated with the site conditions.

The Proposer may be able to utilize a “templating” installation in areas where installing sheet piling may prove difficult due to hard soil conditions, provided that the Proposer must either (i) recertify any previously developed templating installation process belonging to an already existing solution; or (ii) have its engineer develop such templating installation process. If included as part of the Design-Build Proposal, each Proposer should include templating as a unit cost for the RFP Work, provided however that the ability of a Proposer to use templating at any particular location will be in the discretion of the District Engineer. Refer to the Design Criteria Package and the Specifications for Master Project for more detail.

The District does have available for the Proposer’s review certain reports regarding subsurface conditions. Such information is available as part of the Project Manual, and was prepared by third parties. Accordingly, the District is providing the reports and drawings for informational purposes only, and the District cannot guarantee the quantity, quality, completeness, accuracy or availability of the information provided therein. Instead, it is incumbent on each Proposer to obtain whatever information the Proposer needs to complete its Proposal. Further, Proposer is responsible for any interpretation or conclusion Proposer draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

20. ACKNOWLEDGMENTS. In addition to any other requirements set forth in the Project Manual, and with the signature on the Affidavit Regarding Proposal, the Proposer acknowledges the following:

A. The Proposer has carefully reviewed the Project Manual, including the forms of the contract, the specifications, any and all subsurface reports and data, and all other documentation included within the Project Manual. The documents contained within the Project Manual, including the form of agreement, are complementary, and what is called for by one is binding as if called for by all. If the Proposer finds a conflict, error or discrepancy in the Project Manual, he/she shall call it to the District’s and/or the District’s designees’ attention in writing within the time period allotted for asking questions as part of the procurement process.

B. The Design-Builder is required to perform all testing and retesting, if necessary, and as required by the State of Florida, Hillsborough County, the Southwest...
Florida Water Management District and all other regulatory agencies prior to accepting the RFP Work. The entire site is available to any Proposer for surface or subsurface investigation, upon request of the District.

C. The Proposer is responsible for inspecting the entire site prior to submitting a Proposal and notifying the District and/or its designee of discrepancies in the Project Manual that may affect the construction and its costs, timing, etc.

D. The Design-Builder shall be responsible for coordinating the work necessary to complete and obtain all final approvals and acceptances.

E. The Design-Builder shall complete the work herein defined and detailed in a professional and workmanlike manner typical of the industry. There shall be no sections or parts missing. Furthermore, each portion of the work shall be complete and able to function for its intended use. The work must be continuous unless otherwise directed by the District. The work, including punch list items, must be acceptable to and accepted by applicable regulatory authorities.

F. All storm drainage must be maintained to each property adjacent to the Project during construction. If this does not occur, the Design-Builder will be responsible for any damage that may result.

G. The Design-Builder shall be responsible for coordinating the work necessary with all utility companies and other on-site subcontractors performing work for the District and others on site. The Design-Builder shall be responsible for locating, removing and relocating utilities, both aerial and underground, as required for the performance of the work. This shall also include the coordination of, safety and protection associated with all aerial and underground facilities related to the work.

H. The Design-Builder shall be responsible for all costs associated with traffic control and maintenance during the RFP Work.

I. The Design-Builder shall work with the District to identify an acceptable staging area or areas, but will be required to control and protect such area(s) with fencing and other means.

J. All existing trees, sod, irrigation and other landscaping, including mangroves, must be protected and replaced to the extent damaged by the RFP Work.

K. Design-Builder shall provide turbidity barriers throughout the RFP Work site to ensure compliance with all National Pollution Discharge Elimination System (“NPDES”) and other legal requirements.

L. The Proposer’s attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished to the successful Design-Builder is for illustrative purposes only. The District and/or its designee do not assume any
responsibility that the final quantities shall remain in strict accordance with the estimated quantities or of the character, location of the work or other conditions pertaining thereto. The Proposer shall be solely responsible for computing quantities for the preparation of its Proposal and the execution of the work.

M. All necessary survey work must be provided by the Design-Builder.

N. All materials and services provided for by the Design-Builder shall be performed in strict compliance with all applicable governmental regulations, permits required, 2010 American with Disabilities Act (“ADA”) Accessibility Guidelines, and local, state and federal laws.

Permits

21. PERMITS. The District has already secured certain permits for the Project:

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>AGENCY</th>
<th>ISSUED</th>
<th>EXPIRATION</th>
<th>TYPE</th>
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<tbody>
<tr>
<td>STATE</td>
<td></td>
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</tr>
<tr>
<td>708627</td>
<td>Southwest Florida Water Management District (SWFWMD)</td>
<td>6/25/2015</td>
<td>N/A</td>
<td>ERP Exemption</td>
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<tr>
<td>LOCAL MASTER PERMIT</td>
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<tr>
<td>58692</td>
<td>Hillsborough County Environmental Protection Commission (HCEPC)</td>
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<td>10/13/2020</td>
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Depending on Design-Builder’s proposed solution(s), the District anticipates that, to construct the RFP Work, Design-Builder may need to seek and obtain modification of some or all of the above-identified permits, and/or may need to seek and obtain new, additional, or different permits from County, state, and/or federal governmental agencies with jurisdiction. Design-Builder shall be responsible for obtaining and paying for all required permits, licenses, certificates of occupancy, and approvals of governmental agencies with jurisdiction over the RFP Work. The District will cooperate with the Design-Builder’s permitting efforts. Moreover, Design-Builder shall be responsible for identifying and complying with all applicable regulatory requirements.

Please note that the District may be in the process of seeking extension, renewal, and/or modification(s) of some of the above-identified permits at the time the Project Manual is distributed. The District will provide further information regarding existing permits and/or authorizations upon request. The District anticipates that the following permit(s) will also be required for the RFP Work:

- **Generic Permit for Stormwater Discharge from Large and Small Construction Activities** ("CGP") (62-621.300(4)(a), Florida Administrative Code)

The Design-Builder shall be responsible for obtaining the CGP prior to commencing construction, at its own expense, to authorize stormwater discharges associated with construction activities and uncontaminated produced groundwater discharges associated with dewatering operations. The Design-Builder shall file a Notice of Intent (NOI) (DEP Form 62-621.300(4)(b)) to use the CGP with the Florida Department of Environmental Protection ("DEP") via its online portal, [http://www.fldeppportal.com/go/](http://www.fldeppportal.com/go/), at least two (2) days prior to commencing construction activities. In the event any discharge associated with the construction activities does not qualify for use of the CGP, the Design-Builder shall be required to obtain a separate NPDES permit for that discharge from the DEP prior to commencing construction, at its own expense.

The Design-Builder shall comply with all conditions and requirements of all permits and approvals issued for the RFP Work, including the HCEPC permits and Corps permit listed above (to the extent applicable based upon Design-Builder’s proposed solution(s)) and the CGP, including **but not limited to** inspections of site conditions and construction activities, construction in conformity with design plans and specifications, maintenance of records, preparation and adherence to a Stormwater Pollution Prevention Plan (SPPP) and implementation of Best Management Practices (BMPs). Refer to the permits for the complete

<table>
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<th>8/25/2015</th>
<th>10/13/2020</th>
<th>Minor Works</th>
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</table>

**Feet of seawall to be repaired/replaced.**
requirements. Within 14 calendar days after the site has achieved final stabilization and all discharges authorized by the CGP are eliminated or are authorized under a separate NPDES permit, the Design-Builder must submit a completed Notice of Termination (NOT) form (DEP Form 62-621.300(6)) through DEP’s online portal, http://www.fldepportal.com/go/. The Design-Builder will also be responsible for notifying Hillsborough County, the Corps, and/or other agencies of completion of construction activities pursuant to the terms of their respective permits.

The Design-Builder shall adhere at all times to the permits and to all applicable County, state and federal rules and regulations. The Design-Builder shall monitor and keep the construction area in compliance with all Environmental Protection Agency (EPA), SWFWMD, DEP, Corps, and Hillsborough County latest rules and regulations. Any fines levied shall be paid by Design-Builder.

Furthermore, the Design-Builder shall provide all signage required by permits and governmental authorities.

Receipt of all final approvals and operating permits from all applicable regulatory authorities is a requirement for final payment.

Direct Purchasing

22. OWNER DIRECT PURCHASES. The District reserves the right to require the selected Proposer to assign some, or all, of its subcontracts or other agreements with material suppliers directly to the District. This saves the amount of the sales tax, when the District purchases material/equipment required for a construction project directly from the manufacturer/supplier (material/equipment cost only), and simultaneously decreases the amount of the contract for the cost of the materials/equipment, plus the sales tax. The contract cost reduction is accomplished through the construction change order process. To facilitate this process, each Proposer shall include the cost of all construction materials and equipment in its Proposal, and shall separately identify all sales taxes normally applicable to such materials and equipment. Moreover, each Proposer, in its subcontract agreements and other agreements, shall ensure that such agreements are assignable for the purposes of direct purchasing. The Design-Builder’s warranties and performance bonds shall extend to cover all direct purchased materials, as though Design-Builder had selected and purchased the materials itself.

Contract Award & Protests

23. EVALUATION OF PROPOSALS.

Each Proposal shall be separately ranked based on the evaluation of the Proposal, any information obtained through reference checks, and any information generally known to the District, and according to the Evaluation Criteria contained within the Project Manual. Price will be one significant factor used in determining the Proposal that is in the best interest of the District, but the District explicitly and clearly reserves the right to make such award to other than the lowest priced Proposal.
The Board intends to appoint itself to evaluate the Proposals, with advice from the Design Criteria Professional and/or the District Engineer, as applicable; provided, however, that the Board reserves the right to appoint a committee, which may include non-Board members, to evaluate the Proposals and report to the Board. The Board shall select no fewer than three (3) Design-Build firms as the most qualified. However, if fewer than three (3) proposals are received, the District may purchase design-build services or may reject the proposals for lack of competitiveness. The Board shall review and evaluate the bids in their individual discretion, and make any final determination with respect to the award of a final contract that is in the best interests of the District. Chapter 112, *Florida Statutes*, will govern any voting conflicts of interest, and as such a voting conflict of interest may arise solely where there is a personal financial interest relating to the contract award.

The Board shall negotiate a contract with the Proposer ranking the highest based on the evaluation standards and shall establish a price which the Board determines is fair, competitive, and reasonable. Should the Board be unable to negotiate a satisfactory contract with the Proposer considered to be the most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that Proposer shall be terminated. The Board shall then undertake negotiations with the second most qualified Proposer, based on the ranking by the evaluation standards. Failing accord with the second most qualified Proposer, the Board must terminate negotiations. The Board shall then undertake negotiations with the third most qualified Proposer. Should the Board be unable to negotiate a satisfactory contract with any of the selected Proposers, the Board shall select additional Proposers in order of their rankings based on the evaluation standards and continue negotiations until an agreement is reached or the list of Proposers is exhausted.

24. **DISTRICT’S RIGHT TO TAKE ACTIONS IN ITS BEST INTERESTS.** The District reserves the right to reject any and all Proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any Proposal, as it deems appropriate, if it determines in its discretion that it is in the District’s best interests to do so.

25. **CONTRACT AWARD.** Within fourteen (14) days of receipt of the Notice of Award from the District, or longer period if extended by the District in its sole discretion, the Proposer shall enter into and execute the contract in the form included in the Project Manual, unless requested otherwise by the District. No contract to perform the RFP Work shall exist between the District and any Proposer until the contract is signed, and any work provided and any cost incurred by the Proposer prior to receiving the Notice of Award, an executed contract, and the Notice to Proceed will be at the Proposer’s risk unless specifically agreed to in writing by the District. Following the Notice of Award, Design-Builder will arrange an initial conference attended by the District and Design-Builder and others as appropriate in accordance with Section 2.06 of the General Conditions.

26. **PAYMENT & PERFORMANCE BOND.** At the time the contract is executed, the Design-Builder will be required to furnish a payment and performance bond for one hundred percent (100%) of the amount of the RFP Work, with a surety acceptable to the District, and in accordance with Section 255.05, *Florida Statutes*. As part of the Proposal, Proposer shall provide
evidence showing that Proposer is able to furnish a bond in the amount of the Proposer’s total contract price.

27. CROSS INDEMNIFICATIONS.

A. To the fullest extent permitted by law, Proposer shall indemnify and hold harmless the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, the “Indemnitees”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work. Additional indemnification, defense, and hold harmless obligations are as set forth in the forms of contract.

B. To the fullest extent permitted by law, and without waiving any protections or immunities provided to Owner under Florida law, the District shall indemnify and hold harmless the Proposer, the Project Design Professional, subcontractors, suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnitees”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used herein shall mean any and all claims of property owners requesting the District to undertake repairs to their property on account of damages believed by such property owner to be a result of the compromised seawall located along the MiraBay canal system within the Site including, but not limited to, requests made by any and all property owners to the District pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, Project Design Professional, subcontractors, suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work.
C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnitees, as the case may be.

28. LIMITATION OF LIABILITY. Nothing herein shall be construed as or constitute a waiver of District’s limitations on liability contained in Section 768.28, Florida Statutes, or other statute or law.

29. PUBLIC RECORDS. The District is a governmental entity, and, accordingly, the Proposals will be publicly opened as stated above. Additionally, it is likely that the Proposals are or will become public record at some point in the procurement process. That said, Florida law does recognize certain exceptions from the public records laws. For example, financial statements submitted as part of a response to a proposal for a public works project may be exempt from disclosure. See Section 119.071(c), Florida Statutes. In the event that the Proposer believes that any particular portion of the Proposer’s Proposal is exempt from disclosure, the Proposer shall mark the exempt pages as “CONFIDENTIAL – EXEMPT FROM DISCLOSURE.” In the event that the District receives a public records request relating to such records, the District will notify the Proposer. In the event that the District reasonably and in good faith believes that the Proposer’s information is not confidential or exempt under Florida law, the District may provide the information in response to the request and will not be responsible for any liability, claims, damages or losses arising from such disclosure. In the event that a claim of any kind is filed challenging the confidentiality of the Proposer’s information, the District may require the Proposer to indemnify, defend and hold harmless the Indemnitees from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, relating to the claim.

30. MANDATORY AND PERMISSIVE REQUIREMENTS. The only mandatory requirements contained within the Project Manual to submit are that an interested firm must: (i) hold all required local, state and federal licenses in good standing, (ii) be authorized to do business in Hillsborough County and the State of Florida, and (iii) secure and furnish a bid bond or cashier’s check, as described herein and in the contract documents, as well as the payment and performance bond described herein and in the contract documents, and evidence that the Proposer is able to furnish the payment and performance bond in the amount of the Proposer’s total contract price. All of the requirements or provisions set forth in the Project Manual shall be deemed “permissive,” in that a Proposer’s failure to meet any requirement described in mandatory terms such as “shall,” “will,” “mandatory,” or similar language does not automatically disqualify the Proposer’s Proposal, but instead may be taken into account in the evaluation and scoring of the Proposal.

31. PROTESTS. Any protest regarding the Project Manual, including but not limited to, the evaluation criteria and process, specifications or other requirements contained in the Project Manual, must be filed in writing at the District Manager’s Office, within seventy-two (72) hours after the receipt of the Project Manual. The formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days after the initial notice of protest was filed. Failure to timely file a notice of protest, failure to
timely file a formal written protest, or failure to timely post a protest bond, shall constitute a waiver of any right to object or protest with respect to any matter relating to the Project Manual.

Any person who files a notice of protest regarding the Project Manual, or regarding any ranking or intended award by the District, or any other matter, shall post a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. In the event the protest is settled by mutual agreement of the parties, the protest bond shall be distributed as agreed to by the District and protestor. REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

PART I. GENERAL INFORMATION – EVALUATION CRITERIA

1. PRELIMINARY REQUIREMENTS (Pass / Fail)
   An interested firm must hold all required local, state and federal licenses in good standing, and be
   authorized to do business in Hillsborough County and the State of Florida.

2. PROPOSAL GUARANTEE (Pass / Fail)
   The Proposer provided an appropriate proposal guarantee consistent with the terms of the Project
   Manual.

3. PERSONNEL & EQUIPMENT (10 Points Possible)
   This category addresses the following criteria: skill set and experience of key management and
   assigned personnel, including the design engineer, project manager and other specifically trained
   individuals who will design and manage the RFP Work; present ability to staff, equip and manage the RFP
   Work; proposed staffing levels; proposed equipment; capability of performing the work; geographic
   location; inventory of all equipment; etc.

4. EXPERIENCE (20 Points Possible)
   This category addresses past & current record and experience of the Proposer (and/or engineers,
   subcontractors, and suppliers) in similar projects; past performance in any other contracts; etc.

5. UNDERSTANDING SCOPE OF WORK (15 Points Possible)
   This category addresses whether the Proposer demonstrated an understanding of the District’s
   needs for the work requested, demonstrated the ability to perform such work in a feasible manner,
   demonstrated an understanding of the desire for uniformity in appearance, and identified any suggestions
   for “best practices” or other innovative approaches.

6. FINANCIAL CAPACITY (10 Points Possible)
   This category addresses whether the Proposer has demonstrated that it has the financial resources
   and stability as a business entity necessary to implement and execute the work. Also, this category includes
   an evaluation of the Proposer’s insurance and warranties offered, above and beyond what is required under
   the contract documents. The Proposer should include proof of ability to provide insurance coverage as
   required by the District as well as audited financial statements, or other similar information.

7. GUARANTEED MAXIMUM PRICE (30 Points Possible)
   This category addresses overall pricing for the construction work, as well as consideration of unit
   prices and the overall reasonableness of the pricing.

8. GUARANTEED SCHEDULE (15 Points Possible)
   This category addresses the timeliness of the schedule, as well as the Proposer’s ability to credibly
   design and complete the RFP Work within the Proposer’s schedule.

100 Total Points Possible
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

PART II. PROPOSAL FORM – (A) GENERAL INFORMATION

1. Proposer General Information

Proposer Name____________________________________________________________

Street Address ____________________________________________________________

P. O. Box (if any) __________________________________________________________

City __________________ State ___________ Zip Code ________________________

Telephone __________________ Fax no. _________________________________

Internet Address _________________________________________________________

1st Contact Name ____________________ Title ____________________

Contact Telephone ___________________ E-Mail Address _____________________

2nd Contact Name ____________________ Title ____________________

Contact Telephone ___________________ E-Mail Address _____________________

Parent Company Name (if any) ______________________________________________

Street Address __________________________________________________________

P. O. Box (if any) _________________________________________________________

City __________________ State ___________ Zip Code ________________________

Telephone __________________ Fax no. _________________________________

1st Contact Name ____________________ Title ____________________

2nd Contact Name ____________________ Title ____________________

(Attach a chart showing ownership structure of Proposer.)
2. **List the location of Proposer’s office that would oversee the work.**

Street Address ____________________________________________________________

P.O. Box (if any) __________________________________________________________

City ______________________ State ____________ Zip Code ________________

Telephone __________________ Fax No. __________________

1st Contact Name ___________________________ Title ______________________

2nd Contact Name ___________________________ Title ______________________

3. **Company Standing**

Proposer’s form of entity: ________________________________________________
   (e.g., individual, corporation, partnership, limited liability company, etc.)

In what State was the Proposer organized? _________________________________

Date __________ Charter Number (if applicable)____________________

Is the Proposer in good standing with that State? Yes ___ No ___

If no, please explain __________________________________________________

______________________________________________________________

Is the Proposer registered with the State of Florida, Division of Corporations and
authorized to do business in Hillsborough County and the State of Florida?

Yes ___ No ___

If no, please explain ________________________________________________

______________________________________________________________
4. **Licensure**

Please list all applicable state and federal licenses or registrations, including but not limited to those for the State of Florida and Hillsborough County:

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
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For each registration or license, provide the following information:

Type of registration (e.g., certified general contractor, certified electrical contractor, etc.)

_____________________________________________________________________
_____________________________________________________________________

License No. ___________________________ Expiration Date __________

Qualifying Individual ___________________ Title _________________

List company(ies) currently qualified under this license ________________

_____________________________________________________________________

Is the registration or license in good standing? Yes ___ No ___

If no, please explain ________________________________
_____________________________________________________________________
_____________________________________________________________________

*(Attach photocopies of each listed license or registration, and additional sheets as necessary.)*
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
CORPORATE OFFICERS
(Attach additional sheets if necessary)

Provide the following information for Officers of the Proposer and parent company, if any. Attach resumes for all such individuals.

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
<th>POSITION OR TITLE</th>
<th>CORPORATE RESPONSIBILITIES</th>
<th>INDIVIDUAL’S RESIDENCE CITY, STATE</th>
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FOR PARENT COMPANY (if applicable)

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Company Name

Date

27
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
OTHER SUPERVISORY PERSONNEL
(Attach additional sheets if necessary)

Company Name ___________________________ Date ___________________________
Provide information for key management and supervisory personnel of the Proposer for both administration as well as operations. Attach resumes for all such individuals.

<table>
<thead>
<tr>
<th>INDIVIDUAL’S NAME</th>
<th>PRESENT TITLE</th>
<th>DESCRIPTION OF DIRECT JOB RESPONSIBILITIES</th>
<th>YEARS OF EXPERIENCE IN PRESENT POSITION</th>
<th>TOTAL YEARS OF RELATED EXPERIENCE</th>
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II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
COMPANY OWNED MAJOR EQUIPMENT AVAILABLE FOR THE PROJECT
(Attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>CAPACITY</th>
<th>No. LOCATED IN</th>
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PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT

1. For each manager, supervisor and key person who will be directly working on and/or responsible for the RFP Work, please provide the following information:

Name:_______________________________________________________________
Title:_________________________________________________________________
Office Location:_______________________________________________________
____________________________________________________________________
Corporation Responsibilities:______________________________________________
______________________________________________________________________
Years in Current Position:________________________________________________
Proposed Role for the Project:______________________________________________
______________________________________________________________________
% of Time to Be Devoted to Project:

Provide the following information for at LEAST TWO projects similar to the RFP Work where the manager / supervisor / key personnel was involved. Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., involving mangroves).

Project 1

Project Name / Location:______________________________________________
Time Period of Project:____________________________________________
Description of Project:_____________________________________________
________________________________________________________________
Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
Role of Manager / Supervisor / Key Personnel:___________________________
__________________________________________________________________
Reference Contact: ________________________________________________
Contact Phone/E-Mail: ____________________________________________

**Project 2**

Project Name / Location: __________________________________________

Time Period of Project: ____________________________________________

Description of Project: ____________________________________________
________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Manager / Supervisor / Key Personnel: _______________________
________________________________________________________________

Reference Contact: ________________________________________________
Contact Phone/E-Mail: ____________________________________________

**Project 3**

Project Name / Location: __________________________________________

Time Period of Project: ____________________________________________

Description of Project: ____________________________________________
________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Manager / Supervisor / Key Personnel: _______________________
________________________________________________________________

Reference Contact: ________________________________________________
Contact Phone/E-Mail: ____________________________________________

(Attach resume, and use additional sheets as appropriate.)
2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work. (Attach additional sheets as needed.) Also, describe in the Proposer’s narrative or below how staffing levels may differ between the various components of the Design-Build Proposal.

<table>
<thead>
<tr>
<th>Staffing Role / Description of Role in RFP Work</th>
<th># Individuals</th>
<th># of Total Man Hours per Month</th>
<th>Status of Staff with Proposer (e.g., full-time, day labor, etc.)</th>
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3. Provide the following information for the proposed equipment that will be used for the RFP Work. (Attach additional sheets as necessary.) Also, describe in the Proposer’s narrative or below how equipment usage may differ between the various components of the Design-Build Proposal.

<table>
<thead>
<tr>
<th>Equipment Type</th>
<th>Description of Role in the RFP Work</th>
<th>Age of Equipment</th>
<th>% of Time Available to the RFP Work</th>
<th>Is the Equipment Presently Owned?</th>
<th>Leased?</th>
</tr>
</thead>
</table>
4. **Provide a list of all Engineers / Subcontractors / Suppliers that will be hired by Proposer for the RFP Work.**

<table>
<thead>
<tr>
<th>Name of Engineer / Subcontractor / Supplier</th>
<th>Contact / Phone # / E-Mail Address</th>
<th>Role in the RFP Work (Identify the component of the Design-Build Proposal within which the engineer/subcontractor/supplier will be involved, if not applicable to all.)</th>
<th>Total Value of Goods or Services Anticipated to Be Provided</th>
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<tbody>
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</tbody>
</table>

(Attach additional sheets as necessary.)
5. For each Engineer / Subcontractor / Supplier that will provide goods or services in excess of $25,000 for the RFP Work, provide the following information:

Name:_______________________________________________________________

Title:_________________________________________________________________

Contact:____________________________________________________________

Contact Phone/E-Mail: ____________________________

Office Location:_______________________________________________________

........................................................................................................

Shipment Location (for Suppliers):________________________________________

........................................................................................................

Years in Business:_____________________________________________________ 

Proposed Role for the RFP Work:________________________________________

........................................................................................................

Is the Engineer/Subcontractor/Supplier registered with the State of Florida, Division of Corporations and authorized to do business in Hillsborough County and the State of Florida? Yes ___ No ___ If no, explain:____________________________________________________

........................................................................................................

Does the Engineer/Subcontractor/Supplier have all applicable business licenses in good standing? Yes ___ No ___

Please list the licenses:__________________________________________________

........................................................................................................
Provide the following information for at LEAST TWO projects similar to the RFP Work where the Engineer/Subcontractor/Supplier was involved:

*Project 1*

Project Name / Location: ____________________________________________

Time Period of Project: ____________________________________________

Description of Project: ____________________________________________

________________________________________________________________

Did the Project Involve: ____ Sheet Piling? ____ Rip-Rap? ____ Mangroves?

Role of Engineer/Subcontractor/Supplier:

________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier: ____________

Reference Contact: ________________________________________________

Contact Phone/E-Mail: ______________________________________________

*Project 2*

Project Name / Location: ____________________________________________

Time Period of Project: ____________________________________________

Description of Project: ____________________________________________

________________________________________________________________

Did the Project Involve: ____ Sheet Piling? ____ Rip-Rap? ____ Mangroves?

Role of Engineer/Subcontractor/Supplier:

________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier: ____________

Reference Contact: ________________________________________________

Contact Phone/E-Mail: ______________________________________________
Project 3

Project Name / Location: ________________________________________________

Time Period of Project: ________________________________________________

Description of Project: ________________________________________________

____________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Engineer/Subcontractor/Supplier: __________________________________

____________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier: ________________

Reference Contact: ____________________________________________________

Contact Phone/E-Mail: _________________________________________________

Has the Engineer/Subcontractor/Supplier ever failed to complete a contract, or had any contracts terminated before the work was completed? Yes (_) No (_) For each such incident, please provide the following information (attach additional sheets as needed):

Reference Contact: ____________________________________________________

Contact Phone/E-Mail: _________________________________________________

Dollar Amount of Contract: ____________________________________________

Scope of Services for Project: __________________________________________

____________________________________________________________________

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years? Yes (_) No (_) If yes, provide the following:

Identify the Case # and Tribunal: _______________________________________

Describe the Nature of the Action: ______________________________________
Describe the Engineer’s/Subcontractor’s/Supplier’s Role in the Action and Describe the Status and/or Resolution:


Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:


Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:


(Attach additional information regarding Engineer’s/Subcontractor’s/Supplier’s role in the project, key personnel, background and experience, financial capacity, etc., and use additional sheets as appropriate.)
PART II. PROPOSAL FORM – (C) EXPERIENCE

1. Describe at least TWO projects similar to the RFP Work that Proposer has undertaken. For each project, provide the following information (attach additional sheets to complete). Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., with mangroves).

Project Name/Location:_____________________________________________________
Reference Contact:_______________________________________________________
Contact Phone/E-Mail:_______________________________________________________
Dollar Amount of Contract:_________________________________________________
Scope of Services for Project:_______________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Start Date: ____________________________
Current Status of the Project: ____________________________
2. **Has the Proposer previously performed work for a community development district?**
   Yes ( ) No ( ) If yes, please provide the following information for each project (attach additional sheets as necessary):

   - Project Name/Location: _____________________________________________
   - Reference Contact: ________________________________________________
   - Contact Phone/E-Mail: _____________________________________________
   - Dollar Amount of Contract: _________________________________________
   - Scope of Services for Project: _______________________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________
   __________________________

   Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

   - Start Date: _______________________________________________________
   - Current Status of the Project: ______________________________________
   __________________________
   __________________________
3. Has the Proposer ever failed to complete a contract, or had any contracts terminated before the work was completed? Yes (_) No (_) For each such incident, please provide the following information (attach additional sheets as necessary):

Reference Contact: ________________________________________________
Contact Phone/E-Mail: _____________________________________________
Dollar Amount of Contract: _________________________________________
Scope of Services for Project: _______________________________________
________________________________________________________________
________________________________________________________________
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Start Date: _______________________________________________________________________
Reason: _______________________________________________________________________
_______________________________________________________________________
4. Has any officer or partner of the Proposer ever been an officer, partner, or owner of some other organization that has failed to complete a construction contract? Yes (_) No (_)

For each such incident, please provide the following information (attach additional sheets as needed):

Reference Contact: ________________________________________________

Contact Phone/E-Mail: ____________________________________________

Dollar Amount of Contract: _________________________________________

Scope of Services for Project: _______________________________________

Start Date: _______________________________________________________

Reason: __________________________________________________________
5. Has the Proposer or any of its officers or employees, or any of Proposer’s proposed engineers, subcontractors, or materialmen, ever previously conducted work, or provided materials for work, in Mirabay, whether as a contractor, subcontractor, materialman or in some other capacity? Please describe who and in what capacity, and when:

________________________________________________________________________________________

________________________________________________________________________________________

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Furnish requested information about all of Proposer’s active contracts, whether as prime or subcontracts; whether in progress or awarded but not yet started; and regardless of with whom contracted. All amounts to be shown to nearest $1,000. Design-Builder may consolidate and list as a single item all contracts which individually do not exceed 3% of total active contracts and in total do not exceed 20% of the active total contracts.

<table>
<thead>
<tr>
<th>OWNER, LOCATION AND DESCRIPTION OF PROJECT</th>
<th>CURRENT CONTRACT AMOUNT AS PRIME</th>
<th>CURRENT CONTRACT AMOUNT AS SUBCONTRACTOR</th>
<th>CURRENT AMOUNT SUBJECT TO OTHERS</th>
<th>PROPOSER'S UNCOMPLETED AMOUNT AS OF THIS DATE</th>
<th>AS PRIME CONTRACTOR</th>
<th>AS SUBCONTRACTOR</th>
<th>ORIGINAL CONTRACT DATE</th>
<th>APPROVED REVISED DATE</th>
<th>CURRENT ESTIMATE DATE</th>
<th>COMPLETION DATE</th>
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Subtotal Uncompleted Work $  
Total Uncompleted Work on Hand $
# PROPOSAL FORM, PART 3 – (C) & (D) EXPERIENCE & CAPACITY

**PROJECTS PROPOSER COMPLETED IN THE LAST THREE YEARS**

(Attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>PROJECT NAME/ LOCATION</th>
<th>FINAL CONTRACT AMOUNT</th>
<th>PRIME OR SUB ¹</th>
<th>CLASSIFICATION OF WORK PERFORMED</th>
<th>YEAR STARTED/ COMPLETED</th>
<th>OWNER NAME/ LOCATION ²</th>
<th>NAME &amp; PHONE NUMBER OF OWNER'S REPRESENTATIVE FOR THE LISTED PROJECT ³</th>
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</table>

¹ ‘Prime or Sub’ should indicate whether Proposer performed the work as a prime contractor/design-builder or as a subcontractor.

² ‘Owner Name/ Location’ should indicate the Owner of the project if the Proposer performed the work as a prime contractor/design-builder or the general contractor if the Proposer performed the work as a subcontractor.

³ ‘Name & Phone Number of Owner’s Representative on this Project’ should list a reference from the business entity listed in the previous column familiar with Proposer’s contract performance.
PART II. PROPOSAL FORM – (D) FINANCIAL CAPACITY

1. Provide copies of the Proposer’s financial statements, showing assets and liabilities, for each of the past three years. Also attach an interim balance sheet not more than 60 days old. Certified copies accompanied by an auditor’s opinion are strongly encouraged, but not required.

2. Complete the following chart for each of the past five years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ANNUAL REVENUE</th>
<th># OF PROJECTS COMPLETED</th>
<th>LARGEST PROJECT SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td></td>
<td></td>
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<tr>
<td>2016</td>
<td></td>
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<td></td>
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<tr>
<td>2015</td>
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<tr>
<td>2014</td>
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<td></td>
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<tr>
<td>2013</td>
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</tbody>
</table>

3. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years? Yes (_) No (_) If yes, provide the following:

Identify the Case # and Tribunal: ____________________________________________

Describe the Nature of the Action: ____________________________________________

__________________________________________________________________________

__________________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

__________________________________________________________________________

__________________________________________________________________________
4. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

5. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

6. What are the Proposer’s proposed insurance for the Project? Refer to the form of contract for minimum amounts.

   Workers’ Compensation
   a. State Worker’s Compensation – Greater of statutorily required amount or $________ per occurrence / $________ aggregate / $________ per disease
   b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $________
   c. Employer’s Liability – $________

   Commercial General Liability Insurance
a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - $ 

b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - $ 

c. Products-Completed Operations – $ 

d. Personal and Advertising Injury – $ 

e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

**Automobile Liability**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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<tbody>
<tr>
<td>Bodily Injury:</td>
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<tr>
<td>Each Person</td>
<td>$</td>
</tr>
<tr>
<td>Each Accident</td>
<td>$</td>
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<tr>
<td>Property Damage:</td>
<td></td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$</td>
</tr>
</tbody>
</table>

Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $ 

Protection and Indemnity Insurance $ 

Contractual Liability coverage

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>General Aggregate</td>
<td>$</td>
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<tr>
<td>Bodily Injury and Property Damage Combined Each Occurrence</td>
<td>$</td>
</tr>
</tbody>
</table>

Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>General Aggregate</td>
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<tr>
<td>Each Occurrence</td>
<td>$</td>
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</tbody>
</table>

**Builder’s Risk Insurance for the amount of the Project?** YES / NO

**Boiler & Machinery Insurance?**

(List items on separate page) YES / NO

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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</table>

(Other) $ 

(Other) $
(Attach a copy of a current insurance certificate evidencing the Design-Builder’s insurance.)

7. **What are the Proposer’s current bonding limits?**

Name of Proposer’s Bonding Company ________________________________

Address ________________________________

Approved Bonding Capacities:
- Aggregate Limit $____________
- Single Project Limit $____________
- Total Current Contracts Bonded $____________

Name of Proposer’s Bonding Agency ________________________________

Address ________________________________

Contact Name __________________________ Telephone ____________
PART II. PROPOSAL FORM – (E) PRICING

**Overall Lump Sum (LS) Price (Section I (13,142 LF)):**

__________________________________________________________ (Written) $____________/LS

Lump sum prices shall include all costs necessary for completing all required work in strict accordance with the requirements specified in the Package. Lump sum prices shall be a guaranteed maximum price.

Prices for each lump sum section provided above in the Price Breakdown shall be supplemented with a Preliminary Schedule of Pay Items. The Preliminary Schedule of Pay Items shall include corresponding unit price estimates to be utilized after Award to negotiate a program of progress payments. (See attached example Preliminary Schedule of Pay Items for reference).

<table>
<thead>
<tr>
<th>Design-Builder’s Authorized Representative</th>
<th>Date</th>
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</thead>
</table>


EXAMPLE OF PRELIMINARY SCHEDULE OF PAY ITEMS

Below is an example sheet with a sample preliminary schedule of pay items. Items, quantities, and prices are preliminary estimates only and not considered final. Preliminary schedules of pay items are intended for use after Award to negotiate a program of progress payments. The schedules shall be prepared with items associated with the solutions presented in the Design-Build proposal. The pay items listed below are examples only. Each schedule should be tailored as necessary.

<table>
<thead>
<tr>
<th>Pay Item Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surveying</td>
<td>1</td>
<td>LS</td>
<td></td>
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<tr>
<td>Permitting</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality Control</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Utility Repairs</td>
<td>1</td>
<td>LS</td>
<td></td>
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<tr>
<td>Reinforced Concrete</td>
<td></td>
<td>CY</td>
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<tr>
<td>Sheet Pile</td>
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<td>LF</td>
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<tr>
<td>Tie Back</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rip-Rap</td>
<td></td>
<td>TON</td>
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<tr>
<td>Floating Turbidity Barrier</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
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<tr>
<td>Landscaping (Behind Wall)</td>
<td></td>
<td>SF</td>
<td></td>
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<tr>
<td>Dock Restoration</td>
<td></td>
<td>EA</td>
<td></td>
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<tr>
<td>Timber Pile With Canal Warning Marker</td>
<td></td>
<td>EA</td>
<td></td>
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<tr>
<td>Drainage System</td>
<td></td>
<td>LF</td>
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</tbody>
</table>

Grand Total for Section I
PART II. PROPOSAL FORM – (F) GUARANTEED SCHEDULE

Proposers should provide detailed schedules for the Design-Build Proposal. Each schedule should show completion of the applicable components of Section I of the Project. For example, the schedule should show (a) the design completion date, (b) the mobilization date, and (c) the dates for completion of components for Section I.

Proposers should further describe how they intend to use their personnel and equipment in order to timely meet the schedules.
PART II. PROPOSAL FORM – (G) LEGAL CONCERNS

1. List and describe any and all litigation, arbitration or claims filed against the Proposer or its affiliates or principals within the last five (5) years. For each instance, please describe the nature of the litigation, arbitration or claim, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the litigation. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: __________________________________________

Describe the Nature of the Action: __________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2. List any and all governmental enforcement actions (e.g., any action taken to impose fines, penalties, etc.) taken against the Proposer or its affiliates or principals in the last five (5) years. For each action, please describe the nature of the action, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the matter. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: __________________________________________

Describe the Nature of the Action: __________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

3. Has the Proposer or any of its affiliates ever been either disqualified or denied prequalification status by a governmental entity? Yes (_) No (_) If so, please identify the governmental entity and project, and discuss the circumstances surrounding such denial or disqualification as well as the date thereof. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: ____________________________________________

Describe the Nature of the Action: __________________________________________

________________________________________________________________________

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Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________

________________________________________________________________________

4. Please state whether or not your company or any of its affiliates are presently barred or suspended from bidding or contracting on any state, local, or federal-aid contracts in any state(s)? Yes (_) No (_)

If so, state the name(s) of the compan(ies) ______________________________________

________________________________________________________________________

The state(s) where barred or suspended ______________________________________
State the period(s) of debarment or suspension ____________________________

Also, please explain the basis for any bar or suspension:
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

5. *Has the Proposer company been cited by OSHA for any job site or company office/shop safety violations in the past five years? Yes (_) No (_)*

   If yes, please describe each violation, fine, and resolution ____________________________
   ____________________________________________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________

What is the Proposer’s current worker compensation rating? ________________

Has the Proposer experienced any worker injuries resulting in a worker losing more than ten (10) working days as a result of the injury in the past five years? Yes (_) No (_)

   If yes, please describe the incident: _____________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________

6. *Safety of the community’s residents and property is a priority. Please describe any background checks or other security measures that have been or will be taken with respect to the hiring and retention of the Proposer’s personnel (and/or any subcontractors’ personnel) who will be involved with the Project. Also, please describe what security measures will be taken to ensure that on-site personnel are properly supervised. Attach a copy of the Proposer’s security policy that would be included as part of the form of contract.*

   _____________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(N)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Harbor Bay Community Development District
   (print name of the public entity)
   by _______________________________
   (print individual's name and title)
   for _______________________________
   (print name of entity submitting sworn statement)
   whose business address is _______________________________

   and (if applicable) its Federal Employer Identification Number (FEIN) is __________________

   (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn
   statement __________________)

2. I understand that a “public entity crime” as defined in Section 287.133(1)(g), Florida Statutes,
   means a violation of any state or federal law by a person with respect to and directly related to the
   transaction of business with any public entity or with any agency or political subdivision of any
   other state or of the United States, including, but not limited to, any bid or contract for goods or
   services to be provided to any public entity or an agency or political subdivision of any other state
   or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering,
   conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Section 287.133(1)(b), Florida Statutes,
   means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of
   guilt, in any federal or state trial court of record relating to charges brought by indictment or
   information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a please of
   guilty or nolo contendere.

4. I understand that an “affiliate” as defined in Section 287.133(1)(a), Florida Statutes, means:
   a. A predecessor or successor of a person convicted of a public entity crime; or
b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a “person” as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

[ ] Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

[ ] The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

[ ] The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

I understand that the submission of this form to the contracting officer for the public entity identified in paragraph 1 (one) above is for that public entity only and that this form is valid through December 31 of the calendar year in which it is filed. I also understand that I am required to inform the public entity prior to entering into a contract in excess of the threshold amount provided in section 287.017, Florida Statutes, for category two of any change in the information contained in this form.

Dated this __________ day of _______________________, 2018.

(Corporate Seal, if applicable)  (Name of Proposer)

By:______________________________________
Title:_____________________________________

STATE OF ________________
COUNTY OF ________________

The foregoing instrument was sworn and subscribed before me this ____ day of _______________________, 2018, by _______________________, who is personally known to me or who has produced _______________________, as identification, and did [ ] or did not [ ] take the oath.

Notary Public, State of Florida
Print Name:______________________________
Commission No.:________________________
My Commission Expires:___________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, REGARDING SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST

1. This sworn statement is submitted to Harbor Bay Community Development District

by ________________________________
(print individual's name and title)

for ________________________________
(print name of entity submitting sworn statement)

whose business address is ________________________________

2. I understand that, subject to limited exemptions, Section 287.135, Florida Statutes, provides that a company that at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with a local governmental entity for goods or services of $1 million or more.

3. Based on information and belief, at the time the entity submitting this sworn statement submits its proposal to the Harbor Bay Community Development District, neither the entity, nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

4. If awarded the contract, the entity will immediately notify the Harbor Bay Community Development District in writing if either the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
The foregoing SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, is dated this __________ day of _______________________, 2018.

(Corporate Seal, if applicable) __________________________________________ (Name of Proposer)

By: __________________________________________

Title: __________________________________________

STATE OF __________________________
COUNTY OF _________________

The foregoing instrument was sworn and subscribed before me this ____ day of _________________, 2018, by _________________ of _________________, who is personally known to me or who has produced _________________________________ as identification, and did [ ] or did not [ ] take the oath.

Notary Public, State of Florida
Print Name: __________________________________________
Commission No.: __________________________________________
My Commission Expires: ____________________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION I (13,142 LF)

AFFIDAVIT REGARDING PROPOSAL

STATE OF ____________________
COUNTY OF ____________________

Before me, the undersigned authority, appeared the affiant, ________________, and having taken an oath, affiant, based on personal knowledge, deposes and states:

Authorization

1. I am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of __________________ for __________________ (“Proposer”), and am authorized to make this Affidavit Regarding Proposals on behalf of Proposer. **Proof of such authorization is attached hereto.**

2. I assisted with the preparation of, and have reviewed, the Proposer’s proposal (“Proposal”) provided in response to the Harbor Bay Community Development District (“District”) Request for Proposals - Design-Build of Master Seawall Project, Section I (13,142 LF). All of the information provided in the Proposal is full and complete, and truthful and accurate. I understand that inclusion of false, deceptive or fraudulent statements, or the failure to include full and complete answers, may constitute fraud, and, that, among other remedies, the District may consider such action on the part of the Proposer to constitute good cause for rejection of the Proposal.

Receipt of Documents

3. The Proposer acknowledges the receipt of the complete Project Manual as provided by the District and as described in the Project Manual’s Table of Contents. Additionally, the Proposer acknowledges receipt of the following addenda:

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Dated</th>
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Pricing & Non-Collusion

4. The Proposer agrees through submission of the Proposal to honor all pricing information for one hundred and fifty (150) days from the due date of the Proposals. If awarded the contract on the basis of this Proposal, Proposer agrees to enter into and execute the contract in the form included in the Project Manual.

5. I do hereby certify that the Proposer has not, either directly or indirectly, participated in collusion or proposal rigging. The price(s) and amount(s) of this Proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer, or review of any other Proposal, or potential Proposal. Moreover, neither the price(s) nor the amount(s) of this Proposal, and neither the approximate price(s) nor approximate amount(s) of this Proposal has been disclosed to any other firm or person who is a Proposer or potential Proposal, and they will not be disclosed before Proposal opening.

6. No attempt has been made or will be made to induce any firm or persons to refrain from submitting a Proposal for this contract, or to submit a price(s) higher that the prices in this Proposal, or to submit any intentionally high or noncompetitive price(s) or other form of complementary Proposal.

7. The Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.

8. Neither Proposer nor its affiliates, subsidiaries, officers, director, or employees are currently under investigation, by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to a public procurement process, on any public contract, except as follows:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Agreements Regarding Records and Project Manual

9. The Proposer authorizes and requests any person, firm or corporation to furnish any pertinent information requested by the District, or its authorized agents, deemed necessary to verify the statements made in the Proposal, or regarding the ability, standing, integrity, quality of performance, efficiency, and general reputation of the Proposer.
10. By signing below, the Proposer acknowledges that (i) the Proposer has read, understood, and accepted the Project Manual; (ii) the Proposer has had an opportunity to consult with legal counsel regarding the Project Manual; (iii) the Proposer has agreed to the terms of the Project Manual, including but not limited to the forms of contract; (iv) the Proposer has waived any right to challenge any matter relating to the Project Manual, including but not limited to any protest relating to the notice, the Proposal instructions, the proposal forms, the contract form, the scope of work, the evaluation criteria, the evaluation process established in the Project Manual, or any other issues or items relating to the Project Manual; (v) the Proposer certifies that he or she has carefully examined the project site, made his/her own measurements and calculations and prepared and checked the foregoing Proposal after the same was completed and has verified every item placed thereon; and (vi) REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY IMMEDIATELY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AFFIDAVIT REGARDING PROPOSALS AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT.

Dated this __________ day of _______________________, 2018.

_________________________________________
(Corporate Seal, if applicable)  (Name of Proposer)

_________________________________________
By:____________________________________
Title:___________________________________

STATE OF _____________________________
COUNTY OF ___________________________

The foregoing instrument was sworn and subscribed before me this ___ day of ______________, 2018, by ______________________ of ______________, who is personally known to me or who has produced ___________________________ as identification, and did [ ] or did not [ ] take the oath.

________________________________________
Notary Public, State of Florida
Print Name:________________________________
Commission No.:___________________________
My Commission Expires: ____________________

EXHIBIT: Attach Proof of Authorization to Sign
This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE

Prepared by

EJCDCE
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Issued and Published Jointly by

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASCE
AMERICAN SOCIETY OF CIVIL ENGINEERS

National Society of Professional Engineers®
AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER  
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between Harbor Bay Community Development District (“Owner” or “District”), and ______________________________ (“Design-Builder”).

PROJECT INFORMATION
Project: Harbor Bay Community Development District – Design-Build of Master Seawall Project
Design-Build Contract: Section I (13,142 LF) (“Contract”)

Owner’s Consultant: Cardno Limited

Engineer: Design-Builder has retained ______________________________ (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Gregory Woodcock, Cardno Limited, 20215 Cortez Blvd, Brooksville, Florida 34601, greg.woodcock@cardno.com, (352) 754-1240; Christopher Gamache, P.E., Cardno Limited, 380 Park Place Blvd, Suite 300, Clearwater, Florida 33759, christopher.gamache@cardno.com, (727) 431-1615.

2. Design-Builder’s Authorized Representative: ______________________________

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

1.01 General Description of Work
A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: the stabilization of certain canal retaining walls within the community of MiraBay, as more fully described in the engineering documents and as Section I (13,142 LF) in the Technical Specifications attached hereto and referenced in Section 8.13 herein.

ARTICLE 2 – CONTRACT TIMES

2.01 Time of the Essence
A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.2 Contract Times: Dates
A. Design-Builder will substantially complete the Work on or before [—].
B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, on or before [—].
2.02 **Contract Times: Days**

A. Design-Builder will substantially complete the Work within [___] days after the Effective Date consistent with the prioritization schedule described in Section 8.13 herein.

B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within [___] days after the Effective Date consistent with the prioritization schedule described in Section 8.13 herein.

C. Design-Builder shall attain the following Milestone(s):

1. Milestone 1 [event & date/days]
2. Milestone 2 [event & date/days]
3. Milestone 3 [event & date/days]

2.03 **Reserved**

**ARTICLE 3 – CONTRACT PRICE**

3.01 **Stipulated Sums**

A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

1. For all Work other than Unit Price Work, a lump sum price of: $________________ (13,142 LF @ $_________/LF). Unit Pricing, as shown in the Unit Pricing Schedule referenced in Section 7.01.A.12.c and attached hereto, shall be used in connection with pricing for demobilization and mobilization if necessary, and change orders. This price shall be adjusted, if necessary, based upon the actual number of linear feet installed by Design-Builder at the rate of $_________/LF. If Owner elects to directly purchase sheet pile, steel, or other material(s), Design-Builder agrees to deduct the cost of the directly-purchased materials, as well as their related shipping and insurance costs and sales and use taxes, from the $_________/LF price.

2. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Estimated Quantity</th>
<th>Unit Price</th>
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</table>

Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities) $____________

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 12.02 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner.

3. Total of Lump Sum Amount and Unit Price Work (subject to final Unit—
Price adjustment $[ ].

1. For all Work, at the prices stated in Design-Builder’s Proposal, attached hereto as an exhibit.

3.02 Changes in Contract Price Based on Cost of the Work

A. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of [_____] [insert multiplier for such design services], which covers labor costs, overhead, and profit.

B. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark-ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

4.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder’s Applications for Payment on or about the 10th day of each month during performance of the Work as provided in subject to Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner (i.e., by the first of the month) and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

Five percent of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent shall be returned to Design-Builder. Owner shall return the remaining one percent upon Final Completion and acceptance of the Work by Owner.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. [_____] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and

b. [_____] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage)
B.—Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to [_____] percent [Note: a typical amount here is 100%] of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less [_____] percent [Note: a typical amount here is 200%] of Owner’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

C.—Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

4.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price. Upon Final Completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.

4.04 District Pre-Payment and Credit

A. No later than ten (10) business days after receipt from Design-Builder of the certified copies of the recorded payment and performance bonds required by Section 255.05(1), Florida Statutes, Owner shall make a one-time total pre-payment to or on behalf of Design-Builder in the amount of $______________, which Design-Builder shall pay back to Owner in the form of credits (at a rate of $______________ per linear foot) against Design-Builder’s draws for the Work. Such credits paid back to Owner shall total $______________ upon Design-Builder’s Final Completion of the Work.

ARTICLE 5 – INTEREST

5.01 Interest Rate

A. All amounts not paid when due shall bear interest at the rate of [_____] percent per annum, or if applicable at the rate stated in a governing prompt payment statute. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes.

ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS

6.01 Representations

A. Design-Builder makes the following representations for Owner’s reliance:

1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical
conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-BUILDER, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-BUILDER, especially with respect to Technical Data in such reports and drawings.

5. Design-BUILDER has considered the information known to Design-BUILDER itself, and to Construction Subcontractors and Project Design Professionals that Design-BUILDER has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-BUILDER, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-BUILDER; and (c) Design-BUILDER’s safety precautions and programs.

6. Based on the information and observations referred to in the preceding paragraph, Design-BUILDER agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.

7. Design-BUILDER is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8. Design-BUILDER has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-BUILDER has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-BUILDER.

9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

10. Design-BUILDER’s entry into this Contract constitutes an incontrovertible representation by Design-BUILDER that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement, as modified herein (pages 1 to [13], inclusive).


4. Other bonds:
   a. [blank] (pages [blank] to [blank], inclusive).

5. General Conditions, as modified therein (pages [1] to [66], inclusive).
   a. Supplementary Conditions Relating to Subsurface Conditions and Insurance Requirements (pages 1 to 3, inclusive)

7. Conceptual Documents (i.e., the Design Criteria Package).

8. Addenda, if any (numbers [ ] to [ ], inclusive).

9. Design-Builder’s Proposal (for reference purposes only; to the extent of any conflict, this Agreement, the General Conditions, the Supplementary Conditions, and the Technical Specifications shall control).

10. Proposal Amendment(s), if any.

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
   a. Work Change Directives.
   b. Change Orders.
   c. Record Drawings and Record Specifications

12. Other Exhibits to this Agreement (enumerated as follows):
   a. Resolution & the Project Manual (pages [ ] to [ ], inclusive)
   b. Permits (as identified and incorporated by reference; permit documents themselves are not attached but shall be provided separately) (pages [ ] to [ ], inclusive)
   c. Unit Pricing Sheet for Design-Build of Master Seawall Project, Section I (13,142 LF)
   d. Technical Specifications
   e. Daily Logs and Weekly Logs Forms

B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

E. In the event of any conflict between this Agreement, the General Conditions, and/or the Supplementary Conditions, and the Technical Specifications attached hereto, the Technical Specifications shall control.

ARTICLE 8 – MISCELLANEOUS

8.01 Terms
   A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

8.02 Assignment of Contract
   A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto
without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

8.03 **Successors and Assigns**

A. Owner and Design-Build each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

8.04 **Severability**

A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Build, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 **Assignment of Warranties**

Design-Build shall assign to Owner all warranties extended to Design-Build by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Design-Build shall secure the material supplier’s and/or subcontractor’s consent to assign said warranties to Owner.

8.06 **Design-Build’s Certifications**

A. Design-Build certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.06:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.07 **Direct Purchase of Materials**

A. Owner represents to Design-Build that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Design-Build with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement
whereby Owner will directly acquire certain materials (“Direct Purchase Materials”) necessary for completion of the Work directly from the suppliers to take advantage of Owner’s tax exempt status.

B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Design-Build with a list of materials that will be treated as Direct Purchase Materials.

C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner’s consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by Owner and if the original contract contemplated sale of materials and installation by the same person, the change order needs to reflect sale of materials and installation by different legal entities.

D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Design-Build. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties, and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Design-Build will use in the identified public works; (2) the vendor’s invoice will be issued directly to the governmental entity; (3) payment of the vendor’s invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at time of delivery by the vendor.

E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Design-Build as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Design-Build.

F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.

G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Design-Build, as Owner’s agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties, bonds, and guarantees for all material and products as required under the Contract Documents. All contract terms, including but not limited to warranties, payment and performance bonds, and other forms of indemnification, provided by Design-Build as part of Contract shall continue to apply to all Direct Purchase Materials, as though Design-Build had purchased the Direct Purchase Materials.

H. Design-Build shall maintain builder’s risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in Owner’s sole discretion, Owner shall maintain such insurance.
8.08  Construction Defects

PURSUANT TO SECTION 558.005(1), FLORIDA STATUTES, CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

8.09  Public Records

Design-Builder understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Design-Builder agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to, Section 119.0701, Florida Statutes. Among other requirements and to the extent applicable by law, Design-Builder shall: 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if Design-Builder does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Design-Builder’s possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Design-Builder, Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Design-Builder acknowledges that the designated Public Records Custodian for the District is Joe Roethke. IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DESIGN-BUILDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 533-2950, jroethke@rizzetta.com, 9428 CAMDEN FIELD PARKWAY, RIVERVIEW, FL 33578.

8.10  Restriction on Removal of Fill Dirt from Work Site

Design-Builder acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the District.

8.11  Public Entity Crimes

Pursuant to Section 287.133, Florida Statutes, Design-Builder acknowledges that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Design-Builder represents that neither itself nor any Subcontractors retained hereunder meet any of the prohibited criteria set
forth in Section 287.133, Florida Statutes. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.133, Florida Statutes, or later been placed on the convicted vendor list, the Design-Builder shall immediately notify the District, at which time District may immediately terminate the Contractor Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.12 Scrutinized Companies

Pursuant to Section 287.135(2), Florida Statutes, Design-Builder represents that Design-Builder has not been placed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (together, “Scrutinized Companies Lists”), and is not engaged in business operations in Cuba or Syria. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.135(5), Florida Statutes, or has been placed on any of the Scrutinized Companies Lists or has been engaged in business operations in Cuba or Syria, the Design-Builder shall immediately notify the District, at which time District may immediately terminate this Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.13 Prioritization Schedule; Work

The District and Design-Builder expressly understand and agree that Design-Builder shall proceed to construct the Work in accordance with the prioritization schedule in the Technical Specifications referenced in Section 7.01.A.12.d. and attached hereto. The term “Work” as used in all Contract Documents shall be construed to refer only to Section I (13,142 LF) of the Master Seawall Project as more particularly described in the Technical Specifications.

8.14 Good Faith Cooperation on Sheet Pile Purchases

Owner and Design-Builder shall cooperate in good faith to secure the lowest possible cost for the purchase of suitable sheet pile for the Work. Nothing in this paragraph, however, shall be construed as financially committing or otherwise legally obligating Owner to direct purchase sheet pile (if it chooses to do so) from any particular third-party vendor.

8.15 Electronic Transmissions

This Contract may be transmitted between the parties by facsimile machine or electronic mail. Owner and Contractor intend that faxed or emailed signatures constitute original signatures and that a faxed or emailed Contract containing the signatures (original or electronic) of Owner and Contractor is binding on Owner and Contractor.

8.16 Counterparts

This Contract may be executed by the parties signing different counterparts of this Contract, which counterparts together shall constitute the agreement of the parties.
IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

OWNER: HARBOR BAY COMM. DEV. DISTRICT

__________________________________________
By: PAUL CURLEY
Title: BOARD CHAIRMAN
Attest: _________________________________
Name/Title: JOE ROETHKE, DISTRICT MANAGER

__________________________________________
By: _________________________________
Title: _________________________________
Attest: _________________________________
Name/Title: _________________________________

__________________________________________
By: _________________________________
Title: _________________________________
Attest: _________________________________
Name/Title: _________________________________

Address for giving notices:

__________________________________________
__________________________________________
__________________________________________

__________________________________________
__________________________________________
__________________________________________
DESIGN-BUILD PERFORMANCE BOND

DESIGN-BUILDER (name and address): SURETY (name and address of principal place of business):

OWNER (name and address):

Harbor Bay Community Development District
c/o Joseph Roethke, District Manager
9428 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT

Effective Date of the Contract:
Amount:
Description (name and location): Design-Build of Master Seawall Project, Apollo Beach, Florida
Section I (13,142 LF)

BOND

Bond Number:
Date (not earlier than the Effective Date of the Contract):
Amount:
Modifications to this Bond Form: [ ] None [ ] See Paragraph 16

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Design-Build Performance Bond to be duly executed by an authorized officer, agent, or representative. [Note: Provide supplemental execution by any additional parties, such as joint venturers.]

DESIGN-BUILDER AS PRINCIPAL SURETY

Design-Builder’s Name

By: _____________________________

Signature

Surety’s Name

By: _____________________________

Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: ___________________________

Signature

Attest: ___________________________

Signature
1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Design-Build Contract, which is incorporated herein by reference.

2. If the Design-Builder performs the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation under this Bond shall arise after:

   3.1 The Owner first provides notice to the Design-Builder and the Surety that the Owner is considering declaring a Design-Builder Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Design-Builder, and Surety to discuss the Design-Builder’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Design-Builder, and the Surety agree, the Design-Builder shall be allowed a reasonable time to perform the Design-Build Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Design-Builder Default;

   3.2 The Owner declares a Design-Builder Default, terminates the Design-Build Contract, and notifies the Surety; and

   3.3 The Owner has agreed to pay the Balance of the Design-Build Contract Price in accordance with the terms of the Design-Build Contract to the Surety, or to a design-builder or contractor selected to perform the Design-Build Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

   5.1 Arrange for the Design-Builder, with the consent of the Owner, to perform and complete the Design-Build Contract;

   5.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or independent contractors;

   5.3 Obtain bids or negotiated proposals from qualified design-builders or contractors acceptable to the Owner for a contract for performance and completion of the Design-Build Contract, arrange for a contract to be prepared for execution by the Owner and a design-builder or contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Design-Build Contract Price incurred by the Owner as a result of the Design-Builder Default; or

   5.4 Waive its right to perform and complete, arrange for completion, or obtain a new design-builder or contractor, and with reasonable promptness under the circumstances:

   5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

   5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days
after receipt of an additional notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Design-Builder under the Design-Build Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Design-Build Contract. Subject to the commitment by the Owner to pay the Balance of the Design-Build Contract Price, the Surety is obligated, without duplication, for:

7.1 the responsibilities of the Design-Builder for correction of defective work and completion of the Design-Build Contract;

7.2 additional legal, design professional, and delay costs resulting from the Design-Builder’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance of the Design-Builder.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Balance of the Design-Build Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction where the construction portion of the Project is located, and shall be instituted within two years after a declaration of Design-Builder Default, or within two years after the Design-Builder ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice under this Bond to the Surety, the Owner, or the Design-Builder shall be in writing, and mailed or delivered to the recipient’s address as shown in this Bond.

13. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Design-Build Contract Price: The total amount payable by the Owner to the Design-Builder under the Design-Build Contract after all proper adjustments have been made including allowance for the Design-Builder for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Design-Builder is entitled, reduced by all valid and proper payments made to or on behalf of the Design-Builder under the Design-Build Contract.

14.2 Design-Build Contract: The agreement between the Owner and Design-Builder identified as such in this Bond, including all Contract Documents
and changes duly made to such Design-Build Contract.

14.3 Design-Builder Default: Failure of the Design-Builder, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Design-Build Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

14.5 Contract Documents: All the documents that comprise the contract between the Owner and Design-Builder.

15. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

16. Modifications to this Bond are as follows: This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.
DESIGN-BUILD PAYMENT BOND

DESIGN-BUILDER *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

_Harbor Bay Community Development District_

c/o Joseph Roethke, District Manager
9428 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT

   Effective Date of the Contract:
   Amount:
   Description *(name and location):* Design-Build of Master Seawall Project, Apollo Beach, Florida
   Section I (13,142 LF)

BOND

   Bond Number:
   Date *(not earlier than the Effective Date of the Contract):
   Amount:
   Modifications to this Bond Form: [ ] None [ ] See Paragraph 18

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative. *[Note: Provide supplemental execution by any additional parties, such as joint venturers.]*

DESIGN-BUILDER AS PRINCIPAL

   Design-Builder’s Name

   By: ________________________________

   Signature

   Print Name

   Title

   Attest: ________________________________

   Signature

SURETY

   Surety’s Name

   By: ________________________________

   Signature *(attach power of attorney)*

   Print Name

   Title

   Attest: ________________________________

   Signature
1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Design-Builder promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, then the Surety and the Design-Builder shall have no obligation under this Bond.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, and tendered defense of such claims, demands, liens, or suits to the Design-Builder and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety’s obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants that do not have a direct contract with the Design-Builder,

5.1.1 have furnished a written notice of non-payment to the Design-Builder, stating with substantial accuracy the amount claimed and the name of the party to which the materials were, or equipment was, furnished or supplied, or for which the labor was done or performed, within ninety (90) days after having last performed labor or services, or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the Design-Builder have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Design-Builder, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.
7.3 The Surety’s failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Design-Builder may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Design-Builder under the Design-Build Contract shall be used for the performance of the Design-Build Contract and to satisfy claims, if any, under any design-build performance bond. By the Design-Builder furnishing and the Owner accepting this Bond, they agree that all funds earned by the Design-Builder in the performance of the Design-Build Contract are dedicated to satisfy obligations of the Design-Builder and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction where the construction portion of the Project is located, or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design-Build Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Design-Builder shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated here. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the individual or entity for which the labor or services were done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, services, materials, or equipment were furnished for use in the performance of the Design-Build Contract;
4. A brief description of the labor, services, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or services, or last furnished materials or equipment, for use in the performance of the Design-Build Contract;
6. The total amount earned by the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Design-Build or with a subcontractor of the Design-Build to furnish labor, services, materials, or equipment for use in the performance of the Design-Build Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, services, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Build and the Design-Build’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 Design-Build Contract: The agreement between the Owner and Design-Build identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Design-Build as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

16.5 Contract Documents: All the documents that comprise the agreement between the Owner and Design-Build.

17. Any singular reference to Design-Build, Surety, Owner, or other party shall be considered plural where applicable.

18. Modifications to this Bond are as follows: This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.
These General Conditions have been prepared for use with one of the three Agreements between Owner and Design-Builder (EJCDC® D-512, D-520, and D-525, 2016 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design-Build Documents (EJCDC® D-001, 2016 Edition) are also carefully interrelated with the wording of these General Conditions.
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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
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www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.

2. Agreement: The written instrument, executed by Owner and Design-BUILDER, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.

3. Application for Payment: The form which is to be used by Design-BUILDER during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Authorized Representative: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.

5. Change Order: A document which is signed by Design-BUILDER and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

6. Claim: A demand or assertion by Owner or Design-BUILDER seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.

7. Conceptual Documents: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.

8. Constituent of Concern: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, chemical, element, compound, solution, mixture, material or other material matter of any nature whatsoever that is or becomes designated, classified, listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating,
relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, chemical, element, compound, solution, mixture, or material, or other matter.

9. **Construction**: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.

10. **Construction Drawings**: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.

11. **Construction Specifications**: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.

12. **Construction Subcontract**: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.

13. **Construction Subcontractor**: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.

14. **Contract**: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.

15. **Contract Documents**: Those items so designated in the Agreement, and which together comprise the Contract.

16. **Contract Price**: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.

17. **Contract Times**: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

18. **Design-Builder**: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.

19. **Design Professional Services**: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the
preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. **Design Agreement:** A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.

21. **Design Submittal:** A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).

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

23. **Engineer:** The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.

24. **Hazardous Environmental Condition:** The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

25. **Laws and Regulations; Laws or Regulations:** Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Such definitions shall further include, where the context reasonably allows, compliance with any applicable permits and/or other similar approvals issued by governmental bodies, agencies, and authorities.

26. **Liens:** Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. **Milestone:** A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.

28. **Notice of Award:** The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.

29. **Notice to Proceed:** A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. **Owner:** The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.

31. **Owner’s Consultant:** An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.

32. **Owner’s Site Representative:** A representative of Owner at the Site, as indicated in Paragraph 10.05.

33. **Project:** The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.

34. **Project Design Professionals:** The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.

35. **Proposal:** The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.

36. **Proposal Amendment:** A Contract Document that is prepared after submittal of Design-Builder’s Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.

37. **Proposer:** An entity that submits a Statement of Qualifications or Proposal to Owner.

38. **Record Documents:** The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.

39. **Record Drawings and Record Specifications:** Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.

40. **Request for Proposals:** The document prepared by or for Owner specifying and describing Owner’s objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.

41. **Request for Qualifications:** The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. **Schedule of Values:** A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder’s Applications for Payment.

43. **Site:** Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.

44. **Statement of Qualifications:** The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.

45. **Submittal:** A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.

46. **Substantial Completion:** The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.

47. **Supplementary Conditions:** The part of the Contract Documents which amends or supplements these General Conditions.

48. **Supplier:** A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.

49. **Technical Data:** Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. **Underground Facilities:** All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. **Underground Facilities Data:** Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.

52. **Unit Price Work:** Work to be paid for on the basis of unit prices.

53. **Work:** The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

54. **Work Change Directive:** A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

1.02 **Terminology**

A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.

B. **Intent of Certain Terms or Adjectives:**

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. Bonds: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.

B. Evidence of Insurance: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

2.02 Copies of Documents

A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

2.03 Conceptual Documents

A. Design-Builder’s Review of Conceptual Documents:

1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.

2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).

3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.

4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder...
to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.

B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.

C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

2.04 Before Starting the Work

A. Preliminary Schedules: Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner’s timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

Such schedules shall be consistent with the documents provided to the Owner as part of the Design-Builder’s proposal.

2.05 Authorized Representatives

A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 Initial Conference

A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.
2.07 Review of Schedules

A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner’s acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder’s progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.

2. Design-Builder’s schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.

3. Design-Builder’s Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

All such schedules shall be consistent with the documents provided to the Owner as part of the Design-Builder’s proposal.

2.08 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.

C. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.

D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Contract Documents

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).

C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a
functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.

D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations:

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, or shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.

B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.

C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 Ownership and Reuse of Documents

A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:

1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.

3. Owner may use its copy of the Record Drawings and Record Specifications for Owner’s purposes in operating and maintaining the constructed facilities.

4. Upon Owner’s termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder’s use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner’s behalf will be at Owner’s sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting from any such use or reuse.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times

A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 Starting the Work

A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

4.03 Progress Schedule

A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.

B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:

1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.

2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.

C. Continuing the Work: Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or
postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

4.04 Delays in Design-Builder’s Progress

A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.

C. If Design-Builder’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder’s entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions such as tropical storms, hurricanes, or tornados;
3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
4. Acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

H. Where Design-Builder is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of both Owner and Design-Builder, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Design-Builder’s sole and exclusive remedy for such delay. In no event shall Owner be liable to Design-Builder, any sub-contractor, any supplier, or any other person or organization, or to any surety or employee or any agent of them, for damages, including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or resulting from:

1. Delays caused by or within the control of Design-Builder (or Subcontractor or Supplier);
2. Delays beyond the control of both Owner and Design-Builder, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work;
3. Nor shall Owner be liable to Design-Builder for any claims, costs, losses or damages sustained by Design-Builder on or in connection with any other project or anticipated project.

Nothing in this paragraph bars a change in Contract Price to compensate Design-Builder due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible. Except for an adjustment to the Contract Times and Contract Price, the Design-Builder shall not be entitled to and hereby waives any and all damages that it may suffer by reason of delay or for any Act of God, and waives all damages that it may suffer by reason of such delay including but not limited to lost profits, overhead, and other consequential damages. No payment of any claim for damages shall be made to the Design-Builder as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay is avoidable or unavoidable.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws or Regulations.

C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work, provided that such damage results from Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work.

2. Should any claim be made by any such owner or occupant because of Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.

3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner, Owner’s consultants, and anyone directly or indirectly employed by any of them from and against all liabilities, suits, liens, demands, claims, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Construction, or because of other negligent, reckless, or intentionally wrongful actions or conduct of the Design-Builder or those for which Design-Builder is responsible, including without limitation, Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

B. Removal of Debris: During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. Cleaning: Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

E. Reports and Drawings: The Supplementary Conditions identify:

1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and

3. Technical Data contained in such reports, design criteria, drawings, and specifications.

F. **No Reliance by Design-Builder on Technical Data Authorized:** Design-Builder may not rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness, or accuracy of that information. Design-Builder may not rely upon or make any claim against Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. The completeness of such reports and drawings for Design-Builder’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any Design-Builder interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

Design-Builder expressly acknowledges that soil conditions may vary widely across the Site, and Design-Builder takes responsibility for any and all issues arising from unsuitable soils, including but not limited to, varying soil conditions, etc. that may make it more difficult to install the repairs or otherwise conduct the Work. Furthermore, no additional costs will be charged by Design-Builder for matters associated with unsuitable and/or varying soils.

Design-Builder warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecuting of the Work. Design-Builder further warrants that the Contract Price is just and reasonable compensation for all the Work, including all foreseen and unforeseen risks, hazards, and difficulties in connection therewith, including any concealed conditions encountered in the performance of the Work below the surface of the ground at variance with conditions indicated by the Contract Documents or other Design-Build Documents and Design-Build Requirements furnished to Design-Builder for its information.

5.03 **Reference Points**

A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
5.04 Differing Site Conditions

A. Design-Builders shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builders shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builders’ cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.

C. No request by Design-Builders for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builders has given the written notice required.

D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05 Underground Facilities

A. Procedure for Identifying Underground Facilities: Promptly after the Effective Date of the Contract, Design-Builders shall review the Underground Facilities Data furnished by Owner and use ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” as a basis for establishing a procedure (“Underground Facilities Procedure”) for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site (if any). Owner does not warrant or guarantee the accuracy or completeness of any such information or data provided by others. Design-Builders shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.

1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builders proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.

2. To manage the potential impact of design changes on Underground Facilities, Design-Builders shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

B. Design-Builders’ Responsibilities: Unless otherwise expressly provided in the Contract, Design-Builders shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;

2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;

3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;

4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and

5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.

C. **Results of Design-Builder’s Execution of Underground Facilities Procedure:** If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.

D. **Underground Facility Found During Construction:** If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.

1. **Owner’s Review:** Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.
2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.

E. **Inadequate Establishment or Execution of Underground Facilities Procedure:** If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 **Hazardous Environmental Conditions at Site**

A. **No Reliance by Design-Builder on Technical Data Authorized:** Design-Builder may not rely on the accuracy of the Technical Data with respect to environmental conditions at the Site. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness or accuracy of that information.

B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern. **Neither Design-Builder nor any of its successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, shall store, place, generate, manufacture, refine, handle, or locate on the Site a Constituent of Concern.**

D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate...
the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 9.

G. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence. Moreover, none of the indemnifications in this Paragraph 5.06.G shall extend to, or be deemed extended to, entities or individuals not specifically identified herein or to third parties.

H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to the Design-Builder’s negligent, reckless, or intentionally wrongful failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder’s obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment and performance bonds shall each contain the following language: “This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.”

C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.

F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in
the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. All insurance required by the Contract to be purchased and maintained by Design-BUILDER shall be primary and without contribution by insurance maintained by Owner.

D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.

E. Design-BUILDER shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation, employer’s liability, and professional liability (as applicable) insurance, and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor’s pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-BUILDER, unless otherwise indicated in the Supplementary Conditions. Such Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) shall also include, as additional insureds, the Additional Insureds identified in the Supplementary Conditions.

F. Design-BUILDER shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-BUILDER has obtained and is maintaining the policies, coverages, and endorsements required by the Contract, including the required additional insured endorsements, prior to commencing the Work and entering any lands upon which the Work shall be performed. Upon request by Owner or any other insured, Design-BUILDER shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-BUILDER’s Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-BUILDER may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

G. Owner shall deliver to Design-BUILDER, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-BUILDER or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

H. Failure of Owner or Design-BUILDER to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or
Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner’s termination rights under Article 15.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party’s interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder’s interests.

M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder’s liability under the indemnities granted to Owner and other individuals and entities in the Contract.

N. The fact that an entity or individual is named as an additional insured on a particular insurance policy required under this Contract is not intended to constitute a waiver of any rights of any kind, including subrogation rights, claims for indemnification, or any other rights or claims.

6.03 Design-Builder’s Insurance

A. Workers’ Compensation and Employer’s Liability: Design-Builder shall purchase and maintain workers’ compensation and employer’s liability insurance for:

1. Claims under workers’ compensation, disability benefits, and other similar employee benefit acts.
2. United States Longshoreman and Harbor Workers’ Compensation Act and Jones Act coverage (if applicable).
3. Claims for damages because of bodily injury, including without limitation, bodily injury by accident (each accident), bodily injury by disease (policy limit), or bodily injury by disease (each employee); occupational sickness or disease; or death of Design-Builder’s employees (by stop-gap endorsement in monopolist worker’s compensation states).
4. Foreign voluntary worker compensation (if applicable).

B. Commercial General Liability—Claims Covered: Design-Builder shall purchase and maintain a minimum of $2 million commercial (marine) general liability insurance, covering all operations by or on behalf of Design-Builder, including without limitation, premises-operations coverage (including explosion, collapse, and underground coverage) and $1 million products-completed operations coverage, on an occurrence basis, against:

1. Claims for damages because of property damage, bodily injury, sickness or disease, or death of any person other than Design-Builder’s employees.
2. Claims for damages insured by reasonably available personal injury liability coverage.
3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. Commercial General Liability—Form and Content: Design-Builder’s commercial liability policy shall have limits of not less than $2 million per occurrence, $2 million general aggregate limits and $2 million products-completed operations aggregate limits, or limits carried, whichever are greater, which limits may be satisfied by a combination of primary general liability and excess liability policies. Said insurance shall be issued by a solvent, reputable insurance company having an A.M. Best’s rating of A-IV or better and authorized to do business in the State of Florida, and written on a 1996 (or later) ISO commercial general liability form (occurrence form). The Additional Insureds identified in the Supplementary Conditions shall also be listed as insureds. The Additional Insureds, as provided for in the Supplementary Conditions, shall be listed on ISO Form 20 10 11 85 or, in lieu thereof, on both ISO Form 20 10 10 01 and 20 37 10 01, or equivalents, and include the policy should include the following coverages and endorsements:

1. Products and completed operations coverage:
   a. Such insurance shall be maintained for three years after final payment.
   b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder’s contractual indemnity obligations in Paragraph 7.19.

3. Broad form property damage coverage.

4. Severability of interests and no insured-versus-insured or cross-liability exclusions.

5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.

7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 11 85; or 20 10 10 01 and CG 20 37 10 01 (together) in lieu thereof, or equivalents. If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.

D. Commercial General Liability—Excluded Content: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:

1. Any modification of the standard definition of “insured contract.”
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs.

4. Any exclusion of coverage relating to earth movement.

5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability.

6. Any limitation or exclusion based on the nature of Design-Builder’s work.

7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.

E. **Automobile liability:** Design-Builder shall purchase and maintain automobile liability insurance, including without limitation, liability arising out of all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation any machinery or apparatus attached thereto, with limits not less than those limits set forth in the Supplementary Conditions. The automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent, and shall include, without limitation, contractual liability coverage, against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

F. **Umbrella or excess liability:** Design-Builder shall purchase and maintain, written on an occurrence policy form, a minimum of $5 million umbrella and/or excess liability insurance, with limits of liability not less than those limits set forth in the Supplementary Conditions on a per occurrence/annual aggregate in excess of the limits of the, written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a “follow the form” basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

G. **Contractor’s pollution liability insurance:** Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder’s operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

H. **Additional insureds:** The Design-Builder’s commercial (marine) general liability, and automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, staff, supervisors, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. **Professional liability insurance:**

1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of
performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.

2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.

3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.

4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.1, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. General provisions: The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.

2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.

3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days’ prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.

4. Remain in effect at least until final payment and Design-Builder’s departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
6.04 Owner’s Liability Insurance

A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner’s option and expense, may purchase and maintain Owner’s own liability insurance to protect Owner against claims which may arise with respect to the Project.

B. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner’s liability policies for any of Design-Builder’s obligations to the Owner or third parties.

6.05 Property Insurance

A. Builder’s Risk: Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder’s risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. Include the Owner, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC, and NASH Vingt-huit, LLC, and Design-Builder as named insureds, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, and all Construction Subcontractors, employees, and any individuals or entities required by the Supplementary Conditions to be insured under such builder’s risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as “insureds.”

2. Be written on a builder’s risk “all risk” policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.

3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the...
Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.

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

5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).

6. Extend to cover damage or loss to insured property while in transit.

7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.

8. Provide for the waiver of claims and waiver of the insurer’s subrogation rights, as set forth in Paragraph 6.06.

9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.

10. Not include a co-insurance clause.

11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.

12. Include performance/hot testing and start-up.

13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.

B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days’ prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. Deductibles: The purchaser of any required builder’s risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

D. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder’s risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder’s risk insurer. The builder’s risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder’s risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.
E. **Additional Insurance:** If Design-Builder elects to obtain other special insurance to be included in or supplement the builder’s risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder’s expense.

F. **Insurance of Other Property:** If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

G. **Loss of Use and Delay in Start-up:** Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

6.06 **Waiver of Rights**

A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder’s risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner’s property or the Construction caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.

C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is
allowed to waive the insurer’s rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder’s risk insurance and any other property insurance applicable to the Project.

6.07 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder’s risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder’s risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES

7.01 Design Professional Services

A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.

B. Standard of Care: The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 Construction

A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 Supervision and Superintendence of Construction

A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 Labor; Working Hours

A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction during regular working hours, Monday through Saturday. Design-Builder will not perform the Construction on a Sunday or on any legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder’s sole discretion. Design-Builder may perform the Construction outside regular working hours or on Sundays or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

7.05 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 “Or Equals” and Substitutions

A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the
Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
3. Has a proven record of performance and availability of responsive service; and
4. Is not objectionable.

B. *Effect of Owner’s Determination:* Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner’s sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.

D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed “or equal” or substitute shall review and approve the proposal.

E. *Construction Drawings and Construction Specifications:* “Or equal” or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

### 7.07 Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others

A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.

B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.

E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder’s own acts and omissions.

H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.

J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.

K. Nothing in the Contract Documents:

1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor

2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.
7.08  Patent Fees and Royalties

A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents, provided however that such infringement is caused by the negligent, reckless, or intentionally wrongful actions of the Design-Builder or those for which Design-Builder is responsible, including without limitation, the Design-Builder's successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09  Permits and Utility Charges

A. Design-Builder shall be responsible The Contract Documents allocate responsibility for obtaining and paying for all required for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work that have not already been obtained by Owner. Owner shall be responsible for obtaining extensions to (but not modifications of) permits already obtained by Owner prior to the Effective Date of this Contract. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals. Owner will cooperate with Design-Builder’s permitting efforts.
B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner Design-Builder shall also pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto. Design-Builder shall provide all signage required by applicable permits and governmental authorities, including, but not limited to, navigational signs.

7.10 Taxes

A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder’s compliance with any Laws or Regulations.

B. If Design-Builder or those for which Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, engineer, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, negligently, recklessly, or intentionally and wrongfully performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs) arising out of or relating to such Work.

C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

7.12 Record Documents

A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.

B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.

C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.
7.13 Safety and Protection

A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary reasonable and customary precautions for the safety of, and shall provide the necessary reasonable and customary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.

B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. Among other requirements, Design-Builder or subcontractors performing trench excavation work on the Project shall comply with all applicable trench safety standards.

C. Design-Builder shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.

D. Design-Builder shall inform Owner of the specific requirements of Design-Builder’s safety program with which Owner and its employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder’s negligence, recklessness, or intentional misconduct in performance of the Work, or that of any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them for which Design-Builder is responsible to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder at its expense.

F. Design-Builder’s duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.

G. Design-Builder’s duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns
to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 Safety Representative
A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 Hazard Communication Programs
A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 Emergencies
A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 Post-Construction Phase
A. Design-Builder shall:
   1. Provide assistance in connection with the start-up and testing of any equipment or system.
   2. Assist Owner in training staff to operate and maintain the Work.

7.18 Design-Builder’s General Warranty and Guarantee
A. For a period of one (1) year following the Substantial Completion of the Construction by Design-Builder, Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.

B. Design-Builder’s warranty and guarantee hereunder excludes defects or damage caused by:
   1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
   2. Normal wear and tear under normal usage.

C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder’s obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
   1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

D. If the Contract requires Design-Builder to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Design-Builder’s performance obligations to Owner for the Work described in the assigned contract.

E. Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier or subcontractor to consent to same, then Design-Builder shall secure the material supplier’s or subcontractor’s consent to assign said warranties to Owner. The District may, but is not obligated to, help the Design-Builder secure such consent from any subcontractors and/or material suppliers.

F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.

7.19 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner’s Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Design-Builder under the Contract or otherwise, Design-Builder shall indemnify and hold harmless the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, “Indemnities”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the...
Design-Builder, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

B. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professional, Subcontractors and Suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnitees”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used in this Contract shall mean any and all claims of property owners requesting the Owner to undertake repairs to their property on account of damages believed by such property owner to be a result of compromised seawall located along the Mira Bay canal system within the Site including, but not limited to, requests made by any and all property owners to Owner pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Design-Builder, Project Design Professional, Subcontractors and Suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnitees, as the case may be.

D. In any and all claims or actions against Owner, Owner’s Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, any Construction Subcontractor, Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

E. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner’s Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications, or any Upland Claims.
ARTICLE 8 – SUBMITTALS

8.01 Design-Builder’s Preparation of Submittals

A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.

B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder’s transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:

1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.

2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.

C. Before Design-Builder’s transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:

1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;

2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;

3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder’s responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
E. Each Submittal shall bear a stamp or specific written certification by Design-Build that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Build approves the Submittal.

F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Build shall submit Design Submittals for Owner’s review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

8.02 Owner’s Review of Submittals

A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.

B. For those Submittals requiring Owner’s review and approval, Owner’s response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.

C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner’s review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.

D. Owner’s approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.

E. Owner’s review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Build from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Build has in a separate written communication at the time of submission called Owner’s attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner’s review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.

F. Construction tasks and expenditures by Design-Build prior to Owner’s review and approval or acceptance of any Submittal will be at the sole risk of Design-Build.

G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.

H. The parties acknowledge that Design-Build’s design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Build may
propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner’s interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

ARTICLE 9 – OTHER CONSTRUCTION

9.01 Other Work

A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner’s employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner’s employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.

C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner’s employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others’ work with the written consent of Owner and the others whose work will be affected.

D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

9.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner’s employees, or to
arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

9.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner’s employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder’s rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner’s contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

C. When Owner is performing other work at or adjacent to the Site with Owner’s employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder’s failure to take reasonable and customary measures with respect to Owner’s other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.

D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through
Design-Builder’s failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder’s actions, inactions, or negligence, recklessness, or intentional misconduct in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Indemnitees (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 10 – OWNER’S RESPONSIBILITIES

10.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:

1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days’ notice to the Owner;

2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;

3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.

4. Furnish to Design-Builder, as required for performance of the Work, all of the following in Owner’s possession, all of which Design-Builder may use but may not and rely upon in performing services under this Agreement:

   a. Environmental assessment and impact statements;

   b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;

   c. Property descriptions;

   d. Zoning, deed, and other land use restrictions;

   e. Utility and topographic mapping and surveys;

   f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;

h. Engineering surveys to establish reference points which in Owner’s judgment are necessary to enable Design-Builder to proceed with the Work;

i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and

j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.

5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.

B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.

C. Recognizing and acknowledging that Design-Builder’s services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:

a. Accounting, bond and financial advisory (including, if applicable, “municipal advisor” services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.

c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.

D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 Insurance

A. Owner’s responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

10.03 Limitations on Owner’s Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.
10.04 **Undisclosed Hazardous Environmental Condition**

A. Owner’s responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 **Owner’s Site Representative**

A. Owner may furnish an Owner’s Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner’s Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 **Owner’s Consultants and Managers**

A. Owner’s Consultant, if any, is identified in the Agreement.

B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.

C. Neither Owner’s Consultant, Owner’s Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner’s Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder’s means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.

10.07 **Safety Programs**

A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Design-Builder’s safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.

B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 **Permits and Approvals Staging Lot**

A. Owner will supply Design-Builder an area for staging and lay-down of materials and equipment. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

11.01 **Amending and Supplementing Contract Documents**

A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.

1. **Change Orders:** If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish
amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

2. **Work Change Directives:** The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive’s effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive’s addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.

B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may shall be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder’s safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 *Changes Involving the Design*

A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder’s provision of Professional Design Services in response to the change.
11.05 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.

B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-BUILDER’s fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.

C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-BUILDER’s Fee for overhead and profit (determined as provided in Paragraph 11.05.D).

D. Design-BUILDER’s Fee: The Design-BUILDER’s fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-BUILDER’s fee shall be 15 percent;

   b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-BUILDER’s fee shall be 5 percent;

   c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-BUILDER’s fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-BUILDER itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-BUILDER may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;

f. The amount of credit to be allowed by Design-BUILDER to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-BUILDER’s fee by an amount equal to 5 percent of such net decrease; and

g. When both additions and credits are involved in any one change, the adjustment in Design-BUILDER’s fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

11.06 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.

B. Design-BUILDER’s entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-BUILDER’s ability to complete the Work within the Contract Times.

11.07 Execution of Change Orders

A. Owner and Design-BUILDER shall execute appropriate Change Orders covering:

1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Design-BUILDER has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner’s correction of defective Work under Paragraph 13.05 or Owner’s acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.

B. If Owner or Design-BUILDER refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.
11.08 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-BUILDER’S responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

12.01 Cost of the Work

A. Costs of the Work Adjustment: When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-BUILDER in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-BUILDER will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.

B. Costs Included: The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:

1. Payroll costs for employees in the direct employ of Design-BUILDER in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-BUILDER in advance of such performance.
   a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
   b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-BUILDER. For purposes of this Paragraph 12.01.B.1.b, Design-BUILDER shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith. All cash discounts shall accrue to Design-BUILDER unless Owner deposits funds with Design-BUILDER with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and
refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.

3. Cost of permits obtained by Design-Builder.

4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor’s Cost of the Work and fee shall be determined in the same manner as Design-Builder’s Cost of the Work and fee.

5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.

6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.

7. Supplemental costs including the following items:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder’s employees incurred in discharge of duties connected with the Work.
   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
   c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
   d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
   e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
   f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be
included in the Cost of the Work for the purpose of determining Design-Builder’s fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.

h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.

C. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design-Builder’s officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder’s principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder’s fee.

2. Expenses of Design-Builder’s principal and branch offices other than Design-Builder’s office at the Site.

3. Any part of Design-Builder’s capital expenses, including interest on Design-Builder’s capital employed for the subject Work and charges against Design-Builder for delinquent payments.

4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.

D. Design-Builder’s Fee: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder’s fee shall be determined as set forth in Paragraph 11.05.D.

E. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

12.02 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The
estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.

B. If Design-Builder’s compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.

C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder’s overhead and profit for each separately identified item.

D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
   1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
   2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
   3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

**ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

13.01 Access to Construction
   A. Owner, Owner’s Consultant, Owner’s Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder’s Site safety procedures and programs so that they may comply therewith as applicable.

13.02 Tests, Inspections, and Approvals
   A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
      1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
      2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
      3. To attain Owner’s acceptance of materials or equipment to be incorporated in the Construction;
      4. By manufacturers of equipment furnished under the Contract Documents;
      5. To meet the requirements of the Construction Drawings and Construction Specifications;
      6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
      7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder’s purchase thereof for incorporation in the Construction.
B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.

C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.

D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.

E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.

F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.

H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.

I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder’s expense unless Design-Builder has given Owner timely notice of Design-Builder’s intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

13.03 Uncovering Construction

A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner’s request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner’s observation and re-covering it shall be at Design-Builder’s expense, regardless of whether it is defective.

2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

13.04 Defective Construction

A. It is Design-BUILDER’s obligation to assure that the Construction is not defective.

B. Owner shall give Design-BUILDER prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.

C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-BUILDER shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.

D. When correcting defective Construction, Design-BUILDER shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Construction.

13.05 Owner May Correct Defective Construction

A. If Design-BUILDER fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-BUILDER fails to perform the Construction in accordance with the Contract Documents, or if Design-BUILDER fails to comply with any other provision of the Contract Documents, Owner may, after 7 days’ written notice to Design-BUILDER, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-BUILDER from all or part of the Site, take possession of all or part of the Construction, and suspend Design-BUILDER’s services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-BUILDER but which are stored elsewhere. Design-BUILDER shall allow Owner, Owner’s Consultant, Owner’s Site Representative, and Owner’s other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 Costs

A. Design-BUILDER shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.

B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-BUILDER, by set-off against payment or otherwise.
C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 Owner’s Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 Owner May Stop Construction

A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

14.01 Progress Payments

A. Basis for Progress Payments: The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

B. Application for Progress Payment: On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner’s interest therein, all of which will be satisfactory to Owner. Except with respect to the purchase of sheet pile in the event Owner does not directly purchase said materials (in which case Design-Builder agrees to purchase and store only that quantity of material agreed upon by Design-Builder and Owner), progress payments are to be made only on
installed material; no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.

C. Payment of Obligations:

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder’s legitimate obligations associated with prior Applications for Payment.

2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. Review of Applications:

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes. Design-Builder shall make payments due to subcontractors and suppliers within 10 days in accordance with the prompt payment provisions contained in Section 218.735(6) and 218.74, Florida Statutes. Invoices from Design-Builder should be directed to the District Manager, Rizzetta & Company, Inc., c/o Joe Roethke, 9428 Camden Field Parkway, Riverview, Florida 33578, with e-mail copies to JRoethke@rizzetta.com, jbudis@rizzetta.com, and Greg.Woodcock@cardno.com, and Christopher.Gamache@cardno.com.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. Reduction in or Refusal to Make Payment:

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the
results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:

a. Claims have been made against Owner on account of Design-Builder’s conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder’s conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Design-Builder has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Construction is defective, requiring correction or replacement;

g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;

h. The Contract Price has been reduced by Change Orders;

i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;

j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder’s failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;

k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or

l. There are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.
14.02 Design-Builder’s Warranty of Title

A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.03 Substantial Completion

A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.

B. If Owner considers the Work substantially complete:

1. Owner and Design-Builder will confer regarding Owner’s use or occupancy of the Work following Substantial Completion, review the builder’s risk insurance policy with respect to the end of the builder’s risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner’s use or occupancy of the Work. Additionally, five percent (5%) of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent (4%) shall be returned to Design-Builder. Owner shall return the remaining one percent (1%) upon Final Completion and acceptance of the Work by Owner.

2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.

C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

E. To the extent this paragraph 14.03 is inconsistent in any way with Florida’s Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes, such Act shall control, and this Contract shall be construed to allow for the maximum amount of time allowable under the Act in order to review any punch lists and make payment.

14.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without
significant interference with Design-Builder’s performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.

2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

14.05 Final Inspection

A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 Final Payment

A. Application for Payment:

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by:
   a. All documentation called for in the Contract Documents;
   b. Consent of the surety, if any, to final payment;
   c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
   d. A list of all disputes that Design-Builder believes are unsettled; and
   e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner’s property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance: If Owner is satisfied that the Work has been completed and Design-Builder’s other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.

C. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment.

D. Payment Becomes Due: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner’s notice of acceptability.

14.07 Waiver of Claims

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder’s failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder’s continuing obligations under the Contract.

B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

14.08 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner’s written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or
damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design-Builder’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).

2. Design-Builder’s disregard of Laws or Regulations of any public body having jurisdiction.


B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days’ written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such
excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding Paragraph 15.02.B, Design-Builder’s services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design-Builder’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

15.03 Owner May Terminate for Convenience

A. Upon 7 days’ written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:

1.—Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2.—Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3.—Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and

4.—Reasonable expenses directly attributable to termination.

In such case, Owner will pay Design-Builder all costs reasonably associated with Design-Builder’s mobilization on Site; the costs of materials purchased for the Construction and stored on Site by Design-Builder prior to such notice; all amounts due and not previously paid to Design-Builder for Work completed in accordance with the Contract prior to such notice; the cost of reasonably protecting Work in place, and for Work thereafter completed as specified in such notice; and the release and payment to Design-Builder of all retainage held by Owner related to the portion of the Work completed. No payments will be made for any potential costs of settling or paying claims arising out of termination of the Work under subcontracts, equipment leases, orders, or other related arrangements.

B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss, or any other consequential damages of any kind, arising out of or resulting from such termination.

C. Upon any such termination, Design-Builder shall:
1. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;

2. Place no further orders for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated.

3. Promptly make every reasonable effort to obtain cancellation upon terms reasonably satisfactory to Owner of all purchase orders and subcontracts to the extent they relate to the performance of Work terminated, or assign to Owner those orders and subcontracts and revoke agreements specified in such notice;

4. Reasonably assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of property acquired by Owner under the Contract, as may be necessary;

5. Complete performance of any Work which is not terminated; and

6. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors and the amounts due to each.

15.04 Design-Builder May Stop Work or Terminate

A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days’ written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days’ written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder’s stopping Work as permitted by this paragraph.

ARTICLE 16 – DISPUTES

16.01 Methods and Procedures

A. Notice of Claim: If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to
give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

B. Response: Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.

C. Direct Negotiations: Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.

D. Mediation: If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.

1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.

E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

F. In the event Owner or Design-Builder is required to enforce this Agreement by court proceedings or otherwise, then venue for any such legal action shall be in Hillsborough County, Florida, and the substantially prevailing party shall be entitled to recover from the other party all fees and costs incurred, including without limitation reasonable attorney’s fees and costs, paralegal fees, and expert witness fees.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:

1. In person, by a commercial courier service or otherwise; or
2. By registered or certified mail, postage prepaid; or
3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.
17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. Any special warranty or guarantee; or
3. Other provisions of the Contract.

B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 Limitation of Damages

A. With respect to this Contract and any and all Claims and other matters at issue, neither Owner nor its supervisors or staff shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 No Waiver

A. A party’s non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 Survival of Obligations

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 Controlling Law

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
17.09 **Sovereign Immunity**

A. Design-Builder and Owner agree that nothing in this Contract shall be deemed as a waiver of the Owner’s sovereign immunity or the Owner’s limits of liability as set forth in Section 768.28, Florida Statutes or other statute or law, and nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.
SUPPLEMENTARY CONDITIONS RELATING TO
SUBSURFACE CONDITIONS AND INSURANCE REQUIREMENTS

The following supplements establish insurance limits and other requirements relating to Article 6 of the *Standard General Conditions of the Contract between Owner and Design-Builder*, EJCDC Document No. D-700, 2016 Edition (the “General Conditions”), as well as identify certain reports relating to subsurface and physical conditions at the site, which reports relate to Article 5 of the General Conditions. Other changes have been marked directly in underlined and strike-through on the Standard Form of Agreement and the General Conditions. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

**SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS**

Pursuant to Paragraph 5.02.E. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner and were used by Emergency Work Project Engineer in the preparation of the Reconstruction Solution:

1. Report dated May 2015 prepared by Langan Engineering and Environmental Services, Inc. The Technical Data contained in such report are Langan’s Confirmation Borings Location Plan and Subsurface Profiles.

2. Report dated August 13, 2012 prepared by HSA Engineers & Scientists and entitled “Results of Hand Cone Soundings Harbor Bay CDD (Mira Bay) Seawall Study.” The Technical Data contained in such report are the results of hand cone soundings.


Pursuant to Paragraph 5.02.E. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner:

1. None
ARTICLE 6 – BONDS AND INSURANCE

6.03 Design-Builder’s Insurance

Add the following new paragraphs after Paragraph 6.03.K. of the General Conditions:

K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:

1. Workers’ Compensation under Paragraph 6.03.A. of the General Conditions:
   a. State Worker’s Compensation – Greater of statutorily required amount or $1,000,000 per occurrence / $1,000,000 aggregate / $1,000,000 per disease
   b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $1,000,000
   c. Employer’s Liability – $1,000,000

2. Commercial General Liability Insurance under Paragraphs 6.03.B., and Paragraph 6.03.C., and 6.03.D. of the General Conditions:
   a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence – $2,000,000
   b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate – $2,000,000
   c. Products-Completed Operations – $2,000,000
   d. Personal and Advertising Injury – $1,000,000
   e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

3. Automobile Liability under paragraph 6.03.E. of the General Conditions:
   a. Bodily Injury:
      Each Person $1,000,000
      Each Accident $2,000,000
   Property Damage:
      Each Occurrence $1,000,000

4. Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $1,000,000

5. Protection and Indemnity Insurance $1,000,000

6. The Contractual Liability coverage required by paragraph 6.03.C. of the General Conditions shall provide coverage for not less than the following amounts:
   a. General Aggregate $2,000,000
   b. Bodily Injury and Property Damage
Combined Each Occurrence $2,000,000

7. Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
   a. General Aggregate $5,000,000
   b. Each Occurrence $5,000,000

8. Installation Floater to protect against fire, theft, or other loss of Project materials $1,750,000.

L. All insurance policies secured by Design-Builders pursuant to the General Conditions shall be written on an “occurrence” basis to the extent permitted by law. The Design-Builders commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: Owner, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (the “Additional Insureds”). By virtue of such Additional Insureds being named as additional insureds to the aforementioned insurance policies or as indemnitees herein, such Additional Insureds are not responsible for any of the terms and/or provisions of the Contract and Design-Builders shall look only to the Owner regarding all obligations and liabilities arising from the Contract. A waiver of subrogation endorsements shall also be issued in favor of the Additional Insureds with respect to the Worker’s Compensation, Commercial General Liability, and Automobile Liability policies.

M. Design-Builders shall also require its Construction Subcontractors and Engineer to (1) obtain and maintain the insurance coverages identified in 6.02.E of the General Conditions for the coverage amounts identified above, and (2) include and list the Additional Insureds.

N. Such insurance as listed above is in addition to all other insurance required under the Contract.
SECTION I
DESIGN CRITERIA PACKAGE

CONSTRUCTION REQUIREMENTS (Cont'd)

The contractor shall provide a written notice of construction to the
sheriff's office in advance of on-site work for a minimum of two (2)
weeks before the start of work. Written notice shall be given on
Wednesday of the week prior to the start of work and shall be
subsequently renewed every week thereafter until the completion of
construction. No work shall be performed on weekends. Written
notice shall be posted in a conspicuous location on the property
where the work is to be performed. The contractor shall be
responsible for ensuring that all work is completed in a safe and
mannerly manner, leaving the property in a clean and safe
condition. The contractor shall be responsible for ensuring that all
work is completed in accordance with all applicable codes,
specifications, and regulations.

QUALITY CONTROL

The contractor shall be responsible for developing and maintaining a
quality assurance program, which shall include the following:

1. A quality assurance plan
2. A quality control manual
3. A quality control and testing program
4. A quality control and testing plan

The quality control plan shall be submitted to the engineer for review
and approval prior to starting construction.

The contractor shall be responsible for all materials, workmanship,
and testing. The contractor shall be required to provide proof of
compliance with all applicable codes, specifications, and regulations.

 Unless otherwise agreed in writing, the contractor shall be
responsible for all construction work performed in accordance with
the approved plans and specifications. Any deviation from the
approved plans and specifications shall require written approval
from the engineer.

SCHEDULE

The contractor shall be responsible for completing all construction
activities within the time periods specified in the schedule. Any
extension of time shall require written approval from the engineer.

SUBMISSIONS

The following shall be submitted a minimum of 14 days prior to the
start of construction:

1. The approved plans and specifications
2. The approved quality control plan
3. The approved testing and inspection plan
4. The approved safety plan

The following shall be submitted prior to final payment:

1. The final payment plan
2. The final inspection report
3. The final payment certificate

The engineer shall review the plans and specifications and
approve them prior to the start of construction. Any deviations
from the approved plans and specifications shall require written
approval from the engineer.

The contractor shall be responsible for ensuring that all work is
completed in accordance with the approved plans and
specifications. Any deviation from the approved plans and
specifications shall require written approval from the engineer.

The engineer shall conduct a final inspection to ensure that all
work is completed in accordance with the approved plans and
specifications.

The contractor shall provide all necessary permits and approvals
for the construction activities as required by local and state
agencies. The contractor shall be responsible for ensuring that all
permits and approvals are obtained in a timely manner.

The contractor shall be responsible for ensuring that all work is
completed in a safe and satisfactory manner, leaving the property
in a clean and safe condition.
PROJECT MANUAL

REQUEST FOR PROPOSALS FOR DESIGN-BUILD OF MASTER SEAWALL PROJECT SECTION II (13,550 LF)

HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

DISTRICT ENGINEER AND DESIGN CRITERIA PROFESSIONAL:

CHRISTOPHER GAMACHE, P.E.
CARDNO LIMITED
PHONE: (727) 431-1615
380 PARK PLACE BLVD, SUITE 300
CLEARWATER, FLORIDA 33759
CHRISTOPHER.GAMACHE@CARDNO.COM
WWW.CARDNO.COM

GREGORY WOODCOCK
CARDNO LIMITED
PHONE: (352) 754-1240
20215 CORTEZ BLVD
BROOKSVILLE, FLORIDA 34601
GREG.WOODCOCK@CARDNO.COM
WWW.CARDNO.COM

November ___, 2018
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION II (13,550 LF)

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V. Design Criteria Package
The Harbor Bay Community Development District ("District") hereby requests proposals from firms to provide labor, materials, equipment and construction services necessary for the District’s master stormwater and retaining wall stabilization project ("Project"), as more particularly described in the Project Manual, as herein defined, and in accordance with design criteria package ("Design Criteria Package") specifications prepared by Cardno Limited (the "Design Criteria Professional"). The District is a special-purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida. Portions of the District’s community retaining wall, which is integral to and a component of the District’s stormwater management system, and which covers approximately 7 miles in length, is in need of stabilization reconstruction due to certain prior construction defects. Toward that end, the District is seeking proposals from qualified firms.

The Project is divided into three sections – Sections I, II, and III. Each section is being advertised as a stand-alone request for proposal. Proposals may be submitted for one, two, or all three sections, although each proposal should be submitted individually for each section. This Request for Proposals ("RFP") is for Section II (13,550 LF) of the Project only (the "RFP Work"). Proposers have the option to provide a solution to reconstruct the existing wall that is consistent with the Design Criteria Package included within the Project Manual. Within Section II, the reconstruction will involve placing additional fill, and planting mangroves, as well as some drainage work, to enhance the berm along the retaining wall.

To be eligible to submit a proposal, and in addition to any other requirements set forth in the Project Manual, an interested firm must hold all required local, state and federal licenses in good standing and be authorized to do business in Hillsborough County and the State of Florida. TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK.

The instructions to proposers, contract, proposal form, and other materials ("Project Manual") will be available for public inspection and may be obtained beginning November 29, 2018 at 10 a.m. and until January 31, 2019 at 12:00p.m. Please contact the District Manager (using the e-mail addresses below) for the cost of the package, and to obtain pick-up information. Proposers must provide contact information at the time of pick-up of the Project Manual, and may purchase as many Project Manuals as they would like. No partial Project Manual or plans will be available. The District reserves the right in its sole discretion to make changes to the Project Manual up until the time of the bid opening, and to provide notice of such changes only to those proposers who have purchased a Project Manual.

There will be a pre-proposal conference at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and
announced), on December 14, 2018 at 10:00 a.m. Attendance at the pre-proposal conference is not mandatory, but is strongly encouraged, and attendees must purchase a Project Manual to attend.

No later than February 1, 2019 at 12:00 p.m., each firm desiring to submit a proposal for the RFP Work must submit one (1) original of the firm’s proposal to the District Manager’s Office, Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, Florida 33625, as well as one (1) electronic copy of the firm’s proposal to Joseph Roethke at jroethke@rizzetta.com. It is anticipated that the proposals will be publicly opened at that time, though the proposals otherwise may be maintained on a confidential basis throughout the procurement process and to the extent permitted by Florida law. Additionally, and as further described in the Project Manual, each proposer shall supply a bid bond or cashier’s check made payable to the District and in the amount of $100,000 with its proposal. Proposals shall be in the form provided in the Project Manual and submitted in a sealed envelope, marked with a notation “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION II (13,550 LF).” The District reserves the right to return unopened to the proposer any proposals received after the time and date stipulated above. Each proposal shall remain binding for a minimum of one hundred fifty (150) days after the proposal opening.

Proposals will be evaluated in accordance with the criteria included in the Project Manual. The District reserves the right to reject any and all proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any proposal, as it deems appropriate, and if the District determines in its discretion that it is in the District’s best interests to do so. Any protest of the Project Manual, including, but not limited to the terms and specifications, must be filed with the District within 72 hours of pickup of the Project Manual, together with a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. Failure to timely file a protest, or failure to timely post a protest bond, will result in a waiver of proceedings under Chapter 190, Florida Statutes, and other law. Additional requirements for filing a protest can be found in the District’s Rules of Procedure (available upon request).

The successful proposer will be required upon award to furnish a payment and performance bond for one hundred percent (100%) of the value of the contract (as described in the Project Manual), with a surety acceptable to the District, and in accordance with Section 255.05, Florida Statutes.

Any and all questions relative to this Request for Proposals or the RFP Work shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District Manager, at jroethke@rizzetta.com; and Michael Eckert, District Counsel, at micheale@hgslaw.com. No phone inquiries please.
PART I. GENERAL INFORMATION – (B) INSTRUCTIONS TO PROPOSERS

ANY PROTEST OF THIS PROJECT MANUAL MUST BE FILED WITH THE DISTRICT WITHIN 72 HOURS OF PICKUP OF THE PROJECT MANUAL, TOGETHER WITH A PROTEST BOND IN A FORM ACCEPTABLE TO THE DISTRICT AND IN THE AMOUNT OF $100,000, AND FOLLOWED WITHIN SEVEN (7) CALENDAR DAYS BY A FORMAL WRITTEN PROTEST STATING WITH PARTICULARITY THE FACTS AND LAW UPON WHICH SUCH PROTEST IS BASED. FAILURE TO TIMELY FILE A PROTEST, OR FAILURE TO TIMELY POST A PROTEST BOND, WILL RESULT IN A WAIVER OF PROCEEDINGS UNDER CHAPTER 190, FLORIDA STATUTES, AND OTHER LAW. ADDITIONAL REQUIREMENTS FOR FILING A PROTEST CAN BE FOUND IN THE DISTRICT’S RULES OF PROCEDURE, WHICH ARE AVAILABLE UPON REQUEST.

1. OVERVIEW. The Harbor Bay Community Development District (“District”) is seeking proposals (“Proposal(s)”) from firms (“Proposer(s)”) capable of providing labor, materials, equipment and construction services for Section II (13,550 LF) (the “RFP Work”) of the community’s master stormwater and retaining wall stabilization project (“Project”). The District is a special purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida.

The District is undertaking the Project in order to stabilize the community seawall, which is more accurately described as a “retaining wall.” The retaining wall, which extends approximately 7 miles in length, was constructed in the years following the District’s establishment in 1999, and is an integral part of the District’s stormwater management system. The retaining wall consists of sheet piling, tie-rod anchors, a dead-man system, and a concrete cap securing certain of the other components. (As a remedial action, certain areas within the community also have a waler installed along the retaining wall to further secure the wall.) The canals established by the retaining wall connect to the District’s master stormwater system, and serve to collect and release water through the system and into Tampa Bay.

After the retaining wall was installed, it became apparent that it was failing at certain locations within the community, causing the retaining wall sheets to bend and the concrete cap at the top of the wall to rotate.

Thereafter, the District retained Ingenium, Inc. (“Ingenium”), a structural engineering firm, to conduct a pilot project and propose various options for stabilizing the community retaining wall. As part of the pilot project, Ingenium considered and field tested three different

The District also commissioned a peer review of the Pilot Project Report. This analysis of the Pilot Project Report, based on a number of criteria, is available online at http://harborbaycdd.org/projects/procurements/.

In the fall of 2015 and through the current date, the District has proceeded on an emergency basis to stabilize portions of the retaining wall. Emergency work is ongoing at the time of this Request For Proposals – Design-Build of Master Seawall Project, Section II (13,550 LF) (“RFP”).

At a public workshop in December 2015, the District’s Board of Supervisors (“Board”) was presented with a plan for addressing the balance of the community, which was divided into three sections. (Refer to the Technical Documents.)

In Section I, located in the eastern portion of the community, the retaining wall cap has rotated significantly and requires reconstruction or stabilization. Virtually all of the lots located within Section I have homes located on them. For Section I, either one of two solutions, including what are referred to herein as the “Rip Rap Reconstruction Solution” and “New Wall Reconstruction Solution,” was recommended.1

The New Wall Reconstruction Solution involves installation of new sheet piling and additional tie-rod anchors at the face of the existing wall, which components would be bound to the existing wall with a new concrete cap that would envelop the existing cap. Flowable fill would be injected between the old wall and the new sheet piling, and a drainage system would be installed behind the existing wall. For purposes of this RFP, the “New Wall Alternative” refers to installation of the New Wall Reconstruction Solution within Section II, with the Berm Reconstruction for Section II.

The Rip Rap Reconstruction Solution is similar to the New Wall Reconstruction Solution with the exception that instead of installing new sheet piling and additional tie-rod anchors, the Rip Rap Reconstruction Solution involves placing rip-rap against the existing sheet piling. Like the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution also involves the installation of a new cap over the existing cap, as well as installation of a drainage system behind the existing wall. For purposes of this RFP, the “Rip Rap Alternative” refers to installation of the New Wall Reconstruction Solution at some locations, and the Rip Rap Reconstruction Solution at most locations, within Section II, with the Berm Reconstruction for Section II.

The Board is committed to finding and implementing the proper reconstruction solution. The Board has continuously worked to ensure that the retaining wall will undergo reconstruction work in the near future.

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1 In the event that Proposers are reviewing other District documents, it’s worth noting that the District’s prior documents refer to the Rip Rap Reconstruction Solution as “Modified Option 1,” and the New Wall Reconstruction Solution as “Option 3.”
In April 2017, the Board, by majority vote, issued the Phase 1 Reconstruction RFP, which included reconstruction work along the retaining wall for approximately twenty-three lots within the community. Despite interest among contractors, the District received only one proposal in response to the Phase 1 Reconstruction RFP. At its June 15, 2017 meeting, the Board rejected the proposal because it (i) exceeded the budgeted amount for the Project; and (ii) there were not enough proposals received to be competitive. In rejecting the sole Phase 1 Reconstruction RFP proposal, the Board reiterated the importance of receiving as many proposals as possible.

Consequently, in October 2017, the Board decided to pursue and issue a design-build RFP for all three sections of the Project (the “2017 RFP”), which would allow Proposers to develop and specify a solution. Design-Builders were given the flexibility to propose the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution, and/or one or more other solution(s). Moreover, Design-Builders were also given the flexibility to implement different solutions for different areas of the Project, as different areas of the Project have different characteristics. The District encouraged Proposers to consider the merits of a wide variety of repair solutions, including but not limited to rip rap, vinyl, and fiber reinforced polymer (FRP) composite sheet pile solutions (see Technical Documents for details). The District received no responsive bids to the 2017 RFP and post-bid efforts to negotiate a contract for the entire Project failed.

Unlike the Phase 1 Reconstruction RFP or the 2017 RFP, this design-build RFP (the “Design-Build Proposal”) allows Proposers to develop and specify a solution for Section II (13,550 LF) of the Project only. The Board welcomes, and strongly encourages, submission of any solution that is in accordance with the Design Criteria Package. The Board looks forward to reviewing all received Proposals.

All interested Proposers shall be required to comply with the design-build requirements pursuant to Section 287.055, Florida Statutes. For purposes of this RFP, the Design-Build refers to the design and reconstruction of a proposed solution within Section II (13,550 LF) only, with the Berm Reconstruction for Section II. For Proposers’ reference, the District’s Design Criteria Professional has prepared, and included within this Project Manual, a Design Criteria Package containing concise, performance-oriented drawings and/or specifications for the Project, including the RFP Work.

Section II is located in the western portion of the community. In contrast to Section I, the retaining wall within Section II has less cap rotation than Section I and the placement of additional fill and the planting of mangroves have been recommended, along with some drainage improvements (together, “Berm Reconstruction”), to strengthen and secure the berm along the retaining wall within Section II.

TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK. Each Proposer should provide detailed design and construction schedules for the Design-Build Proposal and detail how the Proposer intends to use its equipment and personnel to meet that schedule.

The District may elect to authorize the RFP Work in phases or otherwise take steps to address any funding related items. The District, as a special-purpose unit of local government, is
authorized to levy and impose special assessments to generate revenue for capital projects such as the instant Project. See Chapters 170, 190, and 197, Florida Statutes. The District currently has $2.9 million in various accounts, a portion of which will be used to finance the RFP Work. The District also plans to sell bonds to further finance the RFP Work and has the ability to levy and impose additional special assessments to finance the RFP Work.

For additional information, please refer to the District’s web-site at www.harborbaycdd.org.

2. **DUE DATE.** Sealed Proposals must be received no later than **February 1, 2019** at **12:00p.m.**, at the offices of Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, FL 33625 (“**District Manager’s Office**”), attention Joseph Roethke, and one (1) electronic copy of the same should be delivered no later than such date and time to Joseph Roethke via e-mail, at jroethke@rizzetta.com. Proposals will be publicly opened at that time, provided however that, subject to such public opening and announcements, all Proposals may be kept confidential for a period of time to the extent permitted by Florida law.

3. **SUMMARY OF SCHEDULE.** The District anticipates the following RFP schedule, though certain dates may be subject to change:

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 29, 2018</td>
<td>Notice of RFP Published &amp; Posted</td>
</tr>
<tr>
<td>November 29, 2018 10:00 a.m.</td>
<td>RFP Available for Pick-Up</td>
</tr>
<tr>
<td>December 14, 2018 10:00 a.m.</td>
<td>Pre-Proposal Meeting</td>
</tr>
<tr>
<td>January 18, 2019 5:00 p.m.</td>
<td>Deadline for Questions</td>
</tr>
<tr>
<td>February 1, 2019 12:00 p.m.</td>
<td>Proposals Due / Public Opening</td>
</tr>
<tr>
<td>February 21, 2019 6:00 p.m.</td>
<td>Board Meeting to Evaluate Proposals &amp; Award Contract</td>
</tr>
</tbody>
</table>

4. **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference will be held regarding the RFP Work on **December 14, 2018 at 10:00a.m.**, at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and announced). The pre-proposal conference may include, but not be limited to, a discussion of contract requirements, inspections, evaluations and submittal requirements. Attendance at the pre-proposal conference is not mandatory, but is strongly encouraged.

5. **FAMILIARITY WITH THE LAW.** By submitting a Proposal, the Proposer is assumed to be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the Proposer will in no way relieve it from responsibility to perform the work covered by the Proposal in compliance with all such laws, ordinances and regulations.

6. **INTERPRETATIONS AND ADDENDA; COMMUNICATION.** Any and all questions relative to this RFP or the Project shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District Manager, at jroethke@rizzetta.com; and Michael Eckert,
District Counsel, at michael@hgslaw.com. No phone inquiries please. All questions must be received no later than January 18, 2019 at 5:00 p.m. to be considered. Interpretations or clarifications considered necessary by the District in response to such questions will be issued by addenda e-mailed, faxed or otherwise delivered to all parties recorded as having received the Project Manual. Only questions answered by formal written addenda will be binding. No interpretations will be given verbally. All questions and answers will be distributed to all Proposers.

Except as set forth in this Section, Proposers should not communicate with any District Supervisor, staff member, or other representative during the submission and evaluation process. COMMUNICATION WITH ANY DISTRICT REPRESENTATIVE FOR ANY PURPOSE OTHER THAN THOSE EXPRESSLY DESCRIBED HEREIN MAY CAUSE AN INDIVIDUAL FIRM, OR TEAM, TO BE DISQUALIFIED FROM PARTICIPATING.

Completing the Proposal

7. PROPOSAL FORM. All blanks in the Project Manual must be completed in ink or typewritten. The Proposal shall contain an acknowledgement of receipt of all documents and addenda (the number of which must be filled in on the Affidavit Regarding Proposal). In making its Proposal, each Proposer represents that it has read and understands the Project Manual and that the Proposal is made in accordance therewith, including verification of the contents of the Project Manual against the Table of Contents.

8. DESIGN CRITERIA PACKAGE. The District has retained the firm of Cardno Limited to provide Design Criteria Professional services for the Project, including the RFP Work. The Design Criteria Package, which describes the minimum scope and required quality for design and construction of the Project and also provides information about the Project, is attached to the Project Manual. The Design Criteria Package is not represented as being construction documents. The Design Criteria Package has not undergone any regulatory review. It will be the Design-Builder’s responsibility to develop complete construction documents with all necessary details commensurate with the scope and quality indicated in the Design Criteria Package and to meet all regulatory requirements. Each Proposer acknowledges, understands, and agrees that the Design Criteria Package, and other Project information provided, do not constitute construction documents and do not reflect all of the design, permitting, regulatory, and construction requirements for the Project, and that, notwithstanding the above, these documents are sufficient in all respects for purposes of the Proposer’s preparation and submittal of its Proposal.

9. PROPOSAL REQUIREMENTS. All Proposals shall include the following information in addition to any other requirements of the Project Manual:

A. A narrative description of the Proposer’s approach to completing the RFP Work described in the scope of work provided herein. The narrative approach should specifically address and describe all components of the Design-Build Proposal, including but not limited to separate descriptions, schedules, and costs for each component of same (design, permitting, construction, and operation and maintenance) for the RFP Work. The narrative should also specify all permits,
licenses, certificates of occupancy, and other approvals of governmental authorities that Proposer will require to complete the RFP Work using its proposed solution(s).

B. A completed Proposal Form, including but not limited to, the forms addressing: General Information, Personnel & Equipment, Experience & Capacity, Unit Pricing, Guaranteed Maximum Price, Guaranteed Schedule, Sworn Statement on Public Entity Crimes, Sworn Statement Regarding Scrutinized Companies, and Affidavit Regarding Proposal. If additional permitting is required, the Proposer shall include the price of permitting in their proposal.

C. In connection with completing the Proposal Form, Proposer shall:

1. List position or title and corporate responsibilities of key management or supervisory personnel. For each manager and/or supervisor who will work on the RFP Work:
   i. Proposer should include resumes with applicable certifications.
   ii. Proposer should supply information regarding the Project manager’s / supervisor’s background and experience with projects similar to the RFP Work. (Supply at least 2 examples of experience on similar projects.)
   iii. Proposer should supply at least 3 references for each Project manager / supervisor from someone other than individuals affiliated with the Proposer.

2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work.

3. Describe proposed equipment that will be used for the RFP Work. Among other things, provide the following:
   i. The age of the equipment
   ii. Whether the equipment is owned or leased/rented
   iii. Whether the equipment will be pledged to only the RFP Work or also to other projects and, if the latter, what percentage of time the equipment will be available to the RFP Work

4. Provide a list of all engineers, subcontractors, and suppliers that will be hired by Proposer for the RFP Work. For each engineer / subcontractor / supplier, provide the following:
   i. A description of the engineer / subcontractor / supplier’s role in the RFP Work.
   ii. A description of the engineer / subcontractor / supplier’s background and experience, as it relates to the RFP Work.
   iii. The engineer/subcontractor / supplier’s geographic location.
1. For suppliers, identify also the location where the goods will be produced and shipped.
   iv. At least three references, including identifying the name, address and phone number for the reference.
   v. For all major engineers/subcontractors/suppliers, information regarding the financial capability of the engineer/subcontractor/supplier.

5. Describe how the proposed staffing and equipment will be used in order to meet the schedule, as proposed by Proposer.

6. Describe at least two projects similar to the RFP Work that Proposer has undertaken.

7. Describe previous or currently contracted work with other community development districts.

IN COMPLETING THE APPLICABLE FORMS UNDER SECTION B ABOVE, AND ADDRESSING THE ITEMS UNDER SECTION C ABOVE, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING WHAT PERSONNEL, EQUIPMENT & CAPACITY THAT THE PROPOSER HAS RELATING TO THE DESIGN-BUILD PROPOSAL IN ADDITION TO THE BERM RECONSTRUCTION. ADDITIONALLY, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING THE PROPOSER’S EXPERIENCE RELATING TO THE DESIGN-BUILD PROPOSAL, AS WELL AS EXPERIENCE WORKING IN ENVIRONMENTALLY SENSITIVE AREAS (E.G., THOSE THAT INCLUDE PROTECTED MANGROVES).

D. Information regarding the financial capability of the Proposer. In particular, Proposer should supply the following:
   1. Copies of financial statements for the past three years, and an interim balance sheet not more than 60 days old.
   2. Information regarding current contracts on hand.
   3. Information regarding contracts completed during the last three years.
   4. Information regarding personnel hired by, and equipment owned by, the Proposer.

E. Guaranteed Maximum Pricing for the Design-Build Proposal, with unit pricing. GMP shall include all permitting costs associated with the Design-Build Proposal.

F. Detailed Guaranteed Schedule for the Design-Build Proposal, as well as descriptions of how the Proposer intends to use its equipment and personnel to meet that schedule.
G. Proposed insurance and bonding levels, above and beyond the minimum proposed under the forms of contract. Include Certificate of Insurance and proof that the Proposer is able to obtain payment and performance bonds for 100% of the amount of the RFP Work.

H. Copies of all major material warranties (e.g., for sheet piling and other large purchases), and proof of assignability.

I. Bid bond or other form of security permitted under the Project Manual.

J. Copies of all applicable business licenses.

K. Completed copies of all other forms / documents, and all other information, required under the Project Manual.

10. QUALIFICATIONS OF THE PROPOSER. The contract, if awarded, will only be awarded to a responsible Proposer who is qualified by experience to do the work specified herein. The Proposer shall submit with its Proposal satisfactory evidence of experience in similar work and show that it is fully prepared with the necessary organization, capital, and equipment to complete the work to the satisfaction of the District.

11. INSURANCE. All Proposers shall include as part of the Proposal a current Certificate of Insurance detailing the company’s insurance coverage, or some other evidence of insurance or insurability. In the event the Proposer is notified of award, it shall provide proof of insurance in the form required under the form of contract, within fourteen (14) calendar days after notification, or within such approved extended period as the District may grant.

The form of contract sets forth certain minimum insurance requirements, including but not limited to commercial general liability insurance at a minimum of $2,000,000.00, and umbrella liability insurance at a minimum of $5,000,000.00. Moreover, these insurance policies shall list, as additional insureds, the following: the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, partners, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees. PROPOSERS ARE ENCOURAGED TO PROVIDE INSURANCE AMOUNTS HIGHER THAN WHAT IS CALLED FOR IN THE MINIMUM REQUIREMENTS. Proposers who are unable to meet the insurance requirements set forth in the form of contract may still apply, but the failure to meet such requirements may result in the District’s rejection of the Proposal or deductions in scoring.

12. WARRANTIES. The form of contract includes various warranties that shall be provided by the successful Proposer (“Design-Builder”) to the District. Among other requirements, any warranties provided by material suppliers must be assignable to the District. If an assignment of warranty requires the material supplier to consent to same, then the Design-Builder agrees that it will secure the material supplier’s consent to assign said warranties to the District. The District may, but is not obligated to, help the Design-Builder secure such consent
from any subcontractors and/or material suppliers. As part of its Proposal, each Proposer must provide copies of any major material warranties to the District (e.g., for sheet piling and other large purchases), as well as warranties for the RFP Work.

13. **FINANCIALS.** The Proposer shall include as part of its Proposal proof of financial capability. In the event the Proposer is notified of award, it shall provide sufficient proof of financial capability, including, if requested, audited financial statements from the last three years, as required in the sole discretion of the District.

14. **SIGNATURE ON PROPOSAL.** In addition to executing all forms, affidavits, and acknowledgments for which signature and notary blocks are provided, the Proposer must correctly sign the Affidavit Regarding Proposals. If the Proposer is a corporation, the Proposal should bear the seal of the corporation. Anyone signing the Proposal as agent shall file with the Proposal legal evidence of his or her authority to do so.

15. **PROPOSAL GUARANTY.** A certified or cashier’s check on any national or state bank, or a proposal bond, in the amount of $100,000, and payable to the District, must accompany each Proposal as a guarantee that the Proposer will promptly enter into an agreement to do the work following award of the contract. The proposal guaranty shall be submitted with the understanding that the Proposer will not withdraw its Proposal for a period of one hundred fifty (150) days after the due date for the Proposals.

16. **SUBMISSION OF PROPOSALS.** Each Proposer shall submit one (1) original copy and one (1) electronic copy of a completed Project Manual, including any Addenda thereto, at the time and to the addresses indicated herein. Such Proposal shall be enclosed in an opaque, sealed envelope, marked with the project title and name and address of the Proposer and accompanied by the required documents. If the Proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with a notation, “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION II (13,550 LF).”

17. **SUBMISSION OF ONLY ONE PROPOSAL.** Proposers may be disqualified and their Proposals rejected if the District has reason to believe that collusion may exist among Proposers, the Proposer has defaulted on any previous contract, or is in arrears on any previous or existing contract, or for failure to demonstrate proper licensure and business organization.

18. **PROPOSAL MODIFICATION; INQUIRIES BY THE DISTRICT; WITHDRAWAL.** Proposals may be modified by an appropriate document duly executed and delivered to the place where Proposals are to be submitted at any time prior to the time Proposals are due. The District reserves the right to ask clarification questions and seek additional information from any of the Proposers at any time. No proposal may be withdrawn for a period of one hundred and fifty (150) days from the due date for the Proposals.

*Acknowledgments*
19. SITE INSPECTIONS & CONDITIONS. Please contact the District Engineer, using the information herein, to schedule a site visit. Proposers should inform District Engineer in writing prior to conducting any explorations, investigations, tests, and studies of the site, and shall be responsible for filling all holes and restoring the site to its former condition upon completion of such activities.

By submitting its Proposal, the Proposer acknowledges that they have visited the RFP Work site and have become familiar with the existing site conditions. Among other things, Proposer agrees to obtain and carefully study all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the site which may affect cost, progress, or performance of the work. By submitting its Proposal, Proposer agrees to take responsibility for any and all issues arising from the site conditions, including but not limited to any unsuitable soils, varying soil conditions, etc. No additional costs or time will be charged by Proposer for matters associated with unsuitable soils or any other matters associated with the site conditions.

The Proposer may be able to utilize a “templating” installation in areas where installing sheet piling may prove difficult due to hard soil conditions, provided that the Proposer must either (i) recertify any previously developed templating installation process belonging to an already existing solution; or (ii) have its engineer develop such templating installation process. If included as part of the Design-Build Proposal, each Proposer should include templating as a unit cost for the RFP Work, provided however that the ability of a Proposer to use templating at any particular location will be in the discretion of the District Engineer. Refer to the Design Criteria Package and the Specifications for Master Project for more detail.

The District does have available for the Proposer’s review certain reports regarding subsurface conditions. Such information is available as part of the Project Manual, and was prepared by third parties. Accordingly, the District is providing the reports and drawings for informational purposes only, and the District cannot guarantee the quantity, quality, completeness, accuracy or availability of the information provided therein. Instead, it is incumbent on each Proposer to obtain whatever information the Proposer needs to complete its Proposal. Further, Proposer is responsible for any interpretation or conclusion Proposer draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

20. ACKNOWLEDGMENTS. In addition to any other requirements set forth in the Project Manual, and with the signature on the Affidavit Regarding Proposal, the Proposer acknowledges the following:

A. The Proposer has carefully reviewed the Project Manual, including the forms of the contract, the specifications, any and all subsurface reports and data, and all other documentation included within the Project Manual. The documents contained within the Project Manual, including the form of agreement, are complementary, and what is called for by one is binding as if called for by all. If the Proposer finds a conflict, error or discrepancy in the Project Manual, he/she shall call it to the District’s and/or the District’s designees’ attention in writing.
within the time period allotted for asking questions as part of the procurement process.

B. The Design-Builder is required to perform all testing and retesting, if necessary, and as required by the State of Florida, Hillsborough County, the Southwest Florida Water Management District and all other regulatory agencies prior to accepting the RFP Work. The entire site is available to any Proposer for surface or subsurface investigation, upon request of the District.

C. The Proposer is responsible for inspecting the entire site prior to submitting a Proposal and notifying the District and/or its designee of discrepancies in the Project Manual that may affect the construction and its costs, timing, etc.

D. The Design-Builder shall be responsible for coordinating the work necessary to complete and obtain all final approvals and acceptances.

E. The Design-Builder shall complete the work herein defined and detailed in a professional and workmanlike manner typical of the industry. There shall be no sections or parts missing. Furthermore, each portion of the work shall be complete and able to function for its intended use. The work must be continuous unless otherwise directed by the District. The work, including punch list items, must be acceptable to and accepted by applicable regulatory authorities.

F. All storm drainage must be maintained to each property adjacent to the Project during construction. If this does not occur, the Design-Builder will be responsible for any damage that may result.

G. The Design-Builder shall be responsible for coordinating the work necessary with all utility companies and other on-site subcontractors performing work for the District and others on site. The Design-Builder shall be responsible for locating, removing and relocating utilities, both aerial and underground, as required for the performance of the work. This shall also include the coordination of, safety and protection associated with all aerial and underground facilities related to the work.

H. The Design-Builder shall be responsible for all costs associated with traffic control and maintenance during the RFP Work.

I. The Design-Builder shall work with the District to identify an acceptable staging area or areas, but will be required to control and protect such area(s) with fencing and other means.

J. All existing trees, sod, irrigation and other landscaping, including mangroves, must be protected and replaced to the extent damaged by the RFP Work.
K. Design-Builder shall provide turbidity barriers throughout the RFP Work site to ensure compliance with all National Pollution Discharge Elimination System (“NPDES”) and other legal requirements.

L. The Proposer’s attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished to the successful Design-Builder is for illustrative purposes only. The District and/or its designee do not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities or of the character, location of the work or other conditions pertaining thereto. The Proposer shall be solely responsible for computing quantities for the preparation of its Proposal and the execution of the work.

M. All necessary survey work must be provided by the Design-Builder.

N. All materials and services provided for by the Design-Builder shall be performed in strict compliance with all applicable governmental regulations, permits required, 2010 American with Disabilities Act (“ADA”) Accessibility Guidelines, and local, state and federal laws.

Permits

21. PERMITS. The District has already secured certain permits for the Project:

<table>
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<tr>
<th>NUMBER</th>
<th>AGENCY</th>
<th>ISSUED</th>
<th>EXPIRATION</th>
<th>TYPE</th>
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<tr>
<td>708627</td>
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<td>8/25/2015</td>
<td>10/13/2020</td>
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FEDERAL MASTER PERMIT

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<tbody>
<tr>
<td>SAJ-1998-03785 (SP-LDD)</td>
<td>U.S. Army Corps of Engineers (Corps)</td>
<td>10/13/2015</td>
<td>10/13/2020</td>
<td>Construction (Seawall Repair)</td>
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</tbody>
</table>

**Feet of seawall to be repaired/replaced.

Depending on Design-Builder’s proposed solution(s), the District anticipates that, to construct the RFP Work, Design-Builder may need to seek and obtain modification of some or all of the above-identified permits, and/or may need to seek and obtain new, additional, or different permits from County, state, and/or federal governmental agencies with jurisdiction. Design-Builder shall be responsible for obtaining and paying for all required permits, licenses, certificates of occupancy, and approvals of governmental agencies with jurisdiction over the RFP Work. The District will cooperate with the Design-Builder’s permitting efforts. Moreover, Design-Builder shall be responsible for identifying and complying with all applicable regulatory requirements.

Please note that the District may be in the process of seeking extension, renewal, and/or modification(s) of some of the above-identified permits at the time the Project Manual is distributed. The District will provide further information regarding existing permits and/or authorizations upon request. The District anticipates that the following permit(s) will also be required for the RFP Work:

- **Generic Permit for Stormwater Discharge from Large and Small Construction Activities (“CGP”) (62-621.300(4)(a), Florida Administrative Code)**

The Design-Builder shall be responsible for obtaining the CGP prior to commencing construction, at its own expense, to authorize stormwater discharges associated with construction activities and uncontaminated produced groundwater discharges associated with dewatering operations. The Design-Builder shall file a Notice of Intent (NOI) (DEP Form 62-621.300(4)(b)) to use the CGP with the Florida Department of Environmental Protection (“DEP”) via its online portal, [http://www.fldepportal.com/go/](http://www.fldepportal.com/go/), at least two (2) days prior to commencing construction activities. In the event any discharge associated with the construction activities does not qualify for use of the CGP, the Design-Builder shall be required to obtain a separate NPDES permit for that discharge from the DEP prior to commencing construction, at its own expense.
The Design-Builder shall comply with all conditions and requirements of all permits and approvals issued for the RFP Work, including the HCEPC permits and Corps permit listed above (to the extent applicable based upon Design-Builder’s proposed solution(s)) and the CGP, including but not limited to inspections of site conditions and construction activities, construction in conformity with design plans and specifications, maintenance of records, preparation and adherence to a Stormwater Pollution Prevention Plan (SPPP) and implementation of Best Management Practices (BMPs). Refer to the permits for the complete requirements. Within 14 calendar days after the site has achieved final stabilization and all discharges authorized by the CGP are eliminated or are authorized under a separate NPDES permit, the Design-Builder must submit a completed Notice of Termination (NOT) form (DEP Form 62-621.300(6)) through DEP’s online portal, http://www.fldepportal.com/go/. The Design-Builder will also be responsible for notifying Hillsborough County, the Corps, and/or other agencies of completion of construction activities pursuant to the terms of their respective permits.

The Design-Builder shall adhere at all times to the permits and to all applicable County, state and federal rules and regulations. The Design-Builder shall monitor and keep the construction area in compliance with all Environmental Protection Agency (EPA), SWFWMD, DEP, Corps, and Hillsborough County latest rules and regulations. Any fines levied shall be paid by Design-Builder.

Furthermore, the Design-Builder shall provide all signage required by permits and governmental authorities.

Receipt of all final approvals and operating permits from all applicable regulatory authorities is a requirement for final payment.

Direct Purchasing

22. OWNER DIRECT PURCHASES. The District reserves the right to require the selected Proposer to assign some, or all, of its subcontracts or other agreements with material suppliers directly to the District. This saves the amount of the sales tax, when the District purchases material/equipment required for a construction project directly from the manufacturer/supplier (material/equipment cost only), and simultaneously decreases the amount of the contract for the cost of the materials/equipment, plus the sales tax. The contract cost reduction is accomplished through the construction change order process. To facilitate this process, each Proposer shall include the cost of all construction materials and equipment in its Proposal, and shall separately identify all sales taxes normally applicable to such materials and equipment. Moreover, each Proposer, in its subcontract agreements and other agreements, shall ensure that such agreements are assignable for the purposes of direct purchasing. The Design-Builder’s warranties and performance bonds shall extend to cover all direct purchased materials, as though Design-Builder had selected and purchased the materials itself.

Contract Award & Protests

23. EVALUATION OF PROPOSALS.
Each Proposal shall be separately ranked based on the evaluation of the Proposal, any information obtained through reference checks, and any information generally known to the District, and according to the Evaluation Criteria contained within the Project Manual. Price will be one significant factor used in determining the Proposal that is in the best interest of the District, but the District explicitly and clearly reserves the right to make such award to other than the lowest priced Proposal.

The Board intends to appoint itself to evaluate the Proposals, with advice from the Design Criteria Professional and/or the District Engineer, as applicable; provided, however, that the Board reserves the right to appoint a committee, which may include non-Board members, to evaluate the Proposals and report to the Board. The Board shall select no fewer than three (3) Design-Build firms as the most qualified. However, if fewer than three (3) proposals are received, the District may purchase design-build services or may reject the proposals for lack of competitiveness. The Board shall review and evaluate the bids in their individual discretion, and make any final determination with respect to the award of a final contract that is in the best interests of the District. Chapter 112, Florida Statutes, will govern any voting conflicts of interest, and as such a voting conflict of interest may arise solely where there is a personal financial interest relating to the contract award.

The Board shall negotiate a contract with the Proposer ranking the highest based on the evaluation standards and shall establish a price which the Board determines is fair, competitive, and reasonable. Should the Board be unable to negotiate a satisfactory contract with the Proposer considered to be the most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that Proposer shall be terminated. The Board shall then undertake negotiations with the second most qualified Proposer, based on the ranking by the evaluation standards. Failing accord with the second most qualified Proposer, the Board must terminate negotiations. The Board shall then undertake negotiations with the third most qualified Proposer. Should the Board be unable to negotiate a satisfactory contract with any of the selected Proposers, the Board shall select additional Proposers in order of their rankings based on the evaluation standards and continue negotiations until an agreement is reached or the list of Proposers is exhausted.

24. DISTRICT’S RIGHT TO TAKE ACTIONS IN ITS BEST INTERESTS. The District reserves the right to reject any and all Proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any Proposal, as it deems appropriate, if it determines in its discretion that it is in the District’s best interests to do so.

25. CONTRACT AWARD. Within fourteen (14) days of receipt of the Notice of Award from the District, or longer period if extended by the District in its sole discretion, the Proposer shall enter into and execute the contract in the form included in the Project Manual, unless requested otherwise by the District. No contract to perform the RFP Work shall exist between the District and any Proposer until the contract is signed, and any work provided and any cost incurred by the Proposer prior to receiving the Notice of Award, an executed contract, and the Notice to Proceed will be at the Proposer’s risk unless specifically agreed to in writing by the District. Following the Notice of Award, Design-Builder will arrange an initial conference
attended by the District and Design-Builder and others as appropriate in accordance with Section 2.06 of the General Conditions.

26. **PAYMENT & PERFORMANCE BOND.** At the time the contract is executed, the Design-Builder will be required to furnish a payment and performance bond for one hundred percent (100%) of the amount of the RFP Work, with a surety acceptable to the District, and in accordance with Section 255.05, *Florida Statutes*. As part of the Proposal, Proposer shall provide evidence showing that Proposer is able to furnish a bond in the amount of the Proposer’s total contract price.

27. **CROSS INDEMNIFICATIONS.**

   A. To the fullest extent permitted by law, Proposer shall indemnify and hold harmless the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, the “Indemnitees”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work. Additional indemnification, defense, and hold harmless obligations are as set forth in the forms of contract.

   B. To the fullest extent permitted by law, and without waiving any protections or immunities provided to Owner under Florida law, the District shall indemnify and hold harmless the Proposer, the Project Design Professional, subcontractors, suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnitees”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used herein shall mean any and all claims of property owners requesting the District to undertake repairs to their property on account of damages believed by such property owner to be a result of the compromised seawall located along the MiraBay canal system within the Site including, but not limited to, requests made by any and all property owners to the District pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction
Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, Project Design Professional, subcontractors, suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work.

C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnitees, as the case may be.

28. LIMITATION OF LIABILITY. Nothing herein shall be construed as or constitute a waiver of District’s limitations on liability contained in Section 768.28, Florida Statutes, or other statute or law.

29. PUBLIC RECORDS. The District is a governmental entity, and, accordingly, the Proposals will be publicly opened as stated above. Additionally, it is likely that the Proposals are or will become public record at some point in the procurement process. That said, Florida law does recognize certain exceptions from the public records laws. For example, financial statements submitted as part of a response to a proposal for a public works project may be exempt from disclosure. See Section 119.071(c), Florida Statutes. In the event that the Proposer believes that any particular portion of the Proposer’s Proposal is exempt from disclosure, the Proposer shall mark the exempt pages as “CONFIDENTIAL – EXEMPT FROM DISCLOSURE.” In the event that the District receives a public records request relating to such records, the District will notify the Proposer. In the event that the District reasonably and in good faith believes that the Proposer’s information is not confidential or exempt under Florida law, the District may provide the information in response to the request and will not be responsible for any liability, claims, damages or losses arising from such disclosure. In the event that a claim of any kind is filed challenging the confidentiality of the Proposer’s information, the District may require the Proposer to indemnify, defend and hold harmless the Indemnitees from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, relating to the claim.

30. MANDATORY AND PERMISSIVE REQUIREMENTS. The only mandatory requirements contained within the Project Manual to submit are that an interested firm must: (i) hold all required local, state and federal licenses in good standing, (ii) be authorized to do business in Hillsborough County and the State of Florida, and (iii) secure and furnish a bid bond or cashier’s check, as described herein and in the contract documents, as well as the payment and performance bond described herein and in the contract documents, and evidence that the Proposer is able to furnish the payment and performance bond in the amount of the Proposer’s total contract price. All of the requirements or provisions set forth in the Project Manual shall be deemed “permissive,” in that a Proposer’s failure to meet any requirement described in mandatory terms such as “shall,” “will,” “mandatory,” or similar language does not automatically disqualify the Proposer’s Proposal, but instead may be taken into account in the evaluation and scoring of the Proposal.
31. PROTESTS. Any protest regarding the Project Manual, including but not limited to, the evaluation criteria and process, specifications or other requirements contained in the Project Manual, must be filed in writing at the District Manager’s Office, within seventy-two (72) hours after the receipt of the Project Manual. The formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days after the initial notice of protest was filed. Failure to timely file a notice of protest, failure to timely file a formal written protest, or failure to timely post a protest bond, shall constitute a waiver of any right to object or protest with respect to any matter relating to the Project Manual.

Any person who files a notice of protest regarding the Project Manual, or regarding any ranking or intended award by the District, or any other matter, shall post a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. In the event the protest is settled by mutual agreement of the parties, the protest bond shall be distributed as agreed to by the District and protestor. REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.
PART I. GENERAL INFORMATION – EVALUATION CRITERIA

1. PRELIMINARY REQUIREMENTS (Pass / Fail)
   An interested firm must hold all required local, state and federal licenses in good standing, and be authorized to do business in Hillsborough County and the State of Florida.

2. PROPOSAL GUARANTEE (Pass / Fail)
   The Proposer provided an appropriate proposal guarantee consistent with the terms of the Project Manual.

3. PERSONNEL & EQUIPMENT (10 Points Possible)
   This category addresses the following criteria: skill set and experience of key management and assigned personnel, including the design engineer, project manager and other specifically trained individuals who will design and manage the RFP Work; present ability to staff, equip and manage the RFP Work; proposed staffing levels; proposed equipment; capability of performing the work; geographic location; inventory of all equipment; etc.

4. EXPERIENCE (20 Points Possible)
   This category addresses past & current record and experience of the Proposer (and/or engineers, subcontractors, and suppliers) in similar projects; past performance in any other contracts; etc.

5. UNDERSTANDING SCOPE OF WORK (15 Points Possible)
   This category addresses whether the Proposer demonstrated an understanding of the District’s needs for the work requested, demonstrated the ability to perform such work in a feasible manner, demonstrated an understanding of the desire for uniformity in appearance, and identified any suggestions for “best practices” or other innovative approaches.

6. FINANCIAL CAPACITY (10 Points Possible)
   This category addresses whether the Proposer has demonstrated that it has the financial resources and stability as a business entity necessary to implement and execute the work. Also, this category includes an evaluation of the Proposer’s insurance and warranties offered, above and beyond what is required under the contract documents. The Proposer should include proof of ability to provide insurance coverage as required by the District as well as audited financial statements, or other similar information.

7. GUARANTEED MAXIMUM PRICE (30 Points Possible)
   This category addresses overall pricing for the construction work, as well as consideration of unit prices and the overall reasonableness of the pricing.

8. GUARANTEED SCHEDULE (15 Points Possible)
   This category addresses the timeliness of the schedule, as well as the Proposer’s ability to credibly design and complete the RFP Work within the Proposer’s schedule.

100 Total Points Possible
PART II. PROPOSAL FORM – (A) GENERAL INFORMATION

1. **Proposer General Information**

Proposer Name ____________________________________________________________

Street Address ____________________________________________________________

P. O. Box (if any) __________________________________________________________

City __________________ State _____________ Zip Code ____________

Telephone __________________ Fax no. _______________________________________

Internet Address _________________________________________________________

1st Contact Name __________________ Title ________________

Contact Telephone __________________ E-Mail Address ______________________

2nd Contact Name __________________ Title _________________________

Contact Telephone __________________ E-Mail Address ______________________

Parent Company Name (if any) _____________________________________________

Street Address __________________________________________________________

P. O. Box (if any) _________________________________________________________

City __________________ State _____________ Zip Code ____________

Telephone __________________ Fax no. _______________________________________

1st Contact Name __________________ Title ________________

2nd Contact Name __________________ Title _________________________

(Attach a chart showing ownership structure of Proposer.)
2. **List the location of Proposer’s office that would oversee the work.**

   Street Address ____________________________________________________________

   P.O. Box (if any) ________________________________________________________

   City __________________________ State __________ Zip Code ________

   Telephone __________________________ Fax No. ___________________________

   1st Contact Name __________________________ Title ________________

   2nd Contact Name __________________________ Title ________________

3. **Company Standing**

   Proposer’s form of entity: ________________________________________________
   (e.g., individual, corporation, partnership, limited liability company, etc.)

   In what State was the Proposer organized? __________________________________

   Date __________ Charter Number (if applicable) __________________

   Is the Proposer in good standing with that State? Yes ___ No ___

   If no, please explain ________________________________________________

   ________________________________________________________________

   ________________________________________________________________

   Is the Proposer registered with the State of Florida, Division of Corporations and
   authorized to do business in Hillsborough County and the State of Florida?

   Yes ___ No ___

   If no, please explain ________________________________________________

   ________________________________________________________________
4. **Licensure**

Please list all applicable state and federal licenses or registrations, including but not limited to those for the State of Florida and Hillsborough County:

________________________________________________________________________

________________________________________________________________________

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For each registration or license, provide the following information:

Type of registration (e.g., certified general contractor, certified electrical contractor, etc.)

________________________________________________________________________

License No. ___________________________ Expiration Date ______________

Qualifying Individual __________________ Title ____________________

List company(ies) currently qualified under this license ______________________

________________________________________________________________________

Is the registration or license in good standing? Yes ___ No ___

If no, please explain _________________________________________________

________________________________________________________________________

________________________________________________________________________

(Attach photocopies of each listed license or registration, and additional sheets as necessary.)
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
CORPORATE OFFICERS
(Attach additional sheets if necessary)

Provide the following information for Officers of the Proposer and parent company, if any. Attach resumes for all such individuals.

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
<th>POSITION OR TITLE</th>
<th>CORPORATE RESPONSIBILITIES</th>
<th>INDIVIDUAL’S RESIDENCE CITY, STATE</th>
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FOR PARENT COMPANY (if applicable)

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<tr>
<th>NAME OF PROPOSER</th>
<th>POSITION OR TITLE</th>
<th>CORPORATE RESPONSIBILITIES</th>
<th>INDIVIDUAL’S RESIDENCE CITY, STATE</th>
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Company Name ____________________________ Date ____________________________
Company Name ___________________________ Date __________________
Provide information for key management and supervisory personnel of the Proposer for both administration as well as operations. Attach resumes for all such individuals.

<table>
<thead>
<tr>
<th>INDIVIDUAL’S NAME</th>
<th>PRESENT TITLE</th>
<th>DESCRIPTION OF DIRECT JOB RESPONSIBILITIES</th>
<th>YEARS OF EXPERIENCE IN PRESENT POSITION</th>
<th>TOTAL YEARS OF RELATED EXPERIENCE</th>
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II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
COMPANY OWNED MAJOR EQUIPMENT AVAILABLE FOR THE PROJECT
(Attach additional sheets if necessary)

<table>
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<tr>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>CAPACITY</th>
<th>No. LOCATED IN</th>
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</table>

Company Name _____________________________________________ Date ________________
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT

1. For each manager, supervisor and key person who will be directly working on and/or responsible for the RFP Work, please provide the following information:

Name:_______________________________________________________________

Title:_______________________________________________________________

Office Location:_______________________________________________________

Corporation Responsibilities:___________________________________________

Years in Current Position:_____________________________________________

Proposed Role for the Project:___________________________________________

% of Time to Be Devoted to Project:_____________________________________

Provide the following information for at LEAST TWO projects similar to the RFP Work where the manager / supervisor / key personnel was involved. Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., involving mangroves).

Project 1

Project Name / Location:______________________________________________

Time Period of Project:_______________________________________________

Description of Project:______________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Manager / Supervisor / Key Personnel:_____________________________
Reference Contact: ____________________________________________________
Contact Phone/E-Mail: ________________________________________________

Project 2

Project Name / Location: ______________________________________________
Time Period of Project: ________________________________________________
Description of Project: ________________________________________________
____________________________________________________________________
Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
Role of Manager / Supervisor / Key Personnel: _____________________________
____________________________________________________________________
Reference Contact: ____________________________________________________
Contact Phone/E-Mail: ________________________________________________

Project 3

Project Name / Location: ______________________________________________
Time Period of Project: ________________________________________________
Description of Project: ________________________________________________
____________________________________________________________________
Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
Role of Manager / Supervisor / Key Personnel: _____________________________
____________________________________________________________________
Reference Contact: ____________________________________________________
Contact Phone/E-Mail: ________________________________________________

(Attach resume, and use additional sheets as appropriate.)
2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work. (Attach additional sheets as needed.) Also, describe in the Proposer’s narrative or below how staffing levels may differ between the various components of the Design-Build Proposal.

<table>
<thead>
<tr>
<th>Staffing Role / Description of Role in RFP Work</th>
<th># of Individuals</th>
<th># of Total Man Hours per Month</th>
<th>Status of Staff with Proposer (e.g., full-time, day labor, etc.)</th>
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</table>
3. Provide the following information for the proposed equipment that will be used for the RFP Work. (Attach additional sheets as necessary.) Also, describe in the Proposer’s narrative or below how equipment usage may differ between the various components of the Design-Build Proposal.

<table>
<thead>
<tr>
<th>Equipment Type</th>
<th>Description of Role in the RFP Work</th>
<th>Age of Equipment</th>
<th>% of Time Available to the RFP Work</th>
<th>Is the Equipment Presently Owned?</th>
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</table>
4. **Provide a list of all Engineers / Subcontractors / Suppliers that will be hired by Proposer for the RFP Work.**

<table>
<thead>
<tr>
<th>Name of Engineer / Subcontractor / Supplier</th>
<th>Contact / Phone # / E-Mail Address</th>
<th>Role in the RFP Work (Identify the component of the Design-Build Proposal within which the engineer/subcontractor/ supplier will be involved, if not applicable to all.)</th>
<th>Total Value of Goods or Services Anticipated to Be Provided</th>
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(Attach additional sheets as necessary.)
5. For each Engineer / Subcontractor / Supplier that will provide goods or services in excess of $25,000 for the RFP Work, provide the following information:

Name: _____________________________________________________________
Title: _____________________________________________________________
Contact: _____________________________________________________________
Contact Phone/E-Mail: _________________________________________________
Office Location: _______________________________________________________
____________________________________________________________________
Shipment Location (for Suppliers): _________________________________________
____________________________________________________________________
Years in Business: ______________________
Proposed Role for the RFP Work: _________________________________________
____________________________________________________________________
____________________________________________________________________
Is the Engineer/Subcontractor/Supplier registered with the State of Florida, Division of Corporations and authorized to do business in Hillsborough County and the State of Florida? Yes ___ No ___ If no, explain: _________________________________________
____________________________________________________________________

Does the Engineer/Subcontractor/Supplier have all applicable business licenses in good standing? Yes ___ No ___
Please list the licenses: _________________________________________________
____________________________________________________________________
Provide the following information for at LEAST TWO projects similar to the RFP Work where the Engineer/Subcontractor/Supplier was involved:

Project 1

Project Name / Location:____________________________________________

Time Period of Project:____________________________________________

Description of Project:_____________________________________________
________________________________________________________________

Did the Project Involve:  ____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Engineer/Subcontractor/Supplier:_________________________________
________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier:__________________

Reference Contact:_____________________________________________________

Contact Phone/E-Mail:___________________________________________________

Project 2

Project Name / Location:____________________________________________

Time Period of Project:____________________________________________

Description of Project:_____________________________________________
________________________________________________________________

Did the Project Involve:  ____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Engineer/Subcontractor/Supplier:_________________________________
________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier:__________________

Reference Contact:_____________________________________________________

Contact Phone/E-Mail:___________________________________________________
Project 3

Project Name / Location:______________________________________________

Time Period of Project:______________________________________________

Description of Project:______________________________________________

____________________________________________________________________

Did the Project Involve:  ____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Engineer/Subcontractor/Supplier:_________________________________

____________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier:__________________

Reference Contact:______________________________________________________

Contact Phone/E-Mail:___________________________________________________

Has the Engineer/Subcontractor/Supplier ever failed to complete a contract, or had any contracts terminated before the work was completed?   Yes (_)  No (_)  For each such incident, please provide the following information (attach additional sheets as needed):

Reference Contact:_____________________________________________________

Contact Phone/E-Mail:___________________________________________________

Dollar Amount of Contract:______________________________________________

Scope of Services for Project:____________________________________________

____________________________________________________________________

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years?  Yes (_)  No (_)  If yes, provide the following:

Identify the Case # and Tribunal:________________________________________

Describe the Nature of the Action:_______________________________________
Describe the Engineer’s/Subcontractor’s/Supplier’s Role in the Action and Describe the Status and/or Resolution:

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:

(Attach additional information regarding Engineer’s/Subcontractor’s/Supplier’s role in the project, key personnel, background and experience, financial capacity, etc., and use additional sheets as appropriate.)
PART II. PROPOSAL FORM – (C) EXPERIENCE

1. Describe at least TWO projects similar to the RFP Work that Proposer has undertaken. For each project, provide the following information (attach additional sheets to complete). Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., with mangroves).

Project Name/Location: ____________________________________________________________
Reference Contact: ____________________________________________________________
Contact Phone/E-Mail: __________________________________________________________
Dollar Amount of Contract: ______________________________________________________
Scope of Services for Project: ____________________________________________________

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Did the Project Involve: Sheet Piling? Rip-Rap? Mangroves?

Start Date: ____________________________
Current Status of the Project: ____________________________
2. Has the Proposer previously performed work for a community development district? Yes (_) No (_). If yes, please provide the following information for each project (attach additional sheets as necessary):

Project Name/Location: ________________________________
Reference Contact: ________________________________
Contact Phone/E-Mail: ________________________________
Dollar Amount of Contract: ________________________________
Scope of Services for Project: ________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
Start Date: ________________________________
Current Status of the Project: ________________________________
3. **Has the Proposer ever failed to complete a contract, or had any contracts terminated before the work was completed? Yes ( ) No ( )** For each such incident, please provide the following information (attach additional sheets as necessary):

Reference Contact: ____________________________________________

Contact Phone/E-Mail: __________________________________________

Dollar Amount of Contract: ______________________________________

Scope of Services for Project: ____________________________________

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Start Date: __________________________

Reason: __________________________________________

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4. Has any officer or partner of the Proposer ever been an officer, partner, or owner of some other organization that has failed to complete a construction contract?  Yes (_)  No (_)

For each such incident, please provide the following information (attach additional sheets as needed):

Reference Contact: ___________________________________________________________

Contact Phone/E-Mail: _________________________________________________________

Dollar Amount of Contract: ____________________________________________________

Scope of Services for Project: _________________________________________________

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Start Date: ________________

Reason: ______________________

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5. Has the Proposer or any of its officers or employees, or any of Proposer’s proposed engineers, subcontractors, or materialmen, ever previously conducted work, or provided materials for work, in Mirabay, whether as a contractor, subcontractor, materialman or in some other capacity? Please describe who and in what capacity, and when:

____________________________________________________

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Furnish requested information about all of Proposer’s active contracts, whether as prime or subcontracts; whether in progress or awarded but not yet started; and regardless of with whom contracted. All amounts to be shown to nearest $1,000. Design-Builder may consolidate and list as a single item all contracts which individually do not exceed 3% of total active contracts and in total do not exceed 20% of the active total contracts.

<table>
<thead>
<tr>
<th>OWNER, LOCATION AND DESCRIPTION OF PROJECT</th>
<th>CURRENT CONTRACT AMOUNT AS PRIME</th>
<th>CURRENT CONTRACT AMOUNT AS SUBCONTRACTOR</th>
<th>CURRENT AMOUNT SUBJECT TO OTHERS</th>
<th>PROPOSER’S UNCOMPLETED AMOUNT AS OF THIS DATE</th>
<th>COMPLETION DATE</th>
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Subtotal Uncompleted Work $ $ 

Total Uncompleted Work on Hand $
PROPOSAL FORM, PART 3 – (C) & (D) EXPERIENCE & CAPACITY  
PROJECTS PROPOSER COMPLETED IN THE LAST THREE YEARS  
(Attach additional sheets if necessary)

Company Name ____________________________ Date ____________________________

List all projects completed in the last three years for which the contract value individually exceeded 3% of the Proposer’s annual total work completed for the year the project was started. Include in the list projects that were started earlier than three years but were completed within the last three years.

<table>
<thead>
<tr>
<th>PROJECT NAME/ LOCATION</th>
<th>FINAL CONTRACT AMOUNT</th>
<th>PRIME OR SUB ¹</th>
<th>CLASSIFICATION OF WORK PERFORMED</th>
<th>YEAR STARTED/ COMPLETED</th>
<th>OWNER NAME/ LOCATION ²</th>
<th>NAME &amp; PHONE NUMBER OF OWNER’S REPRESENTATIVE FOR THE LISTED PROJECT ³</th>
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</tr>
</tbody>
</table>

¹ ‘Prime or Sub’ should indicate whether Proposer performed the work as a prime contractor/design-builder or as a subcontractor.

² ‘Owner Name/ Location’ should indicate the Owner of the project if the Proposer performed the work as a prime contractor/design-builder or the general contractor if the Proposer performed the work as a subcontractor.

³ ‘Name & Phone Number of Owner’s Representative on this Project’ should list a reference from the business entity listed in the previous column familiar with Proposer’s contract performance.
PART II. PROPOSAL FORM – (D) FINANCIAL CAPACITY

1. **Provide copies of the Proposer’s financial statements, showing assets and liabilities, for each of the past three years. Also attach an interim balance sheet not more than 60 days old. Certified copies accompanied by an auditor’s opinion are strongly encouraged, but not required.**

2. **Complete the following chart for each of the past five years:**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ANNUAL REVENUE</th>
<th># OF PROJECTS COMPLETED</th>
<th>LARGEST PROJECT SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2015</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. **Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years? Yes (_) No (_)**

If yes, provide the following:

- Identify the Case # and Tribunal: __________________________________________
- Describe the Nature of the Action: __________________________________________
  __________________________________________
  __________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________

________________________________________

________________________________________

________________________________________
4. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

5. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

6. What are the Proposer’s proposed insurance for the Project? Refer to the form of contract for minimum amounts.

Workers’ Compensation
a. State Worker’s Compensation – Greater of statutorily required amount or $________ per occurrence / $________ aggregate / $________ per disease
b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $________
c. Employer’s Liability – $________

Commercial General Liability Insurance

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a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - $__________
b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - $__________
c. Products-Completed Operations – $__________
d. Personal and Advertising Injury – $__________
e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

Automobile Liability
a. Bodily Injury:
   Each Person  $__________
   Each Accident $__________
b. Property Damage:
   Each Occurrence $__________

Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $__________

Protection and Indemnity Insurance $__________

Contractual Liability coverage
a. General Aggregate $__________
b. Bodily Injury and Property Damage Combined Each Occurrence $__________

Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
a. General Aggregate $__________
b. Each Occurrence $__________

Builder's Risk Insurance for the amount of the Project? YES / NO

Boiler & Machinery Insurance?
(List items on separate page) YES / NO

_________________________________
(Other) $__________

_________________________________
(Other) $__________
(Attach a copy of a current insurance certificate evidencing the Design-Builder’s insurance.)

7. **What are the Proposer’s current bonding limits?**

Name of Proposer’s Bonding Company ________________________________

Address _________________________________________________________

Approved Bonding Capacities:

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate Limit</td>
<td>$</td>
</tr>
<tr>
<td>Single Project Limit</td>
<td>$</td>
</tr>
<tr>
<td>Total Current Contracts Bonded</td>
<td>$</td>
</tr>
</tbody>
</table>

Name of Proposer’s Bonding Agency ________________________________

Address _________________________________________________________

Contact Name ____________________________ Telephone ____________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION II (13,550 LF)

PART II. PROPOSAL FORM – (E) PRICING

Overall Lump Sum (LS) Price (Section II (13,550 LF)):

__________________________________________________________ (Written) $____________/LS

Lump sum prices shall include all costs necessary for completing all required work in strict accordance with the requirements specified in the Package. Lump sum prices shall be a guaranteed maximum price.

Prices for each lump sum section provided above in the Price Breakdown shall be supplemented with a Preliminary Schedule of Pay Items. The Preliminary Schedule of Pay Items shall include corresponding unit price estimates to be utilized after Award to negotiate a program of progress payments. (See attached example Preliminary Schedule of Pay Items for reference).

<table>
<thead>
<tr>
<th>Design-Builder’s Authorized Representative</th>
<th>Date</th>
</tr>
</thead>
</table>

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EXAMPLE OF PRELIMINARY SCHEDULE OF PAY ITEMS

Below is an example sheet with a sample preliminary schedule of pay items. Items, quantities, and prices are preliminary estimates only and not considered final. Preliminary schedules of pay items are intended for use after Award to negotiate a program of progress payments. The schedules shall be prepared with items associated with the solutions presented in the Design-Build proposal. The pay items listed below are examples only. Each schedule should be tailored as necessary.

<table>
<thead>
<tr>
<th>Pay Item Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surveying</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permitting</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality Control</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Utility Repairs</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reinforced Concrete</td>
<td></td>
<td>CY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheet Pile</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tie Back</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rip-Rap</td>
<td></td>
<td>TON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floating Turbidity Barrier</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landscaping (Behind Wall)</td>
<td></td>
<td>SF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dock Restoration</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timber Pile With Canal Warning Marker</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drainage System</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grand Total for Section II
PART II. PROPOSAL FORM – (F) GUARANTEED SCHEDULE

Proposers should provide detailed schedules for the Design-Build Proposal. Each schedule should show completion of the applicable components of Section II of the Project. For example, the schedule should show (a) the design completion date, (b) the mobilization date, (c) the dates for completion of components for Section II; and (d) the dates for installation of fill, planting of mangroves, and drainage work within Section II, etc.

Proposers should further describe how they intend to use their personnel and equipment in order to timely meet the schedules.
PART II. PROPOSAL FORM – (G) LEGAL CONCERNS

1. List and describe any and all litigation, arbitration or claims filed against the Proposer or its affiliates or principals within the last five (5) years. For each instance, please describe the nature of the litigation, arbitration or claim, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the litigation. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: _______________________________________

Describe the Nature of the Action: ______________________________________

________________________________________________________________________

________________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2. List any and all governmental enforcement actions (e.g., any action taken to impose fines, penalties, etc.) taken against the Proposer or its affiliates or principals in the last five (5) years. For each action, please describe the nature of the action, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the matter. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: _______________________________________

Describe the Nature of the Action: ______________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

3. Has the Proposer or any of its affiliates ever been either disqualified or denied prequalification status by a governmental entity? Yes (_) No (_) If so, please identify the governmental entity and project, and discuss the circumstances surrounding such denial or disqualification as well as the date thereof. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal: ____________________________________________

Describe the Nature of the Action: ____________________________________________
________________________________________________________________________
________________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:
________________________________________________________________________
________________________________________________________________________

4. Please state whether or not your company or any of its affiliates are presently barred or suspended from bidding or contracting on any state, local, or federal-aid contracts in any state(s)? Yes (_) No (_)

If so, state the name(s) of the compan(ies) ______________________________________
________________________________________________________________________

The state(s) where barred or suspended ______________________________________
5. *Has the Proposer company been cited by OSHA for any job site or company office/shop safety violations in the past five years? Yes ( ) No ( )*

If yes, please describe each violation, fine, and resolution:

________________________________________________________________________

________________________________________________________________________

What is the Proposer’s current worker compensation rating? ______________________

Has the Proposer experienced any worker injuries resulting in a worker losing more than ten (10) working days as a result of the injury in the past five years? Yes ( ) No ( )

If yes, please describe the incident:

________________________________________________________________________

________________________________________________________________________

6. *Safety of the community’s residents and property is a priority. Please describe any background checks or other security measures that have been or will be taken with respect to the hiring and retention of the Proposer’s personnel (and/or any subcontractors’ personnel) who will be involved with the Project. Also, please describe what security measures will be taken to ensure that on-site personnel are properly supervised. Attach a copy of the Proposer’s security policy that would be included as part of the form of contract.*

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

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HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION II (13,550 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(N)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Harbor Bay Community Development District
   (print name of the public entity)
   by ____________________________
   (print individual's name and title)
   for ____________________________
   (print name of entity submitting sworn statement)
   whose business address is _______________________________________________________

   and (if applicable) its Federal Employer Identification Number (FEIN) is ________________
   (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn
   statement ____________________________

2. I understand that a “public entity crime” as defined in Section 287.133(1)(g), Florida Statutes,
   means a violation of any state or federal law by a person with respect to and directly related to the
   transaction of business with any public entity or with any agency or political subdivision of any
   other state or of the United States, including, but not limited to, any bid or contract for goods or
   services to be provided to any public entity or an agency or political subdivision of any other state
   or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering,
   conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Section 287.133(1)(b), Florida Statutes,
   means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of
   guilt, in any federal or state trial court of record relating to charges brought by indictment or
   information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a please of
   guilty or nolo contendere.

4. I understand that an “affiliate” as defined in Section 287.133(1)(a), Florida Statutes, means:
   a. A predecessor or successor of a person convicted of a public entity crime; or
b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a “person” as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

___ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

___ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

___ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Dated this __________ day of _______________________, 2018.

(Corporate Seal, if applicable) __________________________

(Name of Proposer) __________________________

By: __________________________

Title: __________________________

STATE OF __________________________

COUNTY OF __________________________

The foregoing instrument was sworn and subscribed before me this __________ day of _______________________, 2018, by __________________________, who is personally known to me or who has produced __________________________ as identification, and did [ ] or did not [ ] take the oath.

Notary Public, State of Florida
Print Name: __________________________
Commission No.: __________________________
My Commission Expires: __________________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION II (13,550 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, REGARDING
SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR SCRUTINIZED COMPANIES
WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST

1. This sworn statement is submitted to Harbor Bay Community Development District

by ________________________________________________________________

(print individual's name and title)

for ________________________________________________________________

(print name of entity submitting sworn statement)

whose business address is __________________________________________

2. I understand that, subject to limited exemptions, Section 287.135, Florida Statutes, provides that a company that at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with a local governmental entity for goods or services of $1 million or more.

3. Based on information and belief, at the time the entity submitting this sworn statement submits its proposal to the Harbor Bay Community Development District, neither the entity, nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

4. If awarded the contract, the entity will immediately notify the Harbor Bay Community Development District in writing if either the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
The foregoing SWORN STATEMENT PURSUANT TO SECTION 287.135(5), \textit{FLORIDA STATUTES}, is dated this ________ day of _______________________, 2018.

(Corporate Seal, if applicable) (Name of Proposer)

________________________________________

By:______________________________________

Title:_____________________________________

\textbf{STATE OF} \\
\textbf{COUNTY OF} _______________________

The foregoing instrument was sworn and subscribed before me this ___ day of _______________________, 2018, by ______________________ of ______________________, who is personally known to me or who has produced ______________________ as identification, and did [ ] or did not [ ] take the oath.

________________________________________

Notary Public, State of Florida
Print Name:________________________________
Commission No.:___________________________
My Commission Expires: ____________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION II (13,550 LF)

AFFIDAVIT REGARDING PROPOSAL

STATE OF ______________________
COUNTY OF ______________________

Before me, the undersigned authority, appeared the affiant, ________________, and
having taken an oath, affiant, based on personal knowledge, deposes and states:

Authorization

1. I am over eighteen (18) years of age and competent to testify as to the matters
contained herein. I serve in the capacity of ___________________ for ____________________
(“Proposer”), and am authorized to make this Affidavit Regarding Proposals on behalf of
Proposer. Proof of such authorization is attached hereto.

2. I assisted with the preparation of, and have reviewed, the Proposer’s proposal
(“Proposal”) provided in response to the Harbor Bay Community Development District
(“District”) Request for Proposals - Design-Build of Master Seawall Project, Section II (13,550
LF). All of the information provided in the Proposal is full and complete, and truthful and
accurate. I understand that inclusion of false, deceptive or fraudulent statements, or the failure to
include full and complete answers, may constitute fraud, and, that, among other remedies, the
District may consider such action on the part of the Proposer to constitute good cause for
rejection of the Proposal.

Receipt of Documents

3. The Proposer acknowledges the receipt of the complete Project Manual as
provided by the District and as described in the Project Manual’s Table of Contents. Additionally, the Proposer acknowledges receipt of the following addenda:

Addendum No. ______________________________ Dated __________________
Addendum No. ______________________________ Dated __________________
Addendum No. ______________________________ Dated __________________
Addendum No. ______________________________ Dated __________________
Addendum No. ______________________________ Dated __________________
Pricing & Non-Collusion

4. The Proposer agrees through submission of the Proposal to honor all pricing information for one hundred and fifty (150) days from the due date of the Proposals. If awarded the contract on the basis of this Proposal, Proposer agrees to enter into and execute the contract in the form included in the Project Manual.

5. I do hereby certify that the Proposer has not, either directly or indirectly, participated in collusion or proposal rigging. The price(s) and amount(s) of this Proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer, or review of any other Proposal, or potential Proposal. Moreover, neither the price(s) nor the amount(s) of this Proposal, and neither the approximate price(s) nor approximate amount(s) of this Proposal has been disclosed to any other firm or person who is a Proposer or potential Proposal, and they will not be disclosed before Proposal opening.

6. No attempt has been made or will be made to induce any firm or persons to refrain from submitting a Proposal for this contract, or to submit a price(s) higher that the prices in this Proposal, or to submit any intentionally high or noncompetitive price(s) or other form of complementary Proposal.

7. The Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.

8. Neither Proposer nor its affiliates, subsidiaries, officers, director, or employees are currently under investigation, by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to a public procurement process, on any public contract, except as follows:

_______________________________________________________________
_______________________________________________________________
_______________________________________________________________

Agreements Regarding Records and Project Manual

9. The Proposer authorizes and requests any person, firm or corporation to furnish any pertinent information requested by the District, or its authorized agents, deemed necessary to verify the statements made in the Proposal, or regarding the ability, standing, integrity, quality of performance, efficiency, and general reputation of the Proposer.
10. By signing below, the Proposer acknowledges that (i) the Proposer has read, understood, and accepted the Project Manual; (ii) the Proposer has had an opportunity to consult with legal counsel regarding the Project Manual; (iii) the Proposer has agreed to the terms of the Project Manual, including but not limited to the forms of contract; (iv) the Proposer has waived any right to challenge any matter relating to the Project Manual, including but not limited to any protest relating to the notice, the Proposal instructions, the proposal forms, the contract form, the scope of work, the evaluation criteria, the evaluation process established in the Project Manual, or any other issues or items relating to the Project Manual; (v) the Proposer certifies that he or she has carefully examined the project site, made his/her own measurements and calculations and prepared and checked the foregoing Proposal after the same was completed and has verified every item placed thereon; and (vi) REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY IMMEDIATELY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AFFIDAVIT REGARDING PROPOSALS AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT.

Dated this __________ day of _______________________, 2018.

_________________________________________  (Corporate Seal, if applicable)  (Name of Proposer)

_________________________________________  (Name of Proposer)

By:______________________________________

Title:_____________________________________

STATE OF ____________________________
COUNTY OF __________________________

The foregoing instrument was sworn and subscribed before me this ___ day of _______________________, 2018, by __________________________ of __________________________, who is personally known to me or who has produced __________________________ as identification, and did [ ] or did not [ ] take the oath.

__________________________________________
Notary Public, State of Florida
Print Name:________________________________
Commission No.:___________________________
My Commission Expires: ____________________

EXHIBIT: Attach Proof of Authorization to Sign
AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE

Prepared by

Issued and Published Jointly by

American Council of Engineering Companies

American Society of Civil Engineers

National Society of Professional Engineers®
AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between Harbor Bay Community Development District ("Owner" or "District"), and ________________________________ ("Design-Builder").

PROJECT INFORMATION

Project: Harbor Bay Community Development District – Design-Build of Master Seawall Project
Design-Build Contract: Section II (13,550 LF) ("Contract")
Owner's Consultant: Cardno Limited

Engineer: Design-Builder has retained ________________________________ ("Engineer") for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Gregory Woodcock, Cardno Limited, 20215 Cortez Blvd, Brooksville, Florida 34601, greg.woodcock@cardno.com, (352) 754-1240; Christopher Gamache, P.E., Cardno Limited, 380 Park Place Blvd, Suite 300, Clearwater, Florida 33759, christopher.gamache@cardno.com, (727) 431-1615.

2. Design-Builder’s Authorized Representative: ________________________________

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

1.01 General Description of Work
A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: the stabilization of certain canal retaining walls within the community of MiraBay, as more fully described in the engineering documents and as Section II (13,550 LF) in the Technical Specifications attached hereto and referenced in Section 8.13 herein.

ARTICLE 2 – CONTRACT TIMES

2.01 Time of the Essence
A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.2 Contract Times: Dates
A. Design-Builder will substantially complete the Work on or before [—].
B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, on or before [—].
2.02 **Contract Times: Days**

A. Design-Builder will substantially complete the Work within [____] days after the Effective Date consistent with the schedule described in the Technical Specifications referenced in Section 7.01.A.12.d.

B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within [____] days after the Effective Date consistent with the schedule described in the Technical Specifications referenced in Section 7.01.A.12.d.

C. Design-Builder shall attain the following Milestone(s):

1. Milestone 1 [event & date/days]
2. Milestone 2 [event & date/days]
3. Milestone 3 [event & date/days]

2.03 **Reserved**

**ARTICLE 3 – CONTRACT PRICE**

3.01 **Stipulated Sums**

A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

1. For all Work other than Unit Price Work, a lump sum price of: $________________ (13,550 LF @ $_________/LF). Unit Pricing, as shown in the Unit Pricing Schedule referenced in Section 7.01.A.12.c and attached hereto, shall be used in connection with pricing for de-mobilization and mobilization if necessary, and change orders. This price shall be adjusted, if necessary, based upon the actual number of linear feet installed by Design-Builder at the rate of $_____/LF. If Owner elects to directly purchase sheet pile, steel, or other material(s), Design-Builder agrees to deduct the cost of the directly-purchased materials, as well as their related shipping and insurance costs and sales and use taxes, from the $_________/LF price.

2. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Estimated Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
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</table>

| Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities) | $ |

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 12.02 of the General Conditions,
estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner.

3. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) $[ ].

1. For all Work, at the prices stated in Design-Builder’s Proposal, attached hereto as an exhibit.

3.02 Changes in Contract Price Based on Cost of the Work

A. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of [ ] [insert multiplier for such design services], which covers labor costs, overhead, and profit.

B. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark-ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

4.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder’s Applications for Payment on or about the 10th day of each month during performance of the Work as provided in subject to Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner (i.e., by the first of the month) and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

Five percent of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent shall be returned to Design-Builder. Owner shall return the remaining one percent upon Final Completion and acceptance of the Work by Owner.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. [ ] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner,
there will be no additional retainage; and

b. [_____] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage)

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to [_____] percent \[Note: a typical amount here is 100\%\] of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less [_____] percent \[Note: a typical amount here is 200\%\] of Owner’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

C. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

4.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price. Upon Final Completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.

4.04 District Pre-Payment and Credit

A. No later than ten (10) business days after receipt from Design-Builder of the certified copies of the recorded payment and performance bonds required by Section 255.05(1), Florida Statutes, Owner shall make a one-time total pre-payment to or on behalf of Design-Builder in the amount of $__________________, which Design-Builder shall pay back to Owner in the form of credits (at a rate of $________ per linear foot) against Design-Builder’s draws for the Work. Such credits paid back to Owner shall total $__________________ upon Design-Builder’s Final Completion of the Work.

ARTICLE 5 – INTEREST

5.01 Interest Rate

A. All amounts not paid when due shall bear interest at the rate of [_____] percent per annum, or if applicable at the rate stated in a governing prompt payment statute. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes.

ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS

6.01 Representations

A. Design-Builder makes the following representations for Owner’s reliance:

1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that
may affect cost, progress, and performance of the Work.

4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.

5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder’s safety precautions and programs.

6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.

7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.

9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

10. Design-Builder’s entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement, as modified herein (pages 1 to [13], inclusive).
4. Other bonds.
5. General Conditions, as modified therein (pages 1 to 66, inclusive).

   a. Supplementary Conditions Relating to Subsurface Conditions and Insurance Requirements (pages 1 to 3, inclusive)

7. Conceptual Documents (i.e., the Design Criteria Package).

8. Addenda, if any (numbers 1 to 3, inclusive).

9. Design-Builder’s Proposal (for reference purposes only; to the extent of any conflict, this Agreement, the General Conditions, the Supplementary Conditions, and the Technical Specifications shall control).

10. Proposal Amendment(s), if any.

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
   a. Work Change Directives.
   b. Change Orders.
   c. Record Drawings and Record Specifications

12. Other Exhibits to this Agreement (enumerated as follows):
   a. Resolution & the Project Manual (pages __ to __, inclusive)
   b. Permits (as identified and incorporated by reference; permit documents themselves are not attached but shall be provided separately) (pages __ to __, inclusive)
   c. Unit Pricing Sheet for Design-Build of Master Seawall Project, Section II (13,550 LF)
   d. Technical Specifications
   e. Daily Logs and Weekly Logs Forms

B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

E. In the event of any conflict between this Agreement, the General Conditions, and/or the Supplementary Conditions, and the Technical Specifications attached hereto, the Technical Specifications shall control.

ARTICLE 8 – MISCELLANEOUS

8.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.
8.02 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

8.03 Successors and Assigns

A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

8.04 Severability

A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 Assignment of Warranties

Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Design-Builder shall secure the material supplier’s and/or subcontractor’s consent to assign said warranties to Owner.

8.06 Design-Builder’s Certifications

A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.06:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.07 Direct Purchase of Materials
A. Owner represents to Design-Builder that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Design-Builder with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials ("Direct Purchase Materials") necessary for completion of the Work directly from the suppliers to take advantage of Owner’s tax exempt status.

B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Design-Builder with a list of materials that will be treated as Direct Purchase Materials.

C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner’s consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by Owner and if the original contract contemplated sale of materials and installation by the same person, the change order needs to reflect sale of materials and installation by different legal entities.

D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Design-Builder. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties, and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Design-Builder will use in the identified public works; (2) the vendor’s invoice will be issued directly to the governmental entity; (3) payment of the vendor’s invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at time of delivery by the vendor.

E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Design-Builder as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Design-Builder.

F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.

G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Design-Builder, as Owner’s agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties, bonds, and guarantees for all material and products as required under the Contract Documents. All contract terms, including but not limited to warranties, payment and performance bonds, and other forms of indemnification, provided by Design-Builder as part of Contract shall continue to apply to all Direct Purchase Materials, as though Design-Builder had purchased the Direct Purchase Materials.
H. Design-Builder shall maintain builder’s risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in Owner’s sole discretion, Owner shall maintain such insurance.

8.08 Construction Defects

PURSUANT TO SECTION 558.005(1), FLORIDA STATUTES, CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

8.09 Public Records

Design-Builder understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Design-Builder agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to, Section 119.0701, Florida Statutes. Among other requirements and to the extent applicable by law, Design-Builder shall: 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if Design-Builder does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Design-Builder’s possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Design-Builder, Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Design-Builder acknowledges that the designated Public Records Custodian for the District is Joe Roethke. IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DESIGN-BUILDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (813) 533-2950, jroethke@rizzetta.com, 9428 CAMDEN FIELD PARKWAY, RIVERVIEW, FLORIDA 33578.

8.10 Restriction on Removal of Fill Dirt from Work Site

Design-Builder acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the District.

8.11 Public Entity Crimes

Pursuant to Section 287.133, Florida Statutes, Design-Builder acknowledges that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold
amount provided in s. 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Design-Builder represents that neither itself nor any Subcontractors retained hereunder meet any of the prohibited criteria set forth in Section 287.133, Florida Statutes. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.133, Florida Statutes, or later been placed on the convicted vendor list, the Design-Builder shall immediately notify the District, at which time District may immediately terminate the Contractor Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.12 Scrutinized Companies

Pursuant to Section 287.135(2), Florida Statutes, Design-Builder represents that Design-Builder has not been placed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (together, “Scrutinized Companies Lists”), and is not engaged in business operations in Cuba or Syria. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.135(5), Florida Statutes, or has been placed on any of the Scrutinized Companies Lists or has been engaged in business operations in Cuba or Syria, the Design-Builder shall immediately notify the District, at which time District may immediately terminate this Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.13 Work

The term “Work” as used in all Contract Documents shall be construed to refer only to Section II (13,550 LF) of the Master Seawall Project as more particularly described in the Technical Specifications referenced in Section 7.01.A.12.d.

8.14 Good Faith Cooperation on Sheet Pile Purchases

Owner and Design-Builder shall cooperate in good faith to secure the lowest possible cost for the purchase of suitable sheet pile for the Work. Nothing in this paragraph, however, shall be construed as financially committing or otherwise legally obligating Owner to direct purchase sheet pile (if it chooses to do so) from any particular third-party vendor.

8.15 Electronic Transmissions

This Contract may be transmitted between the parties by facsimile machine or electronic mail. Owner and Contractor intend that faxed or emailed signatures constitute original signatures and that a faxed or emailed Contract containing the signatures (original or electronic) of Owner and Contractor is binding on Owner and Contractor.

8.16 Counterparts

This Contract may be executed by the parties signing different counterparts of this Contract, which counterparts together shall constitute the agreement of the parties.
IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

OWNER: HARBOR BAY COMM. DEV. DISTRICT

________________________________________
By: PAUL CURLEY

Title: BOARD CHAIRMAN

Attest: 

Name/Title: JOE ROETHKE, DISTRICT MANAGER

________________________________________
By: 

Title: 

Attest: 

Name/Title: 

________________________________________
By: 

Title: 

Attest: 

Name/Title: 

________________________________________
By: 

Title: 

Attest: 

Name/Title: 

Address for giving notices:

________________________________________
________________________________________
________________________________________
________________________________________
DESIGN-BUILD PERFORMANCE BOND

DESIGN-BUILDER (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

Harbor Bay Community Development District
c/o Joseph Roethke, District Manager
9428 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT
   Effective Date of the Contract:
   Amount:
   Description (name and location): Design-Build of Master Seawall Project, Apollo Beach, Florida
   Section II (13,550 LF)

BOND
   Bond Number:
   Date (not earlier than the Effective Date of the Contract):
   Amount:
   Modifications to this Bond Form: None See Paragraph 16

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Design-Build Performance Bond to be duly executed by an authorized officer, agent, or representative. [Note: Provide supplemental execution by any additional parties, such as joint venturers.]

DESIGN-BUILDER AS PRINCIPAL

Design-Builder’s Name

By: __________________________
   Signature

Print Name

Title

Attest: _______________________
   Signature

SURETY

Surety’s Name

By: __________________________
   Signature (attach power of attorney)

Print Name

Title

Attest: _______________________
   Signature

Title
1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Design-Build Contract, which is incorporated herein by reference.

2. If the Design-Builder performs the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Design-Builder and the Surety that the Owner is considering declaring a Design-Builder Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Design-Builder, and Surety to discuss the Design-Builder’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Design-Builder, and the Surety agree, the Design-Builder shall be allowed a reasonable time to perform the Design-Build Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Design-Builder Default;

3.2 The Owner declares a Design-Builder Default, terminates the Design-Build Contract, and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Design-Build Contract Price in accordance with the terms of the Design-Build Contract to the Surety, or to a design-builder or contractor selected to perform the Design-Build Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

5.1 Arrange for the Design-Builder, with the consent of the Owner, to perform and complete the Design-Build Contract;

5.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified design-builders or contractors acceptable to the Owner for a contract for performance and completion of the Design-Build Contract, arrange for a contract to be prepared for execution by the Owner and a design-builder or contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Design-Build Contract Price incurred by the Owner as a result of the Design-Build Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new design-builder or contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional notice from the Owner to
the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Design-Builder under the Design-Build Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Design-Build Contract. Subject to the commitment by the Owner to pay the Balance of the Design-Build Contract Price, the Surety is obligated, without duplication, for:

7.1 the responsibilities of the Design-Builder for correction of defective work and completion of the Design-Build Contract;

7.2 additional legal, design professional, and delay costs resulting from the Design-Builder’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance of the Design-Builder.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety’s liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Balance of the Design-Build Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction where the construction portion of the Project is located, and shall be instituted within two years after a declaration of Design-Builder Default, or within two years after the Design-Builder ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice under this Bond to the Surety, the Owner, or the Design-Builder shall be in writing, and mailed or delivered to the recipient’s address as shown in this Bond.

13. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Design-Build Contract Price: The total amount payable by the Owner to the Design-Builder under the Design-Build Contract after all proper adjustments have been made including allowance for the Design-Builder for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Design-Builder is entitled, reduced by all valid and proper payments made to or on behalf of the Design-Builder under the Design-Build Contract.

14.2 Design-Build Contract: The agreement between the Owner and Design-Builder identified as such in this Bond, including all Contract Documents and changes duly made to such Design-Build Contract.
14.3 Design-Builder Default: Failure of the Design-Builder, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Design-Build Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

14.5 Contract Documents: All the documents that comprise the contract between the Owner and Design-Builder.

15. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

16. Modifications to this Bond are as follows: **This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.**
DESIGN-BUILD PAYMENT BOND

DESIGN-BUILDER (name and address):                      SURETY (name and address of principal place of business):

OWNER (name and address):

Harbor Bay Community Development District
c/o Joseph Roethke, District Manager
9428 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT
   Effective Date of the Contract: 
   Amount: 
   Description (name and location): Design-Build of Master Seawall Project, Apollo Beach, Florida
   Section II (13,550 LF)

BOND
   Bond Number: 
   Date (not earlier than the Effective Date of the Contract): 
   Amount: 
   Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative. [Note: Provide supplemental execution by any additional parties, such as joint venturers.]

DESIGN-BUILDER AS PRINCIPAL                            SURETY

Design-Builder’s Name                                    Surety’s Name

By: ___________________________                          By: ___________________________

Signature                                                  Signature (attach power of attorney)

Title

Attest: ___________________________    Signature

Print Name

Title

Attest: ___________________________    Signature

Title
1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Design-Builder promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, then the Surety and the Design-Builder shall have no obligation under this Bond.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, and tendered defense of such claims, demands, liens, or suits to the Design-Builder and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety’s obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants that do not have a direct contract with the Design-Builder,

   5.1.1 have furnished a written notice of non-payment to the Design-Builder, stating with substantial accuracy the amount claimed and the name of the party to which the materials were, or equipment was, furnished or supplied, or for which the labor was done or performed, within ninety (90) days after having last performed labor or services, or last furnished materials or equipment included in the Claim; and

   5.2 Claimants who are employed by or have a direct contract with the Design-Builder have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Design-Builder, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.
7.3 The Surety’s failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Design-Build may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Design-Build under the Design-Build Contract shall be used for the performance of the Design-Build Contract and to satisfy claims, if any, under any design-build performance bond. By the Design-Build furnishing and the Owner accepting this Bond, they agree that all funds earned by the Design-Build in the performance of the Design-Build Contract are dedicated to satisfy obligations of the Design-Build and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Design-Build that are unrelated to the Design-Build Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction where the construction portion of the Project is located, or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design-Build Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Design-Build shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated here. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Build and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the individual or entity for which the labor or services were done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, services, materials, or equipment were furnished for use in the performance of the Design-Build Contract;

4. A brief description of the labor, services, materials, or equipment furnished;

5. The date on which the Claimant last performed labor or services, or last furnished materials or equipment, for use in the performance of the Design-Build Contract;

6. The total amount earned by the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim;

7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Design-Build or with a subcontractor of the Design-Build to furnish labor, services, materials, or equipment for use in the performance of the Design-Build Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, services, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Build and the Design-Build’s subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Design-Build Contract:** The agreement between the Owner and Design-Build identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Design-Build as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Design-Build.

17. Any singular reference to Design-Build, Surety, Owner, or other party shall be considered plural where applicable.

18. Modifications to this Bond are as follows: **This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.**
STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

These General Conditions have been prepared for use with one of the three Agreements between Owner and Design-Builder (EJCDC® D-512, D-520, and D-525, 2016 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design-Build Documents (EJCDC® D-001, 2016 Edition) are also carefully interrelated with the wording of these General Conditions.
# STANDARD GENERAL CONDITIONS OF THE
# CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.

2. Agreement: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.

3. Application for Payment: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Authorized Representative: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.

5. Change Order: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

6. Claim: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.

7. Conceptual Documents: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.

8. Constituent of Concern: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, chemical, element, compound, solution, mixture, material or other material matter of any nature whatsoever that is or becomes designated, classified, listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating,
relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, chemical, element, compound, solution, mixture, or material, or other matter.

9. Construction: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.

10. Construction Drawings: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.

11. Construction Specifications: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.

12. Construction Subcontract: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.

13. Construction Subcontractor: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.

14. Contract: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.

15. Contract Documents: Those items so designated in the Agreement, and which together comprise the Contract.

16. Contract Price: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.

17. Contract Times: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

18. Design-Builder: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.

19. Design Professional Services: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the
preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. **Design Agreement**: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.

21. **Design Submittal**: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).

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

23. **Engineer**: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.

24. **Hazardous Environmental Condition**: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

25. **Laws and Regulations; Laws or Regulations**: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Such definitions shall further include, where the context reasonably allows, compliance with any applicable permits and/or other similar approvals issued by governmental bodies, agencies, and authorities.

26. **Liens**: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. **Milestone**: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.

28. **Notice of Award**: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.

29. **Notice to Proceed**: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. **Owner**: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.

31. **Owner’s Consultant**: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.

32. **Owner’s Site Representative**: A representative of Owner at the Site, as indicated in Paragraph 10.05.

33. **Project**: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.

34. **Project Design Professionals**: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.

35. **Proposal**: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.

36. **Proposal Amendment**: A Contract Document that is prepared after submittal of Design-Builder’s Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.

37. **Proposer**: An entity that submits a Statement of Qualifications or Proposal to Owner.

38. **Record Documents**: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.

39. **Record Drawings and Record Specifications**: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.

40. **Request for Proposals**: The document prepared by or for Owner specifying and describing Owner’s objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.

41. **Request for Qualifications**: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. **Schedule of Values:** A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder’s Applications for Payment.

43. **Site:** Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.

44. **Statement of Qualifications:** The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.

45. **Submittal:** A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.

46. **Substantial Completion:** The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.

47. **Supplementary Conditions:** The part of the Contract Documents which amends or supplements these General Conditions.

48. **Supplier:** A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.

49. **Technical Data:** Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. **Underground Facilities**: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. **Underground Facilities Data**: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.

52. **Unit Price Work**: Work to be paid for on the basis of unit prices.

53. **Work**: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

54. **Work Change Directive**: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

### 1.02 Terminology

**A.** The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.

**B. Intent of Certain Terms or Adjectives**:

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. Bonds: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.

B. Evidence of Insurance: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

2.02 Copies of Documents

A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

2.03 Conceptual Documents

A. Design-Builder’s Review of Conceptual Documents:

1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.

2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).

3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.

4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder...
to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.

B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.

C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

2.04 Before Starting the Work

A. Preliminary Schedules: Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner’s timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

Such schedules shall be consistent with the documents provided to the Owner as part of the Design-Builder’s proposal.

2.05 Authorized Representatives

A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 Initial Conference

A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.
2.07 Review of Schedules

A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Build will arrange a conference attended by Design-Build, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Build shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner’s acceptance. No progress payment shall be made to Design-Build until Design-Build submits schedules that comply with the following requirements:

1. Design-Build’s progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.

2. Design-Build’s schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.

3. Design-Build’s Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

All such schedules shall be consistent with the documents provided to the Owner as part of the Design-Build’s proposal.

2.08 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Build may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Build shall jointly develop such protocols.

C. Unless expressly stated otherwise elsewhere in this Contract, Design-Build shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.

D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Contract Documents

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).

C. Design-Build shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a
functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.

D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations:

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.

B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.

C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 Ownership and Reuse of Documents

A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:

1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
2. During the course of the Project, Design-Build will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.

3. Owner may use its copy of the Record Drawings and Record Specifications for Owner’s purposes in operating and maintaining the constructed facilities.

4. Upon Owner’s termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Build under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Build’s use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Build, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner’s behalf will be at Owner’s sole risk, and without liability or legal exposure to Design-Build, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Build, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting from any such use or reuse.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times

A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 Starting the Work

A. Design-Build shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

4.03 Progress Schedule

A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.

B. Design-Build shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:

1. Design-Build shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Build shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.

2. Design-Build shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.

C. Continuing the Work: Design-Build shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or
postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

4.04 Delays in Design-Builder’s Progress

A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.

C. If Design-Builder’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder’s entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions such as tropical storms, hurricanes, or tornados;
3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
4. Acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

H. Where Design-Builder is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of both Owner and Design-Builder, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Design-Builder’s sole and exclusive remedy for such delay. In no event shall Owner be liable to Design-Builder, any subcontractor, any supplier, or any other person or organization, or to any surety or employee or any agent of them, for damages, including but not limited to all fees and charges of Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or resulting from:

1. Delays caused by or within the control of Design-Builder (or Subcontractor or Supplier);

2. Delays beyond the control of both Owner and Design-Builder, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work;

3. Nor shall Owner be liable to Design-Builder for any claims, costs, losses or damages sustained by Design-Builder on or in connection with any other project or anticipated project.

Nothing in this paragraph bars a change in Contract Price to compensate Design-Builder due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible. Except for an adjustment to the Contract Times and Contract Price, the Design-Builder shall not be entitled to and hereby waives any and all damages that it may suffer by reason of delay or for any Act of God, and waives all damages that it may suffer by reason of such delay including but not limited to lost profits, overhead, and other consequential damages. No payment of any claim for damages shall be made to the Design-Builder as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay is avoidable or unavoidable.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws or Regulations.

C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work, provided that such damage results from Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work.

2. Should any claim be made by any such owner or occupant because of Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.

3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) Owner, Owner’s consultants, and anyone directly or indirectly employed by any of them from and against all liabilities, suits, liens, demands, claims, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Construction, or because of other negligent, reckless, or intentionally wrongful actions or conduct of the Design-Builder or those for which Design-Builder is responsible, including without limitation, Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

B. Removal of Debris: During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. Cleaning: Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

E. Reports and Drawings: The Supplementary Conditions identify:

1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and

3. Technical Data contained in such reports, design criteria, drawings, and specifications.

F. No Reliance by Design-Build on Technical Data Authorized: Design-Build may not rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness, or accuracy of that information. Design-Build may not rely upon or make any claim against Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. The completeness of such reports and drawings for Design-Build’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Build, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any Design-Build interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

Design-Build expressly acknowledges that soil conditions may vary widely across the Site, and Design-Build takes responsibility for any and all issues arising from unsuitable soils, including but not limited to, varying soil conditions, etc. that may make it more difficult to install the repairs or otherwise conduct the Work. Furthermore, no additional costs will be charged by Design-Build for matters associated with unsuitable and/or varying soils.

Design-Build warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecuting of the Work. Design-Build further warrants that the Contract Price is just and reasonable compensation for all the Work, including all foreseen and unforeseen risks, hazards, and difficulties in connection therewith, including any concealed conditions encountered in the performance of the Work below the surface of the ground at variance with conditions indicated by the Contract Documents or other Design-Build Documents and Design-Build Requirements furnished to Design-Build for its information.

5.03 Reference Points

A. Design-Build shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Build shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
5.04  Differing Site Conditions

A. Design-Build shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Build shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Build’s cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.

C. No request by Design-Build for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Build has given the written notice required.

D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05  Underground Facilities

A. Procedure for Identifying Underground Facilities: Promptly after the Effective Date of the Contract, Design-Build shall review the Underground Facilities Data furnished by Owner and use ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” as a basis for establishing a procedure (“Underground Facilities Procedure”) for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site (if any). Owner does not warrant or guarantee the accuracy or completeness of any such information or data provided by others. Design-Build shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.

1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Build proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.

2. To manage the potential impact of design changes on Underground Facilities, Design-Build shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

B. Design-Build’s Responsibilities: Unless otherwise expressly provided in the Contract, Design-Build shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;

2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;

3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;

4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and

5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.

C. Results of Design-Builder’s Execution of Underground Facilities Procedure: If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.

D. Underground Facility Found During Construction: If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.

1. Owner’s Review: Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.
2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.

E. Inadequate Establishment or Execution of Underground Facilities Procedure: If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 Hazardous Environmental Conditions at Site

A. No Reliance by Design-Builder on Technical Data Authorized: Design-Builder may not rely on the accuracy of the Technical Data with respect to environmental conditions at the Site. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness or accuracy of that information.

B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern. Neither Design-Builder nor any of its successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, shall store, place, generate, manufacture, refine, handle, or locate on the Site a Constituent of Concern.

D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remEDIATE
the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 9.

G. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence. Moreover, none of the indemnifications in this Paragraph 5.06.G shall extend to, or be deemed extended to, entities or individuals not specifically identified herein or to third parties.

H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to the Design-Builder’s negligent, reckless, or intentionally wrongful failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder’s obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment and performance bonds shall each contain the following language: “This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.”

C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.

F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in
E. the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. All insurance required by the Contract to be purchased and maintained by Design-BUILDER shall be primary and without contribution by insurance maintained by Owner.

D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.

E. Design-BUILDER shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation, employer’s liability, and professional liability (as applicable) insurance, and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor’s pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-BUILDER, unless otherwise indicated in the Supplementary Conditions. Such Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) shall also include, as additional insureds, the Additional Insureds identified in the Supplementary Conditions.

F. Design-BUILDER shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-BUILDER has obtained and is maintaining the policies, coverages, and endorsements required by the Contract, including the required additional insured endorsements, prior to commencing the Work and entering any lands upon which the Work shall be performed. Upon request by Owner or any other insured, Design-BUILDER shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-BUILDER’s Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-BUILDER may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

G. Owner shall deliver to Design-BUILDER, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-BUILDER or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

H. Failure of Owner or Design-BUILDER to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or
Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner’s termination rights under Article 15.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder’s interests.

M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder’s liability under the indemnities granted to Owner and other individuals and entities in the Contract.

N. The fact that an entity or individual is named as an additional insured on a particular insurance policy required under this Contract is not intended to constitute a waiver of any rights of any kind, including subrogation rights, claims for indemnification, or any other rights or claims.

6.03 Design-Builder’s Insurance

A. Workers’ Compensation and Employer’s Liability: Design-Builder shall purchase and maintain workers’ compensation and employer’s liability insurance for:

1. Claims under workers’ compensation, disability benefits, and other similar employee benefit acts.

2. United States Longshoreman and Harbor Workers’ Compensation Act and Jones Act coverage (if applicable).

3. Claims for damages because of bodily injury, including without limitation, bodily injury by accident (each accident), bodily injury by disease (policy limit), or bodily injury by disease (each employee); occupational sickness or disease; or death of Design-Builder’s employees (by stop-gap endorsement in monopolist worker’s compensation states).

4. Foreign voluntary worker compensation (if applicable).

B. Commercial General Liability—Claims Covered: Design-Builder shall purchase and maintain a minimum of $2 million commercial (marine) general liability insurance, covering all operations by or on behalf of Design-Builder, including without limitation, premises-operations coverage (including explosion, collapse, and underground coverage) and $1 million products-completed operations coverage, on an occurrence basis, against:

1. Claims for damages because of property damage, bodily injury, sickness or disease, or death of any person other than Design-Builder’s employees.
2. Claims for damages insured by reasonably available personal injury liability coverage.
3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. Commercial General Liability—Form and Content: Design-Builder’s commercial liability policy shall be have limits of not less than $2 million per occurrence, $2 million general aggregate limits and $2 million products-completed operations aggregate limits, or limits carried, whichever are greater, which limits may be satisfied by a combination of primary general liability and excess liability policies. Said insurance shall be issued by a solvent, reputable insurance company having an A.M. Best’s rating of A-VII or better and authorized to do business in the State of Florida, and written on a 1996 (or later) ISO commercial general liability form (occurrence form). The Additional Insureds identified in the Supplementary Conditions shall also be listed as insureds. The Additional Insureds, as provided for in the Supplementary Conditions, shall be listed on ISO Form 20 10 11 85 or, in lieu thereof, on both ISO Form 20 10 10 01 and 20 37 10 01, or equivalents, and include the

The policy should include the following coverages and endorsements:

1. Products and completed operations coverage:
   a. Such insurance shall be maintained for three years after final payment.
   b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder’s contractual indemnity obligations in Paragraph 7.19.

3. Broad form property damage coverage.

4. Severability of interests and no insured-versus-insured or cross-liability exclusions.

5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.

7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 11 85; or 20 10 10 01 and CG 20 37 10 01 (together) in lieu thereof, or equivalents. If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.

D. Commercial General Liability—Excluded Content: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:

1. Any modification of the standard definition of “insured contract.”
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs.
4. Any exclusion of coverage relating to earth movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability.
6. Any limitation or exclusion based on the nature of Design-Builder’s work.
7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.

E. **Automobile liability:** Design-Builder shall purchase and maintain automobile liability insurance, including without limitation, liability arising out of all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation any machinery or apparatus attached thereto, with limits not less than those limits set forth in the Supplementary Conditions. The automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent, and shall include, without limitation, contractual liability coverage, against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

F. **Umbrella or excess liability:** Design-Builder shall purchase and maintain, written on an occurrence policy form, a minimum of $5 million umbrella and/or excess liability insurance, with limits of liability not less than those limits set forth in the Supplementary Conditions on a per occurrence/annual aggregate in excess of the limits of the, written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a “follow the form” basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

G. **Contractor’s pollution liability insurance:** Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder’s operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

H. **Additional insureds:** The Design-Builder’s commercial (marine) general liability, and automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, staff, supervisors, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. **Professional liability insurance:**

1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of...
performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.

2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.

3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.

4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.1, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. General provisions: The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.

2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.

3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days’ prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.

4. Remain in effect at least until final payment and Design-Builder’s departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
6.04 Owner’s Liability Insurance

A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner’s option and expense, may purchase and maintain Owner’s own liability insurance to protect Owner against claims which may arise with respect to the Project.

B. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner’s liability policies for any of Design-Builder’s obligations to the Owner or third parties.

6.05 Property Insurance

A. Builder’s Risk: Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder’s risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. Include the Owner, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC, and NASH Vingt-huit, LLC, and Design-Builder as named insureds, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, and all Construction Subcontractors, employees, and any individuals or entities required by the Supplementary Conditions to be insured under such builder’s risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as “insureds.”

2. Be written on a builder’s risk “all risk” policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.

3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the
Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.

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

5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).

6. Extend to cover damage or loss to insured property while in transit.

7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.

8. Provide for the waiver of claims and waiver of the insurer’s subrogation rights, as set forth in Paragraph 6.06.

9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.

10. Not include a co-insurance clause.

11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.

12. Include performance/hot testing and start-up.

13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.

B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days’ prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. Deductibles: The purchaser of any required builder’s risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

D. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder’s risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder’s risk insurer. The builder’s risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder’s risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.
E. **Additional Insurance:** If Design-Builder elects to obtain other special insurance to be included in or supplement the builder’s risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder’s expense.

F. **Insurance of Other Property:** If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so what amount.

G. **Loss of Use and Delay in Start-up:** Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

6.06 **Waiver of Rights**

A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder’s risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner’s property or the Construction caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.

C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is
allowed to waive the insurer’s rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder’s risk insurance and any other property insurance applicable to the Project.

6.07 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder’s risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder’s risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES

7.01 Design Professional Services

A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.

B. Standard of Care: The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 Construction

A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 *Labor; Working Hours*

A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction during regular working hours, Monday through Saturday. Design-Builder will not perform the Construction on a Sunday or on any legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder’s sole discretion. Design-Builder may perform the Construction outside regular working hours or on Sundays or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

7.05 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 “Or Equals” and Substitutions

A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the
Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
3. Has a proven record of performance and availability of responsive service; and
4. Is not objectionable.

B. Effect of Owner’s Determination: Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

C. Substitutes: During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner’s sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.

D. Design Professional Review: Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed “or equal” or substitute shall review and approve the proposal.

E. Construction Drawings and Construction Specifications: “Or equal” or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others

A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.

B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.

E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder’s own acts and omissions.

H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.

J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.

K. Nothing in the Contract Documents:

1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor

2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.
7.08 Patent Fees and Royalties

A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) Owner and Owner’s Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents, provided however that such infringement is caused by the negligent, reckless, or intentionally wrongful actions of the Design-Builder or those for which Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09 Permits and Utility Charges

A. Design-Builder shall be responsible The Contract Documents allocate responsibility for obtaining and paying for all required for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work that have not already been obtained by Owner. Owner shall be responsible for obtaining extensions to (but not modifications of) permits already obtained by Owner prior to the Effective Date of this Contract. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals. Owner will cooperate with Design-Builder’s permitting efforts.
B. Design-Build shall pay all charges of utility owners for temporary service to the Work. **Owner** Design-Build shall also pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto. Design-Build shall provide all signage required by applicable permits and governmental authorities, including, but not limited to, navigational signs.

7.10 **Taxes**

A. Design-Build shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Build in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 **Laws and Regulations**

A. Design-Build shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Build’s compliance with any Laws or Regulations.

B. If Design-Build or those for which Design-Build is responsible, including without limitation, the Design-Build’s successors, assigns, agents, engineer, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, negligently, recklessly, or intentionally and wrongfully performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Build shall bear all claims, costs, losses, and shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs) arising out of or relating to such Work.

C. Changes in Laws or Regulations that occur after the date on which the Design-Build committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

7.12 **Record Documents**

A. Design-Build shall maintain the Record Documents in good order, in a safe place at the Site. Design-Build shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Build shall deliver the Record Documents, as annotated, to Owner.

B. After receipt and review of the Record Documents from Design-Build upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Build collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.

C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Build with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.
7.13 Safety and Protection

A. Design-Build shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Build shall take all necessary reasonable and customary precautions for the safety of, and shall provide the necessary reasonable and customary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.

B. Design-Build shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. Among other requirements, Design-Build or subcontractors performing trench excavation work on the Project shall comply with all applicable trench safety standards.

C. Design-Build shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.

D. Design-Build shall inform Owner of the specific requirements of Design-Build’s safety program with which Owner and its employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Build’s negligence, recklessness, or intentional misconduct in performance of the Work, or that of any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them for which Design-Build is responsible to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build at its expense.

F. Design-Build’s duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Build in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Build has left the Site.

G. Design-Build’s duties and responsibilities for safety and protection shall resume whenever Design-Build or any Construction Subcontractor, Supplier, or other representative returns
to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 Safety Representative
A. Design-Build shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 Hazard Communication Programs
A. Design-Build shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 Emergencies
A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Build is obligated to act to prevent threatened damage, injury or loss. Design-Build shall give Owner prompt written notice if Design-Build believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Build in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 Post-Construction Phase
A. Design-Build shall:
   1. Provide assistance in connection with the start-up and testing of any equipment or system.
   2. Assist Owner in training staff to operate and maintain the Work.

7.18 Design-Build’s General Warranty and Guarantee
A. For a period of one (1) year following the Substantial Completion of the Construction by Design-Build, Design-Build warrants and guarantees to Owner that Design-Build will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.

B. Design-Build’s warranty and guarantee hereunder excludes defects or damage caused by:
   1. Abuse, modification or improper maintenance or operation by persons other than Design-Build, Construction Subcontractors, or Suppliers or any other individual for whom Design-Build is responsible; or
   2. Normal wear and tear under normal usage.

C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Build’s obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
   1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

D. If the Contract requires Design-Builder to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Design-Builder’s performance obligations to Owner for the Work described in the assigned contract.

E. Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier or subcontractor to consent to same, then Design-Builder shall secure the material supplier’s or subcontractor’s consent to assign said warranties to Owner. The District may, but is not obligated to, help the Design-Builder secure such consent from any subcontractors and/or material suppliers.

F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.

7.19 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner’s Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Design-Builder under the Contract or otherwise, Design-Builder shall indemnify and hold harmless Owner, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, “Indemnitees”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the
Design-Builder, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

B. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professional, Subcontractors and Suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnitees”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used in this Contract shall mean any and all claims of property owners requesting the Owner to undertake repairs to their property on account of damages believed by such property owner to be a result of the compromised seawall located along the Mira Bay canal system within the Site including, but not limited to, requests made by any and all property owners to Owner pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Design-Builder, Project Design Professional, Subcontractors and Suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnitees, as the case may be.

D. In any and all claims or actions against Owner, Owner’s Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, any Construction Subcontractor, Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

E. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner’s Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications, or any Upland Claims.
ARTICLE 8 – SUBMITTALS

8.01 Design-Builder’s Preparation of Submittals

A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.

B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder’s transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:

1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.

2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.

C. Before Design-Builder’s transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:

1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;

2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;

3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder’s responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.

F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner’s review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

8.02 Owner’s Review of Submittals

A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.

B. For those Submittals requiring Owner’s review and approval, Owner’s response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.

C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner’s review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.

D. Owner’s approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.

E. Owner’s review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner’s attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner’s review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.

F. Construction tasks and expenditures by Design-Builder prior to Owner’s review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.

G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.

H. The parties acknowledge that Design-Builder’s design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may
propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner’s interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

ARTICLE 9 – OTHER CONSTRUCTION

9.01 Other Work

A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner’s employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner’s employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.

C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner’s employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others’ work with the written consent of Owner and the others whose work will be affected.

D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

9.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner’s employees, or to
arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

9.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner’s employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder’s rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner’s contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

C. When Owner is performing other work at or adjacent to the Site with Owner’s employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder’s failure to take reasonable and customary measures with respect to Owner’s other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.

D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through
Design-Builder’s failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder’s actions, inactions, or negligence, recklessness, or intentional misconduct in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Indemnitees (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 10 – OWNER’S RESPONSIBILITIES

10.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:

1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days’ notice to the Owner;

2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;

3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.

4. Furnish to Design-Builder, as required for performance of the Work, all of the following in Owner’s possession, all of which Design-Builder may use but may not and rely upon in performing services under this Agreement:

a. Environmental assessment and impact statements;

b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;

c. Property descriptions;

d. Zoning, deed, and other land use restrictions;

e. Utility and topographic mapping and surveys;

f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
Limitations

A. Insurance

10.03 Limitations on Owner’s Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.

g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;

h. Engineering surveys to establish reference points which in Owner’s judgment are necessary to enable Design-Builder to proceed with the Work;

i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and

j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.

5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.

B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.

C. Recognizing and acknowledging that Design-Builder’s services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:

a. Accounting, bond and financial advisory (including, if applicable, “municipal advisor” services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.

c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.

D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 Insurance

A. Owner’s responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
10.04 Undisclosed Hazardous Environmental Condition
   A. Owner’s responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 Owner’s Site Representative
   A. Owner may furnish an Owner’s Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner’s Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 Owner’s Consultants and Managers
   A. Owner’s Consultant, if any, is identified in the Agreement.
   B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
   C. Neither Owner’s Consultant, Owner’s Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner’s Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder’s means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.

10.07 Safety Programs
   A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Design-Builder’s safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
   B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 Permits and Approvals Staging Lot
   A. Owner will supply Design-Builder an area for staging and lay-down of materials and equipment. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents
   A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
      1. Change Orders: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish
amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

2. **Work Change Directives:** The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive’s effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive’s addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.

B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes shall be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder’s safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 Unauthorized Changes in the Work

A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 Changes Involving the Design

A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder’s provision of Professional Design Services in response to the change.
11.05  **Change of Contract Price**

A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.

B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder’s fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.

C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder’s Fee for overhead and profit (determined as provided in Paragraph 11.05.D).

D. **Design-Builder’s Fee**: The Design-Builder’s fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder’s fee shall be 15 percent;

   b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder’s fee shall be 5 percent;

   c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder’s fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;

f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder’s fee by an amount equal to 5 percent of such net decrease; and

g. When both additions and credits are involved in any one change, the adjustment in Design-Builder’s fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

11.06 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.

B. Design-Builder’s entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

11.07 Execution of Change Orders

A. Owner and Design-Builder shall execute appropriate Change Orders covering:

1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner’s correction of defective Work under Paragraph 13.05 or Owner’s acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.

B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

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11.08 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builders responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

12.01 Cost of the Work

A. Costs of the Work Adjustment: When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builders in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builders will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.

B. Costs Included: The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:

1. Payroll costs for employees in the direct employ of Design-Builders in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builders in advance of such performance.
   a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
   b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builders. For purposes of this Paragraph 12.01.B.1.b, Design-Builders shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith. All cash discounts shall accrue to Design-Builders unless Owner deposits funds with Design-Builders with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and
refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.

3. Cost of permits obtained by Design-Builder.

4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor’s Cost of the Work and fee shall be determined in the same manner as Design-Builder’s Cost of the Work and fee.

5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.

6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.

7. Supplemental costs including the following items:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder’s employees incurred in discharge of duties connected with the Work.
   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
   c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
   d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
   e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
   f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be
12.02 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The

C. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design-Builder’s officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder’s principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder’s fee.

2. Expenses of Design-Builder’s principal and branch offices other than Design-Builder’s office at the Site.

3. Any part of Design-Builder’s capital expenses, including interest on Design-Builder’s capital employed for the subject Work and charges against Design-Builder for delinquent payments.

4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.

D. Design-Builder’s Fee: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder’s fee shall be determined as set forth in Paragraph 11.05.D.

E. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.
estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.

B. If Design-Builder’s compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.

C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder’s overhead and profit for each separately identified item.

D. Design-Builder or Owner may seek an adjustment in the Contract Price if:

1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

**ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

**13.01 Access to Construction**

A. Owner, Owner’s Consultant, Owner’s Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder’s Site safety procedures and programs so that they may comply therewith as applicable.

**13.02 Tests, Inspections, and Approvals**

A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
3. To attain Owner’s acceptance of materials or equipment to be incorporated in the Construction;
4. By manufacturers of equipment furnished under the Contract Documents;
5. To meet the requirements of the Construction Drawings and Construction Specifications;
6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder’s purchase thereof for incorporation in the Construction.

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B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.

C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.

D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.

E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.

F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.

H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.

I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder’s expense unless Design-Builder has given Owner timely notice of Design-Builder’s intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

13.03 Uncovering Construction

A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner’s request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner’s observation and re-covering it shall be at Design-Builder’s expense, regardless of whether it is defective.

2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Build shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

13.04 Defective Construction

A. It is Design-Build’s obligation to assure that the Construction is not defective.

B. Owner shall give Design-Build prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.

C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Build shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.

D. When correcting defective Construction, Design-Build shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Construction.

13.05 Owner May Correct Defective Construction

A. If Design-Build fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Build fails to perform the Construction in accordance with the Contract Documents, or if Design-Build fails to comply with any other provision of the Contract Documents, Owner may, after 7 days’ written notice to Design-Build, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Build from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Build’s services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Build but which are stored elsewhere. Design-Build shall allow Owner, Owner’s Consultant, Owner’s Site Representative, and Owner’s other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 Costs

A. Design-Build shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.

B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Build, by set-off against payment or otherwise.
C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 Owner’s Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 Owner May Stop Construction

A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

14.01 Progress Payments

A. Basis for Progress Payments: The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

B. Application for Progress Payment: On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner’s interest therein, all of which will be satisfactory to Owner. Except with respect to the purchase of sheet pile in the event Owner does not directly purchase said materials (in which case Design-Builder agrees to purchase and store only that quantity of material agreed upon by Design-Builder and Owner), progress payments are to be made only on
installed material; no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.

C. **Payment of Obligations:**

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder’s legitimate obligations associated with prior Applications for Payment.

2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. **Review of Applications:**

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes. Design-Builder shall make payments due to subcontractors and suppliers within 10 days in accordance with the prompt payment provisions contained in Section 218.735(6) and 218.74, Florida Statutes. Invoices from Design-Builder should be directed to the District Manager, Rizzetta & Company, Inc., c/o Joe Roethke, 9428 Camden Field Parkway, Riverview, Florida 33578, with e-mail copies to JRoethke@rizzetta.com, jbudis@rizzetta.com, and Greg.Woodcock@cardno.com, and Christopher.Gamache@cardno.com.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. **Reduction in or Refusal to Make Payment:**

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the
results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:

a. Claims have been made against Owner on account of Design-Builder’s conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder’s conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Design-Builder has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Construction is defective, requiring correction or replacement;

g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;

h. The Contract Price has been reduced by Change Orders;

i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;

j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder’s failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;

k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or

l. There are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereeto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.
14.02 Design-Builder’s Warranty of Title

A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.03 Substantial Completion

A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.

B. If Owner considers the Work substantially complete:

1. Owner and Design-Builder will confer regarding Owner’s use or occupancy of the Work following Substantial Completion, review the builder’s risk insurance policy with respect to the end of the builder’s risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner’s use or occupancy of the Work. Additionally, five percent (5%) of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent (4%) shall be returned to Design-Builder. Owner shall return the remaining one percent (1%) upon Final Completion and acceptance of the Work by Owner.

2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.

C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

E. To the extent this paragraph 14.03 is inconsistent in any way with Florida’s Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes, such Act shall control, and this Contract shall be construed to allow for the maximum amount of time allowable under the Act in order to review any punch lists and make payment.

14.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without
significant interference with Design-Builder’s performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.

2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

14.05 Final Inspection

A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 Final Payment

A. Application for Payment:

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by:

   a. All documentation called for in the Contract Documents;

   b. Consent of the surety, if any, to final payment;

   c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;

   d. A list of all disputes that Design-Builder believes are unsettled; and

   e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner’s property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Final Payment and Acceptance*: If Owner is satisfied that the Work has been completed and Design-Builder’s other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.

C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment.

D. *Payment Becomes Due*: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner’s notice of acceptability.

14.07 *Waiver of Claims*

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder’s failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder’s continuing obligations under the Contract.

B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

14.08 *Correction Period*

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner’s written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or
damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design-Builder’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).

2. Design-Builder’s disregard of Laws or Regulations of any public body having jurisdiction.


B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days’ written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such
excess will be paid to Design-Build. If such costs, losses and damages exceed such unpaid balance, Design-Build shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding Paragraph 15.02.B, Design-Build’s services will not be terminated if Design-Build begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design-Build’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Build then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Build by Owner will not release Design-Build from liability.

15.03 Owner May Terminate for Convenience

A. Upon 7 days’ written notice to Design-Build, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Build shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers, and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and

4. Reasonable expenses directly attributable to termination.

In such case, Owner will pay Design-Build all costs reasonably associated with Design-Build’s mobilization on Site; the costs of materials purchased for the Construction and stored on Site by Design-Build prior to such notice; all amounts due and not previously paid to Design-Build for Work completed in accordance with the Contract prior to such notice; the cost of reasonably protecting Work in place, and for Work thereafter completed as specified in such notice; and the release and payment to Design-Build of all retainage held by Owner related to the portion of the Work completed. No payments will be made for any potential costs of settling or paying claims arising out of termination of the Work under subcontracts, equipment leases, orders, or other related arrangements.

B. Design-Build shall not be paid on account of loss of anticipated profits or revenue or other economic loss, or any other consequential damages of any kind, arising out of or resulting from such termination.

C. Upon any such termination, Design-Build shall:
15.04 **Design-Build May Stop Work or Terminate**

A. If, through no act or fault of Design-Build, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Build any sum finally determined to be due, then Design-Build may, upon 7 days’ written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Build any sum finally determined to be due, Design-Build may upon 7 days’ written notice to Owner stop the Work until payment is made of all such amounts due Design-Build, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Build from obtaining an increase in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to Design-Build’s stopping Work as permitted by this paragraph.

**ARTICLE 16 – DISPUTES**

16.01 **Methods and Procedures**

A. **Notice of Claim**: If Owner and Design-Build are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to...
give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

B. **Response:** Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.

C. **Direct Negotiations:** Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.

D. **Mediation:** If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.

1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.

E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

F. In the event Owner or Design-Builder is required to enforce this Agreement by court proceedings or otherwise, then venue for any such legal action shall be in Hillsborough County, Florida, and the substantially prevailing party shall be entitled to recover from the other party all fees and costs incurred, including without limitation reasonable attorney’s fees and costs, paralegal fees, and expert witness fees.

**ARTICLE 17 – MISCELLANEOUS**

17.01 **Giving Notice**

A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:

1. In person, by a commercial courier service or otherwise; or
2. By registered or certified mail, postage prepaid; or
3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.
17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. Any special warranty or guarantee; or
3. Other provisions of the Contract.

B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 Limitation of Damages

A. With respect to this Contract and any and all Claims and other matters at issue, neither Owner nor its supervisors or staff shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 No Waiver

A. A party’s non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 Survival of Obligations

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 Controlling Law

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
17.09 **Sovereign Immunity**

A. Design-Builder and Owner agree that nothing in this Contract shall be deemed as a waiver of the Owner’s sovereign immunity or the Owner’s limits of liability as set forth in Section 768.28, Florida Statutes or other statute or law, and nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.
SUPPLEMENTARY CONDITIONS RELATING TO
SUBSURFACE CONDITIONS AND INSURANCE REQUIREMENTS

The following supplements establish insurance limits and other requirements relating to Article 6 of the Standard General Conditions of the Contract between Owner and Design-Builder, EJCDC Document No. D-700, 2016 Edition (the “General Conditions”), as well as identify certain reports relating to subsurface and physical conditions at the site, which reports relate to Article 5 of the General Conditions. Other changes have been marked directly in underlined and strike-through on the Standard Form of Agreement and the General Conditions. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS

Pursuant to Paragraph 5.02.E. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner and were used by Emergency Work Project Engineer in the preparation of the Reconstruction Solution:

1. Report dated May 2015 prepared by Langan Engineering and Environmental Services, Inc. The Technical Data contained in such report are Langan’s Confirmation Borings Location Plan and Subsurface Profiles.

2. Report dated August 13, 2012 prepared by HSA Engineers & Scientists and entitled “Results of Hand Cone Soundings Harbor Bay CDD (Mira Bay) Seawall Study.” The Technical Data contained in such report are the results of hand cone soundings.


Pursuant to Paragraph 5.02.E. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner:

1. None
ARTICLE 6 – BONDS AND INSURANCE

6.03 Design-Builder’s Insurance

Add the following new paragraphs after Paragraph 6.03.K. of the General Conditions:

K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:

1. Workers’ Compensation under Paragraph 6.03.A. of the General Conditions:
   a. State Worker’s Compensation – Greater of statutorily required amount or $1,000,000 per occurrence / $1,000,000 aggregate / $1,000,000 per disease
   b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $1,000,000
   c. Employer’s Liability – $1,000,000

2. Commercial General Liability Insurance under Paragraphs 6.03.B., and 6.03.C., and 6.03.D. of the General Conditions:
   a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence – $2,000,000
   b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate – $2,000,000
   c. Products-Completed Operations – $2,000,000
   d. Personal and Advertising Injury – $1,000,000
   e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

3. Automobile Liability under paragraph 6.03.E. of the General Conditions:
   a. Bodily Injury:
      - Each Person $1,000,000
      - Each Accident $2,000,000
   Property Damage:
      - Each Occurrence $1,000,000

4. Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $1,000,000

5. Protection and Indemnity Insurance $1,000,000

6. The Contractual Liability coverage required by paragraph 6.03.C. of the General Conditions shall provide coverage for not less than the following amounts:
   a. General Aggregate $2,000,000
   b. Bodily Injury and Property Damage
Combined Each Occurrence $2,000,000

7. Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
   a. General Aggregate $5,000,000
   b. Each Occurrence $5,000,000

8. Installation Floater to protect against fire, theft, or other loss of Project materials $1,750,000.

L. All insurance policies secured by Design-Builder pursuant to the General Conditions shall be written on an “occurrence” basis to the extent permitted by law. The Design-Builder’s commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: Owner, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (the “Additional Insureds”). By virtue of such Additional Insureds being named as additional insureds to the aforementioned insurance policies or as indemnitees herein, such Additional Insureds are not responsible for any of the terms and/or provisions of the Contract and Design-Builder shall look only to the Owner regarding all obligations and liabilities arising from the Contract. A waiver of subrogation endorsements shall also be issued in favor of the Additional Insureds with respect to the Worker’s Compensation, Commercial General Liability, and Automobile Liability policies.

M. Design-Builder shall also require its Construction Subcontractors and Engineer to (1) obtain and maintain the insurance coverages identified in 6.02.E of the General Conditions for the coverage amounts identified above, and (2) include and list the Additional Insureds.

N. Such insurance as listed above is in addition to all other insurance required under the Contract.
PROJECT MANUAL

REQUEST FOR PROPOSALS FOR DESIGN-BUILD OF MASTER SEAWALL PROJECT SECTION III (5,130 LF)

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

DISTRICT ENGINEER AND DESIGN CRITERIA PROFESSIONAL:

CHRISTOPHER GAMACHE, P.E.
CARDNO LIMITED
PHONE: (727) 431 -1615
380 PARK PLACE BLVD, SUITE 300
CLEARWATER, FLORIDA 33759
CHRISTOPHER.GAMACHE@CARDNO.COM
WWW.CARDNO.COM

GREGORY WOODCOCK
CARDNO LIMITED
PHONE: (352) 754 - 1240
20215 CORTEZ BLVD
BROOKSVILLE, FLORIDA 34601
GREG.WOODCOCK@CARDNO.COM
WWW.CARDNO.COM

November ____, 2018
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEA WALL PROJECT
SECTION III (5,130 LF)

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HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)
Hillsborough County, Florida

The Harbor Bay Community Development District (“District”) hereby requests proposals from firms to provide labor, materials, equipment and construction services necessary for the District’s master stormwater and retaining wall stabilization project (“Project”), as more particularly described in the Project Manual, as herein defined, and in accordance with design criteria package (“Design Criteria Package”) specifications prepared by Cardno Limited (the “Design Criteria Professional”). The District is a special-purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida. Portions of the District’s community retaining wall, which is integral to and a component of the District’s stormwater management system, and which covers approximately 7 miles in length, is in need of stabilization reconstruction due to certain prior construction defects. Toward that end, the District is seeking proposals from qualified firms.

The Project is divided into three sections – Sections I, II, and III. Each section is being advertised as a stand-alone request for proposal. Proposals may be submitted for one, two, or all three sections, although each proposal should be submitted individually for each section. This Request for Proposals (“RFP”) is for Section III (5,130 LF) of the Project only (the “RFP Work”). Proposers have the option to provide a solution to reconstruct the existing wall that is consistent with the Design Criteria Package included within the Project Manual. Within portions of Section III, the reconstruction will involve placing additional fill, and planting mangroves, as well as some drainage work, to enhance the berm along the retaining wall. Portions of Section III will also require the removal of upland trees as well as a solution to reconstruct the existing wall.

To be eligible to submit a proposal, and in addition to any other requirements set forth in the Project Manual, an interested firm must hold all required local, state and federal licenses in good standing and be authorized to do business in Hillsborough County and the State of Florida. TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK.

The instructions to proposers, contract, proposal form, and other materials (“Project Manual”) will be available for public inspection and may be obtained beginning November 29, 2018 at 10 a.m. and until January 31, 2019 at 12:00p.m. Please contact the District Manager (using the e-mail addresses below) for the cost of the package, and to obtain pick-up information. Proposers must provide contact information at the time of pick-up of the Project Manual, and may purchase as many Project Manuals as they would like. No partial Project Manual or plans will be available. The District reserves the right in its sole discretion to make changes to the Project Manual up until the time of the bid opening, and to provide notice of such changes only to those proposers who have purchased a Project Manual.
There will be a **pre-proposal conference** at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and announced), on **December 14, 2018** at **10:00 a.m.**. Attendance at the pre-proposal conference is not mandatory, but is strongly encouraged, and attendees must purchase a Project Manual to attend.

No later than **February 1, 2019** at **12:00 p.m.**, each firm desiring to submit a proposal for the RFP Work must submit one (1) original of the firm’s proposal to the District Manager’s Office, Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, Florida 33625, as well as one (1) electronic copy of the firm’s proposal to Joseph Roethke at jroethke@rizzetta.com. It is anticipated that the proposals will be publicly opened at that time, though the proposals otherwise may be maintained on a confidential basis throughout the procurement process and to the extent permitted by Florida law. Additionally, and as further described in the Project Manual, each proposer shall supply a bid bond or cashier’s check made payable to the District and in the amount of $100,000 with its proposal. Proposals shall be in the form provided in the Project Manual and submitted in a sealed envelope, marked with a notation “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION III (5,130 LF).” The District reserves the right to return unopened to the proposer any proposals received after the time and date stipulated above. Each proposal shall remain binding for a minimum of one hundred fifty (150) days after the proposal opening.

Proposals will be evaluated in accordance with the criteria included in the Project Manual. The District reserves the right to reject any and all proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any proposal, as it deems appropriate, and if the District determines in its discretion that it is in the District’s best interests to do so. Any protest of the Project Manual, including, but not limited to the terms and specifications, must be filed with the District within 72 hours of pickup of the Project Manual, together with a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. Failure to timely file a protest, or failure to timely post a protest bond, will result in a waiver of proceedings under Chapter 190, *Florida Statutes*, and other law. Additional requirements for filing a protest can be found in the District’s Rules of Procedure (available upon request).

The successful proposer will be required upon award to furnish a payment and performance bond for one hundred percent (100%) of the value of the contract (as described in the Project Manual), with a surety acceptable to the District, and in accordance with Section 255.05, *Florida Statutes*.

Any and all questions relative to this Request for Proposals or the RFP Work shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District
Manager, at jroethke@rizzetta.com; and Michael Eckert, District Counsel, at michaele@hgslaw.com. No phone inquiries please.

Joseph Roethke, District Manager
Harbor Bay Community Development District
PART I. GENERAL INFORMATION – (B) INSTRUCTIONS TO PROPOSERS

ANY PROTEST OF THIS PROJECT MANUAL MUST BE FILED WITH THE DISTRICT WITHIN 72 HOURS OF PICKUP OF THE PROJECT MANUAL, TOGETHER WITH A PROTEST BOND IN A FORM ACCEPTABLE TO THE DISTRICT AND IN THE AMOUNT OF $100,000, AND FOLLOWED WITHIN SEVEN (7) CALENDAR DAYS BY A FORMAL WRITTEN PROTEST STATING WITH PARTICULARITY THE FACTS AND LAW UPON WHICH SUCH PROTEST IS BASED. FAILURE TO TIMELY FILE A PROTEST, OR FAILURE TO TIMELY POST A PROTEST BOND, WILL RESULT IN A WAIVER OF PROCEEDINGS UNDER CHAPTER 190, FLORIDA STATUTES, AND OTHER LAW. ADDITIONAL REQUIREMENTS FOR FILING A PROTEST CAN BE FOUND IN THE DISTRICT’S RULES OF PROCEDURE, WHICH ARE AVAILABLE UPON REQUEST.

General Instructions

1. OVERVIEW. The Harbor Bay Community Development District (“District”) is seeking proposals (“Proposal(s)”) from firms (“Proposer(s)”) capable of providing labor, materials, equipment and construction services for Section III (5,130 LF) of the community’s master stormwater and retaining wall stabilization project (“Project”). The District is a special purpose unit of local government established under Chapter 190, Florida Statutes, for the purpose of financing, acquiring, constructing, installing, operating and maintaining community infrastructure improvements for the community of Mirabay, which is located in south Hillsborough County, near Apollo Beach, Florida.

The District is undertaking the Project in order to stabilize the community seawall, which is more accurately described as a “retaining wall.” The retaining wall, which extends approximately 7 miles in length, was constructed in the years following the District’s establishment in 1999, and is an integral part of the District’s stormwater management system. The retaining wall consists of sheet piling, tie-rod anchors, a dead-man system, and a concrete cap securing certain of the other components. (As a remedial action, certain areas within the community also have a waler installed along the retaining wall to further secure the wall.) The canals established by the retaining wall connect to the District’s master stormwater system, and serve to collect and release water through the system and into Tampa Bay.

After the retaining wall was installed, it became apparent that it was failing at certain locations within the community, causing the retaining wall sheets to bend and the concrete cap at the top of the wall to rotate.

Thereafter, the District retained Ingenium, Inc. (“Ingenium”), a structural engineering firm, to conduct a pilot project and propose various options for stabilizing the community retaining wall. As part of the pilot project, Ingenium considered and field tested three different

The District also commissioned a peer review of the Pilot Project Report. This analysis of the Pilot Project Report, based on a number of criteria, is available online at http://harborbaycdd.org/projects/procurements/.

In the fall of 2015 and through the current date, the District has proceeded on an emergency basis to stabilize portions of the retaining wall. Emergency work is ongoing at the time of this Request For Proposals – Design-Build of Master Seawall Project, Section III (5,130 LF) (“RFP”).

At a public workshop in December 2015, the District’s Board of Supervisors (“Board”) was presented with a plan for addressing the balance of the community, which was divided into three sections. (Refer to the Technical Documents.)

In Section I, located in the eastern portion of the community, the retaining wall cap has rotated significantly and requires reconstruction or stabilization. Virtually all of the lots located within Section I have homes located on them. For Section I, either one of two solutions, including what are referred to herein as the “Rip Rap Reconstruction Solution” and “New Wall Reconstruction Solution,” was recommended.

The New Wall Reconstruction Solution involves installation of new sheet piling and additional tie-rod anchors at the face of the existing wall, which components would be bound to the existing wall with a new concrete cap that would envelop the existing cap. Flowable fill would be injected between the old wall and the new sheet piling, and a drainage system would be installed behind the existing wall. For purposes of this RFP, the “New Wall Alternative” refers to installation of the New Wall Reconstruction Solution within Section III, with the Berm Reconstruction for the relevant portion of Section III.

The Rip Rap Reconstruction Solution is similar to the New Wall Reconstruction Solution with the exception that instead of installing new sheet piling and additional tie-rod anchors, the Rip Rap Reconstruction Solution involves placing rip-rap against the existing sheet piling. Like the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution also involves the installation of a new cap over the existing cap, as well as installation of a drainage system behind the existing wall. For purposes of this RFP, the “Rip Rap Alternative” refers to installation of the New Wall Reconstruction Solution at some locations, and the Rip Rap Reconstruction Solution at most locations, within Section III, with the Berm Reconstruction for the relevant portion of Section III.

The Board is committed to finding and implementing the proper reconstruction solution. The Board has continuously worked to ensure that the retaining wall will undergo reconstruction work in the near future.

1 In the event that Proposers are reviewing other District documents, it’s worth noting that the District’s prior documents refer to the Rip Rap Reconstruction Solution as “Modified Option 1,” and the New Wall Reconstruction Solution as “Option 3.”
In April 2017, the Board, by majority vote, issued the Phase 1 Reconstruction RFP, which included reconstruction work along the retaining wall for approximately twenty-three lots within the community. Despite interest among contractors, the District received only one proposal in response to the Phase 1 Reconstruction RFP. At its June 15, 2017 meeting, the Board rejected the proposal because it (i) exceeded the budgeted amount for the Project; and (ii) there were not enough proposals received to be competitive. In rejecting the sole Phase 1 Reconstruction RFP proposal, the Board reiterated the importance of receiving as many proposals as possible.

Consequently, in October 2017, the Board decided to pursue and issue a design-build RFP for all three sections of the Project (the “2017 RFP”), which would allow Proposers to develop and specify a solution. Design-Builders were given the flexibility to propose the New Wall Reconstruction Solution, the Rip Rap Reconstruction Solution, and/or one or more other solution(s). Moreover, Design-Builders were also given the flexibility to implement different solutions for different areas of the Project, as different areas of the Project have different characteristics. The District encouraged Proposers to consider the merits of a wide variety of repair solutions, including but not limited to rip rap, vinyl, and fiber reinforced polymer (FRP) composite sheet pile solutions (see Technical Documents for details). The District received no responsive bids to the 2017 RFP and post-bid efforts to negotiate a contract for the entire Project failed.

Unlike the Phase 1 Reconstruction RFP or the 2017 RFP, this design-build RFP (the “Design-Build Proposal”) allows Proposers to develop and specify a solution for Section III (5,130 LF) of the Project only. The Board welcomes, and strongly encourages, submission of any solution that is in accordance with the Design Criteria Package. The Board looks forward to reviewing all received Proposals.

All interested Proposers shall be required to comply with the design-build requirements pursuant to Section 287.055, Florida Statutes. For purposes of this RFP, the Design-Build refers to the design and reconstruction of a proposed solution with Berm Reconstruction within Section III (5,130 LF) only, with the Berm Reconstruction for the relevant portion of Section III. For Proposers’ reference, the District’s Design Criteria Professional has prepared, and included within this Project Manual, a Design Criteria Package containing concise, performance-oriented drawings and/or specifications for the Project, including the RFP Work.

With respect to portions of Section III, the placement of additional fill and the planting of mangroves have been recommended, along with some drainage improvements (together, “Berm Reconstruction”).

TIME IS OF THE ESSENCE WITH RESPECT TO THE RFP WORK. Each Proposer should provide detailed design and construction schedules for the Design-Build Proposal and detail how the Proposer intends to use its equipment and personnel to meet that schedule.

The District may elect to authorize the RFP Work in phases or otherwise take steps to address any funding related items. The District, as a special-purpose unit of local government, is authorized to levy and impose special assessments to generate revenue for capital projects such as the instant Project. See Chapters 170, 190, and 197, Florida Statutes. The District currently has
$2.9 million in various accounts, a portion of which will be used to finance the RFP Work. The District also plans to sell bonds to further finance the RFP Work and has the ability to levy and impose additional special assessments to finance the RFP Work.

For additional information, please refer to the District’s web-site at www.harborbaycdd.org.

2. **DUE DATE.** Sealed Proposals must be received no later than **February 1, 2019** at **12:00p.m.**, at the offices of Rizzetta & Company, Inc., 12750 Citrus Park Ln, Suite 115, Tampa, FL 33625 (“**District Manager’s Office**”), attention Joseph Roethke, and one (1) electronic copy of the same should be delivered no later than such date and time to Joseph Roethke via e-mail, at **jroethke@rizzetta.com**. Proposals will be publicly opened at that time, provided however that, subject to such public opening and announcements, all Proposals may be kept confidential for a period of time to the extent permitted by Florida law.

3. **SUMMARY OF SCHEDULE.** The District anticipates the following RFP schedule, though certain dates may be subject to change:

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 22, 2018</td>
<td>Notice of RFP Published &amp; Posted</td>
</tr>
<tr>
<td>November 29, 2018</td>
<td>RFP Available for Pick-Up</td>
</tr>
<tr>
<td>December 14, 2018</td>
<td>Pre-Proposal Meeting</td>
</tr>
<tr>
<td>January 18, 2019</td>
<td>Deadline for Questions</td>
</tr>
<tr>
<td>February 1, 2019</td>
<td>Proposals Due / Public Opening</td>
</tr>
<tr>
<td>February 21, 2019</td>
<td>Board Meeting to Evaluate Proposals &amp; Award Contract</td>
</tr>
</tbody>
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4. **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference will be held regarding the RFP Work on **December 14, 2018 at 10:00a.m.**, at the Mirabay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, FL 33572 (or at an alternative location to be determined and announced). The pre-proposal conference may include, but not be limited to, a discussion of contract requirements, inspections, evaluations and submittal requirements. Attendance at the pre-proposal conference is not mandatory, but is strongly encouraged.

5. **FAMILIARITY WITH THE LAW.** By submitting a Proposal, the Proposer is assumed to be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the Proposer will in no way relieve it from responsibility to perform the work covered by the Proposal in compliance with all such laws, ordinances and regulations.

6. **INTERPRETATIONS AND ADDENDA; COMMUNICATION.** Any and all questions relative to this RFP or the Project shall be directed in writing by e-mail only to Greg Woodcock and Christopher Gamache, P.E., District Engineers and Design Criteria Professionals, at greg.woodcock@cardno.com and christopher.gamache@cardno.com, respectively, with e-mail copies to Joseph Roethke, District Manager, at jroethke@rizzetta.com; and Michael Eckert, District Counsel, at michele@hgslaw.com. No phone inquiries please. All questions must be received no later than **January 18, 2019 at 5:00p.m.** to be considered. Interpretations or
clarifications considered necessary by the District in response to such questions will be issued by addenda e-mailed, faxed or otherwise delivered to all parties recorded as having received the Project Manual. Only questions answered by formal written addenda will be binding. No interpretations will be given verbally. All questions and answers will be distributed to all Proposers.

Except as set forth in this Section, Proposers should not communicate with any District Supervisor, staff member, or other representative during the submission and evaluation process. COMMUNICATION WITH ANY DISTRICT REPRESENTATIVE FOR ANY PURPOSE OTHER THAN THOSE EXPRESSLY DESCRIBED HEREIN MAY CAUSE AN INDIVIDUAL FIRM, OR TEAM, TO BE DISQUALIFIED FROM PARTICIPATING.

Completing the Proposal

7. **PROPOSAL FORM.** All blanks in the Project Manual must be completed in ink or typewritten. The Proposal shall contain an acknowledgement of receipt of all documents and addenda (the number of which must be filled in on the Affidavit Regarding Proposal). In making its Proposal, each Proposer represents that it has read and understands the Project Manual and that the Proposal is made in accordance therewith, including verification of the contents of the Project Manual against the Table of Contents.

8. **DESIGN CRITERIA PACKAGE.** The District has retained the firm of Cardno Limited to provide Design Criteria Professional services for the Project, including the RFP Work. The Design Criteria Package, which describes the minimum scope and required quality for design and construction of the Project and also provides information about the Project, is attached to the Project Manual. The Design Criteria Package is not represented as being construction documents. The Design Criteria Package has not undergone any regulatory review. It will be the Design-Builder’s responsibility to develop complete construction documents with all necessary details commensurate with the scope and quality indicated in the Design Criteria Package and to meet all regulatory requirements. Each Proposer acknowledges, understands, and agrees that the Design Criteria Package, and other Project information provided, do not constitute construction documents and do not reflect all of the design, permitting, regulatory, and construction requirements for the Project, and that, notwithstanding the above, these documents are sufficient in all respects for purposes of the Proposer’s preparation and submittal of its Proposal.

9. **PROPOSAL REQUIREMENTS.** All Proposals shall include the following information in addition to any other requirements of the Project Manual:

A. A narrative description of the Proposer’s approach to completing the RFP Work described in the scope of work provided herein. The narrative approach should specifically address and describe all components of the Design-Build Proposal, including but not limited to separate descriptions, schedules, and costs for each component of same (design, permitting, construction, and operation and maintenance) for the RFP Work. The narrative should also specify all permits, licenses, certificates of occupancy, and other approvals of governmental authorities
that Proposer will require to complete the RFP Work using its proposed solution(s).

B. A completed Proposal Form, including but not limited to, the forms addressing: General Information, Personnel & Equipment, Experience & Capacity, Unit Pricing, Guaranteed Maximum Price, Guaranteed Schedule, Sworn Statement on Public Entity Crimes, Sworn Statement Regarding Scrutinized Companies, and Affidavit Regarding Proposal. If additional permitting is required, the Proposer shall include the price of permitting in their proposal.

C. In connection with completing the Proposal Form, Proposer shall:

1. List position or title and corporate responsibilities of key management or supervisory personnel. For each manager and/or supervisor who will work on the RFP Work:
   i. Proposer should include resumes with applicable certifications.
   ii. Proposer should supply information regarding the Project manager’s / supervisor’s background and experience with projects similar to the RFP Work. (Supply at least 2 examples of experience on similar projects.)
   iii. Proposer should supply at least 3 references for each Project manager / supervisor from someone other than individuals affiliated with the Proposer.

2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work.

3. Describe proposed equipment that will be used for the RFP Work. Among other things, provide the following:
   i. The age of the equipment
   ii. Whether the equipment is owned or leased/rented
   iii. Whether the equipment will be pledged to only the RFP Work or also to other projects and, if the latter, what percentage of time the equipment will be available to the RFP Work

4. Provide a list of all engineers, subcontractors, and suppliers that will be hired by Proposer for the RFP Work. For each engineer / subcontractor / supplier, provide the following:
   i. A description of the engineer / subcontractor / supplier’s role in the RFP Work.
   ii. A description of the engineer / subcontractor / supplier’s background and experience, as it relates to the RFP Work.
   iii. The engineer/subcontractor / supplier’s geographic location.
1. For suppliers, identify also the location where the goods will be produced and shipped.

   iv. At least three references, including identifying the name, address and phone number for the reference.

   v. For all major engineers / subcontractors / suppliers, information regarding the financial capability of the engineer / subcontractor / supplier.

5. Describe how the proposed staffing and equipment will be used in order to meet the schedule, as proposed by Proposer.

6. Describe at least two projects similar to the RFP Work that Proposer has undertaken.

7. Describe previous or currently contracted work with other community development districts.

IN COMPLETING THE APPLICABLE FORMS UNDER SECTION B ABOVE, AND ADDRESSING THE ITEMS UNDER SECTION C ABOVE, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING WHAT PERSONNEL, EQUIPMENT & CAPACITY THAT THE PROPOSER HAS RELATING TO THE DESIGN-BUILD PROPOSAL IN ADDITION TO THE BERM RECONSTRUCTION. ADDITIONALLY, EACH PROPOSER SHALL PROVIDE SPECIFIC INFORMATION REGARDING THE PROPOSER’S EXPERIENCE RELATING TO THE DESIGN-BUILD PROPOSAL, AS WELL AS EXPERIENCE WORKING IN ENVIRONMENTALLY SENSITIVE AREAS (E.G., THOSE THAT INCLUDE PROTECTED MANGROVES).

D. Information regarding the financial capability of the Proposer. In particular, Proposer should supply the following:
   1. Copies of financial statements for the past three years, and an interim balance sheet not more than 60 days old.
   2. Information regarding current contracts on hand.
   3. Information regarding contracts completed during the last three years.
   4. Information regarding personnel hired by, and equipment owned by, the Proposer.

E. Guaranteed Maximum Pricing for the Design-Build Proposal, with unit pricing. GMP shall include all permitting costs associated with the Design-Build Proposal.

F. Detailed Guaranteed Schedule for the Design-Build Proposal, as well as descriptions of how the Proposer intends to use its equipment and personnel to meet that schedule.
G. Proposed insurance and bonding levels, above and beyond the minimum proposed under the forms of contract. Include Certificate of Insurance and proof that the Proposer is able to obtain payment and performance bonds for 100% of the amount of the RFP Work.

H. Copies of all major material warranties (e.g., for sheet piling and other large purchases), and proof of assignability.

I. Bid bond or other form of security permitted under the Project Manual.

J. Copies of all applicable business licenses.

K. Completed copies of all other forms / documents, and all other information, required under the Project Manual.

10. QUALIFICATIONS OF THE PROPOSER. The contract, if awarded, will only be awarded to a responsible Proposer who is qualified by experience to do the work specified herein. The Proposer shall submit with its Proposal satisfactory evidence of experience in similar work and show that it is fully prepared with the necessary organization, capital, and equipment to complete the work to the satisfaction of the District.

11. INSURANCE. All Proposers shall include as part of the Proposal a current Certificate of Insurance detailing the company’s insurance coverage, or some other evidence of insurance or insurability. In the event the Proposer is notified of award, it shall provide proof of insurance in the form required under the form of contract, within fourteen (14) calendar days after notification, or within such approved extended period as the District may grant.

The form of contract sets forth certain minimum insurance requirements, including but not limited to commercial general liability insurance at a minimum of $2,000,000.00, and umbrella liability insurance at a minimum of $5,000,000.00. Moreover, these insurance policies shall list, as additional insureds, the following: the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees. PROPOSERS ARE ENCOURAGED TO PROVIDE INSURANCE AMOUNTS HIGHER THAN WHAT IS CALLED FOR IN THE MINIMUM REQUIREMENTS. Proposers who are unable to meet the insurance requirements set forth in the form of contract may still apply, but the failure to meet such requirements may result in the District’s rejection of the Proposal or deductions in scoring.

12. WARRANTIES. The form of contract includes various warranties that shall be provided by the successful Proposer (“Design-Builder”) to the District. Among other requirements, any warranties provided by material suppliers must be assignable to the District. If an assignment of warranty requires the material supplier to consent to same, then the Design-Builder agrees that it will secure the material supplier’s consent to assign said warranties to the District. The District may, but is not obligated to, help the Design-Builder secure such consent.
from any subcontractors and/or material suppliers. As part of its Proposal, each Proposer must provide copies of any major material warranties to the District (e.g., for sheet piling and other large purchases), as well as warranties for the RFP Work.

13. **FINANCIALS.** The Proposer shall include as part of its Proposal proof of financial capability. In the event the Proposer is notified of award, it shall provide sufficient proof of financial capability, including, if requested, audited financial statements from the last three years, as required in the sole discretion of the District.

14. **SIGNATURE ON PROPOSAL.** In addition to executing all forms, affidavits, and acknowledgments for which signature and notary blocks are provided, the Proposer must correctly sign the Affidavit Regarding Proposals. If the Proposer is a corporation, the Proposal should bear the seal of the corporation. Anyone signing the Proposal as agent shall file with the Proposal legal evidence of his or her authority to do so.

15. **PROPOSAL GUARANTY.** A certified or cashier’s check on any national or state bank, or a proposal bond, in the amount of $100,000, and payable to the District, must accompany each Proposal as a guarantee that the Proposer will promptly enter into an agreement to do the work following award of the contract. The proposal guaranty shall be submitted with the understanding that the Proposer will not withdraw its Proposal for a period of one hundred fifty (150) days after the due date for the Proposals.

16. **SUBMISSION OF PROPOSALS.** Each Proposer shall submit one (1) original copy and one (1) electronic copy of a completed Project Manual, including any Addenda thereto, at the time and to the addresses indicated herein. Such Proposal shall be enclosed in an opaque, sealed envelope, marked with the project title and name and address of the Proposer and accompanied by the required documents. If the Proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with a notation, “RESPONSE TO REQUEST FOR PROPOSALS – DESIGN-BUILD OF MASTER SEAWALL PROJECT, SECTION III (5,130 LF).”

17. **SUBMISSION OF ONLY ONE PROPOSAL.** Proposers may be disqualified and their Proposals rejected if the District has reason to believe that collusion may exist among Proposers, the Proposer has defaulted on any previous contract, or is in arrears on any previous or existing contract, or for failure to demonstrate proper licensure and business organization.

18. **PROPOSAL MODIFICATION; INQUIRIES BY THE DISTRICT; WITHDRAWAL.** Proposals may be modified by an appropriate document duly executed and delivered to the place where Proposals are to be submitted at any time prior to the time Proposals are due. The District reserves the right to ask clarification questions and seek additional information from any of the Proposers at any time. No proposal may be withdrawn for a period of one hundred and fifty (150) days from the due date for the Proposals.

*Acknowledgments*
19. SITE INSPECTIONS & CONDITIONS. Please contact the District Engineer, using the information herein, to schedule a site visit. Proposers should inform District Engineer in writing prior to conducting any explorations, investigations, tests, and studies of the site, and shall be responsible for filling all holes and restoring the site to its former condition upon completion of such activities.

By submitting its Proposal, the Proposer acknowledges that they have visited the RFP Work site and have become familiar with the existing site conditions. Among other things, Proposer agrees to obtain and carefully study all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the site which may affect cost, progress, or performance of the work. By submitting its Proposal, Proposer agrees to take responsibility for any and all issues arising from the site conditions, including but not limited to any unsuitable soils, varying soil conditions, etc. No additional costs or time will be charged by Proposer for matters associated with unsuitable soils or any other matters associated with the site conditions.

The Proposer may be able to utilize a “templating” installation in areas where installing sheet piling may prove difficult due to hard soil conditions, provided that the Proposer must either (i) recertify any previously developed templating installation process belonging to an already existing solution; or (ii) have its engineer develop such templating installation process. If included as part of the Design-Build Proposal, each Proposer should include templating as a unit cost for the RFP Work, provided however that the ability of a Proposer to use templating at any particular location will be in the discretion of the District Engineer. Refer to the Design Criteria Package and the Specifications for Master Project for more detail.

The District does have available for the Proposer’s review certain reports regarding subsurface conditions. Such information is available as part of the Project Manual, and was prepared by third parties. Accordingly, the District is providing the reports and drawings for informational purposes only, and the District cannot guarantee the quantity, quality, completeness, accuracy or availability of the information provided therein. Instead, it is incumbent on each Proposer to obtain whatever information the Proposer needs to complete its Proposal. Further, Proposer is responsible for any interpretation or conclusion Proposer draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

20. ACKNOWLEDGMENTS. In addition to any other requirements set forth in the Project Manual, and with the signature on the Affidavit Regarding Proposal, the Proposer acknowledges the following:

A. The Proposer has carefully reviewed the Project Manual, including the forms of the contract, the specifications, any and all subsurface reports and data, and all other documentation included within the Project Manual. The documents contained within the Project Manual, including the form of agreement, are complementary, and what is called for by one is binding as if called for by all. If the Proposer finds a conflict, error or discrepancy in the Project Manual, he/she shall call it to the District’s and/or the District’s designees’ attention in writing.
within the time period allotted for asking questions as part of the procurement process.

B. The Design-Builder is required to perform all testing and retesting, if necessary, and as required by the State of Florida, Hillsborough County, the Southwest Florida Water Management District and all other regulatory agencies prior to accepting the RFP Work. The entire site is available to any Proposer for surface or subsurface investigation, upon request of the District.

C. The Proposer is responsible for inspecting the entire site prior to submitting a Proposal and notifying the District and/or its designee of discrepancies in the Project Manual that may affect the construction and its costs, timing, etc.

D. The Design-Builder shall be responsible for coordinating the work necessary to complete and obtain all final approvals and acceptances.

E. The Design-Builder shall complete the work herein defined and detailed in a professional and workmanlike manner typical of the industry. There shall be no sections or parts missing. Furthermore, each portion of the work shall be complete and able to function for its intended use. The work must be continuous unless otherwise directed by the District. The work, including punch list items, must be acceptable to and accepted by applicable regulatory authorities.

F. All storm drainage must be maintained to each property adjacent to the Project during construction. If this does not occur, the Design-Builder will be responsible for any damage that may result.

G. The Design-Builder shall be responsible for coordinating the work necessary with all utility companies and other on-site subcontractors performing work for the District and others on site. The Design-Builder shall be responsible for locating, removing and relocating utilities, both aerial and underground, as required for the performance of the work. This shall also include the coordination of, safety and protection associated with all aerial and underground facilities related to the work.

H. The Design-Builder shall be responsible for all costs associated with traffic control and maintenance during the RFP Work.

I. The Design-Builder shall work with the District to identify an acceptable staging area or areas, but will be required to control and protect such area(s) with fencing and other means.

J. All existing trees, sod, irrigation and other landscaping, including mangroves, must be protected and replaced to the extent damaged by the RFP Work.
K. Design-Builder shall provide turbidity barriers throughout the RFP Work site to ensure compliance with all National Pollution Discharge Elimination System (“NPDES”) and other legal requirements.

L. The Proposer’s attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished to the successful Design-Builder is for illustrative purposes only. The District and/or its designee do not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities or of the character, location of the work or other conditions pertaining thereto. The Proposer shall be solely responsible for computing quantities for the preparation of its Proposal and the execution of the work.

M. All necessary survey work must be provided by the Design-Builder.

N. All materials and services provided for by the Design-Builder shall be performed in strict compliance with all applicable governmental regulations, permits required, 2010 American with Disabilities Act (“ADA”) Accessibility Guidelines, and local, state and federal laws.

Permits

21. PERMITS. The District has already secured certain permits for the Project:

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>AGENCY</th>
<th>ISSUED</th>
<th>EXPIRATION</th>
<th>TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>708627</td>
<td>Southwest Florida Water Management District (SWFWMD)</td>
<td>6/25/2015</td>
<td>N/A</td>
<td>ERP Exemption</td>
</tr>
<tr>
<td>LOCAL MASTER PERMIT</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>58692</td>
<td>Hillsborough County Environmental Protection Commission (HCEPC)</td>
<td>8/25/2015</td>
<td>10/13/2020</td>
<td>Minor Works [3300.87**]</td>
</tr>
<tr>
<td>58694</td>
<td>HCEPC</td>
<td>8/25/2015</td>
<td>10/13/2020</td>
<td>Minor Works [4124.7**]</td>
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<td>58699</td>
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<td>8/25/2015</td>
<td>10/13/2020</td>
<td>Minor Works [4223.52**]</td>
</tr>
</tbody>
</table>
Depending on Design-Builder’s proposed solution(s), the District anticipates that, to construct the RFP Work, Design-Builder may need to seek and obtain modification of some or all of the above-identified permits, and/or may need to seek and obtain new, additional, or different permits from County, state, and/or federal governmental agencies with jurisdiction. Design-Builder shall be responsible for obtaining and paying for all required permits, licenses, certificates of occupancy, and approvals of governmental agencies with jurisdiction over the RFP Work. The District will cooperate with the Design-Builder’s permitting efforts. Moreover, Design-Builder shall be responsible for identifying and complying with all applicable regulatory requirements.

Please note that the District may be in the process of seeking extension, renewal, and/or modification(s) of some of the above-identified permits at the time the Project Manual is distributed. The District will provide further information regarding existing permits and/or authorizations upon request. The District anticipates that the following permit(s) will also be required for the RFP Work:

- Generic Permit for Stormwater Discharge from Large and Small Construction Activities (“CGP”) (62-621.300(4)(a), Florida Administrative Code)

The Design-Builder shall be responsible for obtaining the CGP prior to commencing construction, at its own expense, to authorize stormwater discharges associated with construction activities and uncontaminated produced groundwater discharges associated with dewatering operations. The Design-Builder shall file a Notice of Intent (NOI) (DEP Form 62-621.300(4)(b)) to use the CGP with the Florida Department of Environmental Protection (“DEP”) via its online portal, http://www.fldepportal.com/go/, at least two (2) days prior to commencing construction activities. In the event any discharge associated with the construction activities does not qualify for use of the CGP, the Design-Builder shall be required to obtain a separate NPDES permit for that discharge from the DEP prior to commencing construction, at its own expense.
The Design-Builder shall comply with all conditions and requirements of all permits and approvals issued for the RFP Work, including the HCEPC permits and Corps permit listed above (to the extent applicable based upon Design-Builder’s proposed solution(s)) and the CGP, including but not limited to inspections of site conditions and construction activities, construction in conformity with design plans and specifications, maintenance of records, preparation and adherence to a Stormwater Pollution Prevention Plan (SPPP) and implementation of Best Management Practices (BMPs). Refer to the permits for the complete requirements. Within 14 calendar days after the site has achieved final stabilization and all discharges authorized by the CGP are eliminated or are authorized under a separate NPDES permit, the Design-Builder must submit a completed Notice of Termination (NOT) form (DEP Form 62-621.300(6)) through DEP’s online portal, http://www.fldepportal.com/go/. The Design-Builder will also be responsible for notifying Hillsborough County, the Corps, and/or other agencies of completion of construction activities pursuant to the terms of their respective permits.

The Design-Builder shall adhere at all times to the permits and to all applicable County, state and federal rules and regulations. The Design-Builder shall monitor and keep the construction area in compliance with all Environmental Protection Agency (EPA), SWFWMD, DEP, Corps, and Hillsborough County latest rules and regulations. Any fines levied shall be paid by Design-Builder.

Furthermore, the Design-Builder shall provide all signage required by permits and governmental authorities.

Receipt of all final approvals and operating permits from all applicable regulatory authorities is a requirement for final payment.

Direct Purchasing

22. OWNER DIRECT PURCHASES. The District reserves the right to require the selected Proposer to assign some, or all, of its subcontracts or other agreements with material suppliers directly to the District. This saves the amount of the sales tax, when the District purchases material/equipment required for a construction project directly from the manufacturer/supplier (material/equipment cost only), and simultaneously decreases the amount of the contract for the cost of the materials/equipment, plus the sales tax. The contract cost reduction is accomplished through the construction change order process. To facilitate this process, each Proposer shall include the cost of all construction materials and equipment in its Proposal, and shall separately identify all sales taxes normally applicable to such materials and equipment. Moreover, each Proposer, in its subcontract agreements and other agreements, shall ensure that such agreements are assignable for the purposes of direct purchasing. The Design-Builder’s warranties and performance bonds shall extend to cover all direct purchased materials, as though Design-Builder had selected and purchased the materials itself.

Contract Award & Protests

23. EVALUATION OF PROPOSALS.
Each Proposal shall be separately ranked based on the evaluation of the Proposal, any information obtained through reference checks, and any information generally known to the District, and according to the Evaluation Criteria contained within the Project Manual. Price will be one significant factor used in determining the Proposal that is in the best interest of the District, but the District explicitly and clearly reserves the right to make such award to other than the lowest priced Proposal.

The Board intends to appoint itself to evaluate the Proposals, with advice from the Design Criteria Professional and/or the District Engineer, as applicable; provided, however, that the Board reserves the right to appoint a committee, which may include non-Board members, to evaluate the Proposals and report to the Board. The Board shall select no fewer than three (3) Design-Build firms as the most qualified. However, if fewer than three (3) proposals are received, the District may purchase design-build services or may reject the proposals for lack of competitiveness. The Board shall review and evaluate the bids in their individual discretion, and make any final determination with respect to the award of a final contract that is in the best interests of the District. Chapter 112, Florida Statutes, will govern any voting conflicts of interest, and as such a voting conflict of interest may arise solely where there is a personal financial interest relating to the contract award.

The Board shall negotiate a contract with the Proposer ranking the highest based on the evaluation standards and shall establish a price which the Board determines is fair, competitive, and reasonable. Should the Board be unable to negotiate a satisfactory contract with the Proposer considered to be the most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that Proposer shall be terminated. The Board shall then undertake negotiations with the second most qualified Proposer, based on the ranking by the evaluation standards. Failing accord with the second most qualified Proposer, the Board must terminate negotiations. The Board shall then undertake negotiations with the third most qualified Proposer. Should the Board be unable to negotiate a satisfactory contract with any of the selected Proposers, the Board shall select additional Proposers in order of their rankings based on the evaluation standards and continue negotiations until an agreement is reached or the list of Proposers is exhausted.

24. DISTRICT’S RIGHT TO TAKE ACTIONS IN ITS BEST INTERESTS. The District reserves the right to reject any and all Proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the RFP Work in phases, and waive minor or technical irregularities in any Proposal, as it deems appropriate, if it determines in its discretion that it is in the District’s best interests to do so.

25. CONTRACT AWARD. Within fourteen (14) days of receipt of the Notice of Award from the District, or longer period if extended by the District in its sole discretion, the Proposer shall enter into and execute the contract in the form included in the Project Manual, unless requested otherwise by the District. No contract to perform the RFP Work shall exist between the District and any Proposer until the contract is signed, and any work provided and any cost incurred by the Proposer prior to receiving the Notice of Award, an executed contract, and the Notice to Proceed will be at the Proposer’s risk unless specifically agreed to in writing by the District. Following the Notice of Award, Design-Builder will arrange an initial conference
attended by the District and Design-Builder and others as appropriate in accordance with Section 2.06 of the General Conditions.

26. **PAYMENT & PERFORMANCE BOND.** At the time the contract is executed, the Design-Builder will be required to furnish a payment and performance bond for one hundred percent (100%) of the amount of the RFP Work, with a surety acceptable to the District, and in accordance with Section 255.05, *Florida Statutes*. As part of the Proposal, Proposer shall provide evidence showing that Proposer is able to furnish a bond in the amount of the Proposer’s total contract price.

27. **CROSS INDEMNIFICATIONS.**

   A. To the fullest extent permitted by law, Proposer shall indemnify and hold harmless the District, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, the “Indemnitees”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work. Additional indemnification, defense, and hold harmless obligations are as set forth in the forms of contract.

   B. To the fullest extent permitted by law, and without waiving any protections or immunities provided to Owner under Florida law, the District shall indemnify and hold harmless the Proposer, the Project Design Professional, subcontractors, suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnitees”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used herein shall mean any and all claims of property owners requesting the District to undertake repairs to their property on account of damages believed by such property owner to be a result of the compromised seawall located along the MiraBay canal system within the Site including, but not limited to, requests made by any and all property owners to the District pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction
Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Proposer, Project Design Professional, subcontractors, suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the RFP Work.

C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnitees, as the case may be.

28. LIMITATION OF LIABILITY. Nothing herein shall be construed as or constitute a waiver of District’s limitations on liability contained in Section 768.28, Florida Statutes, or other statute or law.

29. PUBLIC RECORDS. The District is a governmental entity, and, accordingly, the Proposals will be publicly opened as stated above. Additionally, it is likely that the Proposals are or will become public record at some point in the procurement process. That said, Florida law does recognize certain exceptions from the public records laws. For example, financial statements submitted as part of a response to a proposal for a public works project may be exempt from disclosure. See Section 119.071(c), Florida Statutes. In the event that the Proposer believes that any particular portion of the Proposer’s Proposal is exempt from disclosure, the Proposer shall mark the exempt pages as “CONFIDENTIAL – EXEMPT FROM DISCLOSURE.” In the event that the District receives a public records request relating to such records, the District will notify the Proposer. In the event that the District reasonably and in good faith believes that the Proposer’s information is not confidential or exempt under Florida law, the District may provide the information in response to the request and will not be responsible for any liability, claims, damages or losses arising from such disclosure. In the event that a claim of any kind is filed challenging the confidentiality of the Proposer’s information, the District may require the Proposer to indemnify, defend and hold harmless the Indemnitees from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, relating to the claim.

30. MANDATORY AND PERMISSIVE REQUIREMENTS. The only mandatory requirements contained within the Project Manual to submit are that an interested firm must: (i) hold all required local, state and federal licenses in good standing, (ii) be authorized to do business in Hillsborough County and the State of Florida, and (iii) secure and furnish a bid bond or cashier’s check, as described herein and in the contract documents, as well as the payment and performance bond described herein and in the contract documents, and evidence that the Proposer is able to furnish the payment and performance bond in the amount of the Proposer’s total contract price. All of the requirements or provisions set forth in the Project Manual shall be deemed “permissive,” in that a Proposer’s failure to meet any requirement described in mandatory terms such as “shall,” “will,” “mandatory,” or similar language does not automatically disqualify the Proposer’s Proposal, but instead may be taken into account in the evaluation and scoring of the Proposal.
31. PROTESTS. Any protest regarding the Project Manual, including but not limited to, the evaluation criteria and process, specifications or other requirements contained in the Project Manual, must be filed in writing at the District Manager’s Office, within seventy-two (72) hours after the receipt of the Project Manual. The formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days after the initial notice of protest was filed. Failure to timely file a notice of protest, failure to timely file a formal written protest, or failure to timely post a protest bond, shall constitute a waiver of any right to object or protest with respect to any matter relating to the Project Manual.

Any person who files a notice of protest regarding the Project Manual, or regarding any ranking or intended award by the District, or any other matter, shall post a protest bond in a form acceptable to the District and in the amount of $100,000. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District’s costs, expenses and attorney’s fees associated with hearing and defending the protest. In the event the protest is settled by mutual agreement of the parties, the protest bond shall be distributed as agreed to by the District and protestor. REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)

PART I. GENERAL INFORMATION – EVALUATION CRITERIA

1. PRELIMINARY REQUIREMENTS (Pass / Fail)
   An interested firm must hold all required local, state and federal licenses in good standing, and be authorized to do business in Hillsborough County and the State of Florida.

2. PROPOSAL GUARANTEE (Pass / Fail)
   The Proposer provided an appropriate proposal guarantee consistent with the terms of the Project Manual.

3. PERSONNEL & EQUIPMENT (10 Points Possible)
   This category addresses the following criteria: skill set and experience of key management and assigned personnel, including the design engineer, project manager and other specifically trained individuals who will design and manage the RFP Work; present ability to staff, equip and manage the RFP Work; proposed staffing levels; proposed equipment; capability of performing the work; geographic location; inventory of all equipment; etc.

4. EXPERIENCE (20 Points Possible)
   This category addresses past & current record and experience of the Proposer (and/or engineers, subcontractors, and suppliers) in similar projects; past performance in any other contracts; etc.

5. UNDERSTANDING SCOPE OF WORK (15 Points Possible)
   This category addresses whether the Proposer demonstrated an understanding of the District’s needs for the work requested, demonstrated the ability to perform such work in a feasible manner, demonstrated an understanding of the desire for uniformity in appearance, and identified any suggestions for “best practices” or other innovative approaches.

6. FINANCIAL CAPACITY (10 Points Possible)
   This category addresses whether the Proposer has demonstrated that it has the financial resources and stability as a business entity necessary to implement and execute the work. Also, this category includes an evaluation of the Proposer’s insurance and warranties offered, above and beyond what is required under the contract documents. The Proposer should include proof of ability to provide insurance coverage as required by the District as well as audited financial statements, or other similar information.

7. GUARANTEED MAXIMUM PRICE (30 Points Possible)
   This category addresses overall pricing for the construction work, as well as consideration of unit prices and the overall reasonableness of the pricing.

8. GUARANTEED SCHEDULE (15 Points Possible)
   This category addresses the timeliness of the schedule, as well as the Proposer’s ability to credibly design and complete the RFP Work within the Proposer’s schedule.

100 Total Points Possible
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)

PART II. PROPOSAL FORM – (A) GENERAL INFORMATION

1. Proposer General Information

Proposer Name____________________________________________________________

Street Address ____________________________________________________________

P. O. Box (if any) __________________________________________________________

City __________________ State ___________ Zip Code ________________

Telephone __________________ Fax no. ________________________________

Internet Address __________________________________________________________

1st Contact Name ______________________ Title ____________________________

Contact Telephone __________________ E-Mail Address ______________________

2nd Contact Name ______________________ Title ____________________________

Contact Telephone __________________ E-Mail Address ______________________

Parent Company Name (if any) ____________________________________________

Street Address __________________________________________________________

P. O. Box (if any) _________________________________________________________

City __________________ State ___________ Zip Code ________________

Telephone __________________ Fax no. ________________________________

1st Contact Name ______________________ Title ____________________________

2nd Contact Name ______________________ Title ____________________________

(Attach a chart showing ownership structure of Proposer.)
2. **List the location of Proposer’s office that would oversee the work.**

   Street Address ____________________________________________________________

   P.O. Box (if any) _________________________________________________________

   City ______________________ State _____________ Zip Code _________

   Telephone ______________________ Fax No. _____________________________

   1st Contact Name ______________________ Title ____________________________

   2nd Contact Name ______________________ Title ____________________________

3. **Company Standing**

   Proposer’s form of entity: ________________________________________________
   (e.g., individual, corporation, partnership, limited liability company, etc.)

   In what State was the Proposer organized? _________________________________

   Date ___________ Charter Number (if applicable) __________________________

   Is the Proposer in good standing with that State? Yes ___ No ___

   If no, please explain ____________________________________________________

   _________________________________________________________________

   Is the Proposer registered with the State of Florida, Division of Corporations and
   authorized to do business in Hillsborough County and the State of Florida?

   Yes ___ No ___

   If no, please explain ____________________________________________________

   _________________________________________________________________
4. **Licensure**

Please list all applicable state and federal licenses or registrations, including but not limited to those for the State of Florida and Hillsborough County:


For each registration or license, provide the following information:

Type of registration (e.g., certified general contractor, certified electrical contractor, etc.)


License No. ________________________ Expiration Date __________

Qualifying Individual __________________ Title __________________

List company(ies) currently qualified under this license __________________

Is the registration or license in good standing? Yes ___ No ___

If no, please explain __________________________________________

________________________________________

(Attach photocopies of each listed license or registration, and additional sheets as necessary.)
**PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT**

**CORPORATE OFFICERS**

(Attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
<th>POSITION OR TITLE</th>
<th>CORPORATE RESPONSIBILITIES</th>
<th>INDIVIDUAL’S RESIDENCE CITY, STATE</th>
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For Parent Company (if applicable)

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<thead>
<tr>
<th>NAME OF PROPOSER</th>
<th>POSITION OR TITLE</th>
<th>CORPORATE RESPONSIBILITIES</th>
<th>INDIVIDUAL’S RESIDENCE CITY, STATE</th>
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</table>
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
OTHER SUPERVISORY PERSONNEL
(Attach additional sheets if necessary)

Company Name ____________________________ Date ____________________________
Provide information for key management and supervisory personnel of the Proposer for both administration as well as operations. Attach resumes for all such individuals.

<table>
<thead>
<tr>
<th>INDIVIDUAL’S NAME</th>
<th>PRESENT TITLE</th>
<th>DESCRIPTION OF DIRECT JOB RESPONSIBILITIES</th>
<th>YEARS OF EXPERIENCE IN PRESENT POSITION</th>
<th>TOTAL YEARS OF RELATED EXPERIENCE</th>
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</table>
II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT
COMPANY OWNED MAJOR EQUIPMENT AVAILABLE FOR THE PROJECT
(Attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>CAPACITY</th>
<th>No. LOCATED IN</th>
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</table>

Company Name ____________________________ Date ____________________________
PART II. PROPOSAL FORM – (B) PERSONNEL & EQUIPMENT

1. For each manager, supervisor and key person who will be directly working on and/or responsible for the RFP Work, please provide the following information:

   Name:_______________________________________________________________
   Title:_________________________________________________________________
   Office Location:_______________________________________________________
   Corporation Responsibilities:___________________________________________
   Years in Current Position:_____________________________________________
   Proposed Role for the Project:___________________________________________
   % of Time to Be Devoted to Project:_____________________________________

   Provide the following information for at LEAST TWO projects similar to the RFP Work where the manager / supervisor / key personnel was involved. Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., involving mangroves).

   Project 1
   Project Name / Location:______________________________________________
   Time Period of Project:_______________________________________________
   Description of Project:_______________________________________________
   Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
   Role of Manager / Supervisor / Key Personnel:_____________________________
Reference Contact:________________________________________________________
Contact Phone/E-Mail:_____________________________________________________

*Project 2*

Project Name / Location:____________________________________________________
Time Period of Project:_____________________________________________________
Description of Project:________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Manager / Supervisor / Key Personnel:________________________________________
______________________________________________________________________________
Reference Contact:___________________________________________________________
Contact Phone/E-Mail:_______________________________________________________

*Project 3*

Project Name / Location:_____________________________________________________
Time Period of Project:_____________________________________________________
Description of Project:________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Manager / Supervisor / Key Personnel:________________________________________
______________________________________________________________________________
Reference Contact:___________________________________________________________
Contact Phone/E-Mail:_______________________________________________________

*Attach resume, and use additional sheets as appropriate.*
2. Describe proposed staffing levels, including information on current operations, administrative, maintenance and management staffing of both a professional and technical nature, required for the RFP Work. Identify the amount of each person’s time that will be devoted to the RFP Work. (Attach additional sheets as needed.) Also, describe in the Proposer’s narrative or below how staffing levels may differ between the various components of the Design-Build Proposal.

<table>
<thead>
<tr>
<th>Staffing Role / Description of Role in RFP Work</th>
<th># of Individuals</th>
<th># of Total Man Hours per Month</th>
<th>Status of Staff with Proposer (e.g., full-time, day labor, etc.)</th>
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</table>
3. **Provide the following information for the proposed equipment that will be used for the RFP Work. (Attach additional sheets as necessary.) Also, describe in the Proposer’s narrative or below how equipment usage may differ between the various components of the Design-Build Proposal.**

<table>
<thead>
<tr>
<th>Equipment Type</th>
<th>Description of Role in the RFP Work</th>
<th>Age of Equipment</th>
<th>% of Time Available to the RFP Work</th>
<th>Is the Equipment Presently Owned?</th>
<th>Leased?</th>
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</tbody>
</table>
4. **Provide a list of all Engineers / Subcontractors / Suppliers that will be hired by Proposer for the RFP Work.**

<table>
<thead>
<tr>
<th>Name of Engineer / Subcontractor / Supplier</th>
<th>Contact / Phone # / E-Mail Address</th>
<th>Role in the RFP Work (Identify the component of the Design-Build Proposal within which the engineer/subcontractor/supplier will be involved, if not applicable to all.)</th>
<th>Total Value of Goods or Services Anticipated to Be Provided</th>
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</table>

(Attach additional sheets as necessary.)
5. *For each Engineer / Subcontractor / Supplier that will provide goods or services in excess of $25,000 for the RFP Work, provide the following information:*

Name: __________________________________________________________

Title: __________________________________________________________

Contact: _________________________________________________________

Contact Phone/E-Mail: ____________________________________________

Office Location: _________________________________________________

________________________________________________________________

Shipment Location (for Suppliers): ___________________________________

________________________________________________________________

Years in Business: ____________________________

Proposed Role for the RFP Work: ____________________________________

________________________________________________________________

Is the Engineer/Subcontractor/Supplier registered with the State of Florida, Division of Corporations and authorized to do business in Hillsborough County and the State of Florida?  Yes ___ No ___ If no, explain: __________________________________________

________________________________________________________________

Does the Engineer/Subcontractor/Supplier have all applicable business licenses in good standing?  Yes ___ No ___

Please list the licenses: ____________________________________________

________________________________________________________________
Provide the following information for at LEAST TWO projects similar to the RFP Work where the Engineer/Subcontractor/Supplier was involved:

Project 1

Project Name / Location: ____________________________________________

Time Period of Project: _____________________________________________

Description of Project: _____________________________________________
________________________________________________________________

Did the Project Involve:  ____ Sheet Piling?  ____ Rip-Rap?  ____ Mangroves?

Role of Engineer/Subcontractor/Supplier: _______________________________
________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier: ______________

Reference Contact: _________________________________________________

Contact Phone/E-Mail: ______________________________________________

Project 2

Project Name / Location: ____________________________________________

Time Period of Project: _____________________________________________

Description of Project: _____________________________________________
________________________________________________________________

Did the Project Involve:  ____ Sheet Piling?  ____ Rip-Rap?  ____ Mangroves?

Role of Engineer/Subcontractor/Supplier: _______________________________
________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier: ______________

Reference Contact: _________________________________________________

Contact Phone/E-Mail: ______________________________________________
Project 3

Project Name / Location: ________________________________________________

Time Period of Project: ________________________________________________

Description of Project: ________________________________________________
____________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?

Role of Engineer/Subcontractor/Supplier: ___________________________________
____________________________________________________________________

Total Value of Contract to Engineer/Subcontractor/Supplier:__________________

Reference Contact: ______________________________________________________

Contact Phone/E-Mail: ____________________________________________________

Has the Engineer/Subcontractor/Supplier ever failed to complete a contract, or had any
contracts terminated before the work was completed? Yes (_) No (_) For each such
incident, please provide the following information (attach additional sheets as needed):

Reference Contact: ______________________________________________________

Contact Phone/E-Mail: ____________________________________________________

Dollar Amount of Contract: ______________________________________________

Scope of Services for Project: _____________________________________________
____________________________________________________________________

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries),
or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members,
shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the
past 10 years? Yes (_) No (_) If yes, provide the following:

Identify the Case # and Tribunal: __________________________________________

Describe the Nature of the Action: _________________________________________
Describe the Engineer’s/Subcontractor’s/Supplier’s Role in the Action and Describe the Status and/or Resolution:

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:

Has the Engineer/Subcontractor/Supplier or any of its affiliates (parents or subsidiaries), or any of the Engineer’s/Subcontractor’s/Supplier’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:

(Attach additional information regarding Engineer’s/Subcontractor’s/Supplier’s role in the project, key personnel, background and experience, financial capacity, etc., and use additional sheets as appropriate.)
PART II. PROPOSAL FORM – (C) EXPERIENCE

1. Describe at least TWO projects similar to the RFP Work that Proposer has undertaken. For each project, provide the following information (attach additional sheets to complete). Specify whether the project involved sheet piling installation, rip-rap installation, or work in environmentally sensitive areas (e.g., with mangroves).

Project Name/Location: _______________________________________________________
Reference Contact: __________________________________________________________
Contact Phone/E-Mail: _________________________________________________________
Dollar Amount of Contract: ___________________________________________________
Scope of Services for Project: ________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Did the Project Involve: _____ Sheet Piling? _____ Rip-Rap? _____ Mangroves?
Start Date: ____________________________
Current Status of the Project: __________________________
2. **Has the Proposer previously performed work for a community development district?**

Yes (_)  No (_)  If yes, please provide the following information for each project (attach additional sheets as necessary):

- **Project Name/Location:**
- **Reference Contact:**
- **Contact Phone/E-Mail:**
- **Dollar Amount of Contract:**
- **Scope of Services for Project:**

- **Did the Project Involve:**  ____ Sheet Piling?  ____ Rip-Rap?  ____ Mangroves?

- **Start Date:**
- **Current Status of the Project:**
3. Has the Proposer ever failed to complete a contract, or had any contracts terminated before the work was completed? Yes ( ) No ( ) For each such incident, please provide the following information (attach additional sheets as necessary):

Reference Contact: __________________________________________________________

Contact Phone/E-Mail: ______________________________________________________

Dollar Amount of Contract: _________________________________________________

Scope of Services for Project: _______________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Start Date: ________________________________________________________________

Reason: _________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
4. Has any officer or partner of the Proposer ever been an officer, partner, or owner of some other organization that has failed to complete a construction contract? Yes (_) No (_)

For each such incident, please provide the following information (attach additional sheets as needed):

Reference Contact: ________________________________
Contact Phone/E-Mail: ________________________________
Dollar Amount of Contract: ________________________________
Scope of Services for Project: ________________________________

Start Date: ________________________________
Reason: ________________________________
5. Has the Proposer or any of its officers or employees, or any of Proposer’s proposed engineers, subcontractors, or materialmen, ever previously conducted work, or provided materials for work, in Mirabay, whether as a contractor, subcontractor, materialman or in some other capacity? Please describe who and in what capacity, and when:

_________________________________________________________________
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Furnish requested information about all of Proposer’s active contracts, whether as prime or subcontracts; whether in progress or awarded but not yet started; and regardless of with whom contracted. All amounts to be shown to nearest $1,000. Design-Builder may consolidate and list as a single item all contracts which individually do not exceed 3% of total active contracts and in total do not exceed 20% of the active total contracts.

<table>
<thead>
<tr>
<th>OWNER, LOCATION AND DESCRIPTION OF PROJECT</th>
<th>CURRENT CONTRACT AMOUNT AS PRIME</th>
<th>CURRENT CONTRACT AMOUNT AS SUBCONTRACTOR</th>
<th>CURRENT AMOUNT SUBJECT TO OTHERS</th>
<th>PROPOSER’S UNCOMPLETED AMOUNT AS OF THIS DATE</th>
<th>COMPLETION DATE</th>
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PROPOSAL FORM, PART 3 – (C) & (D) EXPERIENCE & CAPACITY
PROJECTS PROPOSER COMPLETED IN THE LAST THREE YEARS
(Attach additional sheets if necessary)

Company Name _____________________________ Date ________________

List all projects completed in the last three years for which the contract value individually exceeded 3% of the Proposer’s annual total work completed for the year the project was started. Include in the list projects that were started earlier than three years but were completed within the last three years.

<table>
<thead>
<tr>
<th>PROJECT NAME/ LOCATION</th>
<th>FINAL CONTRACT AMOUNT</th>
<th>PRIME OR SUB ¹</th>
<th>CLASSIFICATION OF WORK PERFORMED</th>
<th>YEAR STARTED/ COMPLETED</th>
<th>OWNER NAME/ LOCATION ²</th>
<th>NAME &amp; PHONE NUMBER OF OWNER’S REPRESENTATIVE FOR THE LISTED PROJECT ³</th>
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¹ ‘Prime or Sub’ should indicate whether Proposer performed the work as a prime contractor/design-builder or as a subcontractor.

² ‘Owner Name/ Location’ should indicate the Owner of the project if the Proposer performed the work as a prime contractor/design-builder or the general contractor if the Proposer performed the work as a subcontractor.

³ ‘Name & Phone Number of Owner’s Representative on this Project’ should list a reference from the business entity listed in the previous column familiar with Proposer’s contract performance.
PART II. PROPOSAL FORM – (D) FINANCIAL CAPACITY

1. Provide copies of the Proposer’s financial statements, showing assets and liabilities, for each of the past three years. Also attach an interim balance sheet not more than 60 days old. Certified copies accompanied by an auditor’s opinion are strongly encouraged, but not required.

2. Complete the following chart for each of the past five years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ANNUAL REVENUE</th>
<th># OF PROJECTS COMPLETED</th>
<th>LARGEST PROJECT SIZE</th>
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</thead>
<tbody>
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<td>2017</td>
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<td>2015</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years? Yes (_) No (_)

If yes, provide the following:

Identify the Case # and Tribunal: ___________________________________________

Describe the Nature of the Action: __________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
4. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors executed an assignment for the benefit of creditors within the past 10 years? Yes (_) No (_) If yes, please explain:


5. Has the Proposer or any of its affiliates (parents or subsidiaries), or any of the Proposer’s officers or principal members, shareholders or investors defaulted on a loan or other financial obligation (e.g., failing to pay subcontractors or materialmen) within the past 10 years? Yes (_) No (_) If yes, please explain:


6. What are the Proposer’s proposed insurance for the Project? Refer to the form of contract for minimum amounts.

Workers’ Compensation
a. State Worker’s Compensation – Greater of statutorily required amount or $________ per occurrence / $________ aggregate / $________ per disease
b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $________
c. Employer’s Liability – $________

Commercial General Liability Insurance
a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - $________
b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - $________
c. Products-Completed Operations – $________
d. Personal and Advertising Injury – $________
e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

Automobile Liability
a. Bodily Injury:
   Each Person $________
   Each Accident $________
b. Property Damage:
   Each Occurrence $________

Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $________

Protection and Indemnity Insurance $________

Contractual Liability coverage
a. General Aggregate $________
b. Bodily Injury and Property Damage Combined Each Occurrence $________

Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
a. General Aggregate $________
b. Each Occurrence $________

Builder’s Risk Insurance for the amount of the Project? YES / NO

Boiler & Machinery Insurance?
(List items on separate page) YES / NO

_________________________ $___________
(Other)

_________________________ $___________
(Other)
(Attach a copy of a current insurance certificate evidencing the Design-Builder’s insurance.)

7. **What are the Proposer’s current bonding limits?**

Name of Proposer’s Bonding Company

Address

Approved Bonding Capacities:
- Aggregate Limit $_____
- Single Project Limit $_____
- Total Current Contracts Bonded $_____

Name of Proposer’s Bonding Agency

Address

Contact Name ___________________ Telephone ____________
PART II. PROPOSAL FORM – (E) PRICING

Overall Lump Sum (LS) Price (Section III (5,130 LF)):

____________________________________________________________________ (Written) $____________/LS

Lump sum prices shall include all costs necessary for completing all required work in strict accordance with the requirements specified in the Package. Lump sum prices shall be a guaranteed maximum price.

Prices for each lump sum section provided above in the Price Breakdown shall be supplemented with a Preliminary Schedule of Pay Items. The Preliminary Schedule of Pay Items shall include corresponding unit price estimates to be utilized after Award to negotiate a program of progress payments. (See attached example Preliminary Schedule of Pay Items for reference).

<table>
<thead>
<tr>
<th>Design-Builder’s Authorized Representative</th>
<th>Date</th>
</tr>
</thead>
</table>


EXAMPLE OF PRELIMINARY SCHEDULE OF PAY ITEMS

Below is an example sheet with a sample preliminary schedule of pay items. Items, quantities, and prices are preliminary estimates only and not considered final. Preliminary schedules of pay items are intended for use after Award to negotiate a program of progress payments. The schedules shall be prepared with items associated with the solutions presented in the Design-Build proposal. The pay items listed below are examples only. Each schedule should be tailored as necessary.

<table>
<thead>
<tr>
<th>Pay Item Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surveying</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permitting</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality Control</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Utility Repairs</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reinforced Concrete</td>
<td></td>
<td>CY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheet Pile</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tie Back</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rip-Rap</td>
<td></td>
<td>TON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floating Turbidity Barrier</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landscaping (Behind Wall)</td>
<td></td>
<td>SF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dock Restoration</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timber Pile With Canal Warning Marker</td>
<td></td>
<td>EA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drainage System</td>
<td></td>
<td>LF</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grand Total for Section III
PART II. PROPOSAL FORM – (F) GUARANTEED SCHEDULE

Proposers should provide detailed schedules for the Design-Build Proposal. Each schedule should show completion of the applicable components of Section III of the Project. For example, the schedule should show (a) the design completion date, (b) the mobilization date, (c) the dates for completion of components for Section III; and (d) the dates for installation of fill, planting of mangroves, and drainage work within Section III, etc.

Proposers should further describe how they intend to use their personnel and equipment in order to timely meet the schedules.
PART II. PROPOSAL FORM – (G) LEGAL CONCERNS

1. List and describe any and all litigation, arbitration or claims filed against the Proposer or its affiliates or principals within the last five (5) years. For each instance, please describe the nature of the litigation, arbitration or claim, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the litigation. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal:________________________________________

Describe the Nature of the Action:________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

_____________________________________________________________________

_____________________________________________________________________

2. List any and all governmental enforcement actions (e.g., any action taken to impose fines, penalties, etc.) taken against the Proposer or its affiliates or principals in the last five (5) years. For each action, please describe the nature of the action, identify the case number and tribunal, describe the Proposer’s role in the matter, and describe the status and/or resolution of the matter. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal:________________________________________

Describe the Nature of the Action:________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

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3. Has the Proposer or any of its affiliates ever been either disqualified or denied prequalification status by a governmental entity? Yes ( ) No ( ) If so, please identify the governmental entity and project, and discuss the circumstances surrounding such denial or disqualification as well as the date thereof. (Attach additional sheets if necessary.)

Identify the Case # and Tribunal:________________________________________

Describe the Nature of the Action:________________________________________

_____________________________________________________________________

_____________________________________________________________________

Describe the Proposer’s Role in the Action and Describe the Status and/or Resolution:

_____________________________________________________________________

_____________________________________________________________________

4. Please state whether or not your company or any of its affiliates are presently barred or suspended from bidding or contracting on any state, local, or federal-aid contracts in any state(s)? Yes ( ) No ( )

If so, state the name(s) of the compan(ies) _________________________________

_____________________________________________________________________

The state(s) where barred or suspended _________________________________
State the period(s) of debarment or suspension ____________________________

Also, please explain the basis for any bar or suspension:

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

5. Has the Proposer company been cited by OSHA for any job site or company office/ shop safety violations in the past five years? Yes (_) No (_)

If yes, please describe each violation fine, and resolution ____________________________

____________________________________________________________________

____________________________________________________________________

What is the Proposer’s current worker compensation rating? ____________________________

Has the Proposer experienced any worker injuries resulting in a worker losing more than ten (10) working days as a result of the injury in the past five years? Yes (_) No (_)

If yes, please describe the incident: ____________________________________________

____________________________________________________________________

____________________________________________________________________

6. Safety of the community’s residents and property is a priority. Please describe any background checks or other security measures that have been or will be taken with respect to the hiring and retention of the Proposer’s personnel (and/or any subcontractors’ personnel) who will be involved with the Project. Also, please describe what security measures will be taken to ensure that on-site personnel are properly supervised. Attach a copy of the Proposer’s security policy that would be included as part of the form of contract.

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

55
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(N)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to ___Harbor Bay Community Development District_______
   (print name of the public entity)
   by ____________________________________________
   (print individual's name and title)
   for ____________________________________________
   (print name of entity submitting sworn statement)
   whose business address is

   _____________________________________________

   and (if applicable) its Federal Employer Identification Number (FEIN) is ________________

   (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn
   statement _____________________________)

2. I understand that a “public entity crime” as defined in Section 287.133(1)(g), Florida Statutes,
   means a violation of any state or federal law by a person with respect to and directly related to the
   transaction of business with any public entity or with any agency or political subdivision of any
   other state or of the United States, including, but not limited to, any bid or contract for goods or
   services to be provided to any public entity or an agency or political subdivision of any other state
   or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering,
   conspiracy, or material misrepresentation.

3. I understand that “convicted” or “conviction” as defined in Section 287.133(1)(b), Florida Statutes,
   means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of
   guilt, in any federal or state trial court of record relating to charges brought by indictment or
   information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a please of
   guilty or nolo contendere.

4. I understand that an “affiliate” as defined in Section 287.133(1)(a), Florida Statutes, means:

   a. A predecessor or successor of a person convicted of a public entity crime; or
b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a “person” as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **(Indicate which statement applies.)**

- Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(Attach a copy of the final order.)**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Dated this __________ day of _______________________, 2018.

(Corporate Seal, if applicable) (Name of Proposer)

________________________________________
By:______________________________________
Title:_____________________________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)

SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, REGARDING
SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR SCRUTINIZED COMPANIES
WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST

1. This sworn statement is submitted to Harbor Bay Community Development District

by _____________________________________________________________

(print individual's name and title)

for _____________________________________________________________

(print name of entity submitting sworn statement)

whose business address is __________________________________________________________________________

2. I understand that, subject to limited exemptions, Section 287.135, Florida Statutes, provides that a company that at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with a local governmental entity for goods or services of $1 million or more.

3. Based on information and belief, at the time the entity submitting this sworn statement submits its proposal to the Harbor Bay Community Development District, neither the entity, nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

4. If awarded the contract, the entity will immediately notify the Harbor Bay Community Development District in writing if either the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
The foregoing SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, is dated this __________ day of _______________________, 2018.

(Corporate Seal, if applicable)   (Name of Proposer)

By:______________________________________
Title:_____________________________________

STATE OF __________________________
COUNTY OF ________________________

The foregoing instrument was sworn and subscribed before me this ____ day of _______________________, 2018, by _________________ of _____________________, who is personally known to me or who has produced _______________________________ as identification, and did [ ] or did not [ ] take the oath.

Notary Public, State of Florida
Print Name:________________________________
Commission No.:___________________________
My Commission Expires:______________________
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS – DESIGN-BUILD OF
MASTER SEAWALL PROJECT
SECTION III (5,130 LF)

AFFIDAVIT REGARDING PROPOSAL

STATE OF ________________________
COUNTY OF ______________________

Before me, the undersigned authority, appeared the affiant, ________________, and having taken an oath, affiant, based on personal knowledge, deposes and states:

Authorization

1. I am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of ________________ for __________________ ("Proposer"), and am authorized to make this Affidavit Regarding Proposals on behalf of Proposer. Proof of such authorization is attached hereto.

2. I assisted with the preparation of, and have reviewed, the Proposer’s proposal ("Proposal") provided in response to the Harbor Bay Community Development District ("District") Request for Proposals - Design-Build of Master Seawall Project, Section III (5,130 LF). All of the information provided in the Proposal is full and complete, and truthful and accurate. I understand that inclusion of false, deceptive or fraudulent statements, or the failure to include full and complete answers, may constitute fraud, and, that, among other remedies, the District may consider such action on the part of the Proposer to constitute good cause for rejection of the Proposal.

Receipt of Documents

3. The Proposer acknowledges the receipt of the complete Project Manual as provided by the District and as described in the Project Manual’s Table of Contents. Additionally, the Proposer acknowledges receipt of the following addenda:

   Addendum No. ________________________ Dated ____________________
   Addendum No. ________________________ Dated ____________________
   Addendum No. ________________________ Dated ____________________
   Addendum No. ________________________ Dated ____________________
   Addendum No. ________________________ Dated ____________________
Pricing & Non-Collusion

4. The Proposer agrees through submission of the Proposal to honor all pricing information for one hundred and fifty (150) days from the due date of the Proposals. If awarded the contract on the basis of this Proposal, Proposer agrees to enter into and execute the contract in the form included in the Project Manual.

5. I do hereby certify that the Proposer has not, either directly or indirectly, participated in collusion or proposal rigging. The price(s) and amount(s) of this Proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer, or review of any other Proposal, or potential Proposal. Moreover, neither the price(s) nor the amount(s) of this Proposal, and neither the approximate price(s) nor approximate amount(s) of this Proposal has been disclosed to any other firm or person who is a Proposer or potential Proposal, and they will not be disclosed before Proposal opening.

6. No attempt has been made or will be made to induce any firm or persons to refrain from submitting a Proposal for this contract, or to submit a price(s) higher that the prices in this Proposal, or to submit any intentionally high or noncompetitive price(s) or other form of complementary Proposal.

7. The Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.

8. Neither Proposer nor its affiliates, subsidiaries, officers, director, or employees are currently under investigation, by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to a public procurement process, on any public contract, except as follows:

Agreements Regarding Records and Project Manual

9. The Proposer authorizes and requests any person, firm or corporation to furnish any pertinent information requested by the District, or its authorized agents, deemed necessary to verify the statements made in the Proposal, or regarding the ability, standing, integrity, quality of performance, efficiency, and general reputation of the Proposer.
10. By signing below, the Proposer acknowledges that (i) the Proposer has read, understood, and accepted the Project Manual; (ii) the Proposer has had an opportunity to consult with legal counsel regarding the Project Manual; (iii) the Proposer has agreed to the terms of the Project Manual, including but not limited to the forms of contract; (iv) the Proposer has waived any right to challenge any matter relating to the Project Manual, including but not limited to any protest relating to the notice, the Proposal instructions, the proposal forms, the contract form, the scope of work, the evaluation criteria, the evaluation process established in the Project Manual, or any other issues or items relating to the Project Manual; (v) the Proposer certifies that he or she has carefully examined the project site, made his/her own measurements and calculations and prepared and checked the foregoing Proposal after the same was completed and has verified every item placed thereon; and (vi) REGARDLESS OF WHETHER A PROTEST OF ANY KIND IS FILED, AND IN ORDER TO AVOID AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY, THE PROPOSER AGREES THAT THE DISTRICT MAY IMMEDIATELY PROCEED WITH THE RFP WORK PURSUANT TO A CONTRACT WITH THE PROPOSER SELECTED BY THE DISTRICT.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AFFIDAVIT REGARDING PROPOSALS AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT.

Dated this __________ day of _______________________, 2018.

_________________________________________
(Corporate Seal, if applicable)  (Name of Proposer)

_________________________________________

By:______________________________________
Title:_____________________________________

STATE OF __________________________________
COUNTY OF ________________________________

The foregoing instrument was sworn and subscribed before me this ___ day of ________________, 2018, by ________________ of ___________________, who is personally known to me or who has produced ____________________________ as identification, and did [ ] or did not [ ] take the oath.

__________________________________________
Notary Public, State of Florida
Print Name: _________________________________
Commission No.: _____________________________
My Commission Expires: _____________________

EXHIBIT: Attach Proof of Authorization to Sign

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AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE

Prepared by

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Issued and Published Jointly by
ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASCE
AMERICAN SOCIETY OF CIVIL ENGINEERS

National Society of Professional Engineers®
AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between Harbor Bay Community Development District ("Owner" or "District"), and ________________________________ ("Design-Builder").

PROJECT INFORMATION

Project: Harbor Bay Community Development District – Design-Build of Master Seawall Project

Design-Build Contract: Section III (5,130 LF) ("Contract")

Owner’s Consultant: Cardno Limited

Engineer: Design-Builder has retained ________________________________ ("Engineer") for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Gregory Woodcock, Cardno Limited, 20215 Cortez Blvd, Brooksville, Florida 34601, greg.woodcock@cardno.com, (352) 754-1240; Christopher Gamache, P.E., Cardno Limited, 380 Park Place Blvd, Suite 300, Clearwater, Florida 33759, christopher.gamache@cardno.com, (727) 431-1615.

2. Design-Builder’s Authorized Representative: ________________________________

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

1.01 General Description of Work

A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: the stabilization of certain canal retaining walls within the community of MiraBay, as more fully described in the engineering documents and as Section III (5,130 LF) in the Technical Specifications attached hereto and referenced in Section 8.13 herein.

ARTICLE 2 – CONTRACT TIMES

2.01 Time of the Essence

A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.2 Contract Times: Dates

A. Design-Builder will substantially complete the Work on or before [__].

B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, on or before [__].
2.02 Contract Times: Days

A. Design-Builder will substantially complete the Work within [___] days after the Effective Date consistent with the schedule described in the Technical Specifications referenced in Section 7.01.A.12.d.

B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within [___] days after the Effective Date consistent with the schedule described in the Technical Specifications referenced in Section 7.01.A.12.d.

C. Design-Builder shall attain the following Milestone(s):

1. Milestone 1 [event & date/days]
2. Milestone 2 [event & date/days]
3. Milestone 3 [event & date/days]

2.03 Reserved

ARTICLE 3 – CONTRACT PRICE

3.01 Stipulated Sums

A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

1. For all Work other than Unit Price Work, a lump sum price of: $________________

   (5,130 LF @ $_________/LF). Unit Pricing, as shown in the Unit Pricing Schedule referenced in Section 7.01.A.12.c and attached hereto, shall be used in connection with pricing for demobilization and mobilization if necessary, and change orders. This price shall be adjusted, if necessary, based upon the actual number of linear feet installed by Design-Builder at the rate of $_____/LF. If Owner elects to directly purchase sheet pile, steel, or other material(s), Design-Builder agrees to deduct the cost of the directly-purchased materials, as well as their related shipping and insurance costs and sales and use taxes, from the $_________/LF price.

2. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Estimated Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
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</table>

   Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities) $__

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 12.02 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and
classifications are to be made by Owner.

3. Total of Lump-Sum Amount and Unit Price Work (subject to final Unit Price adjustment). $

1. For all Work, at the prices stated in Design-Builders Proposal, attached hereto as an exhibit.

3.02 Changes in Contract Price Based on Cost of the Work

A. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of [_____] [insert multiplier for such design services], which covers labor costs, overhead, and profit.

B. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

A. Design-Builders shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

4.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builders Applications for Payment on or about the 10th day of each month during performance of the Work as provided in subject to Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner (i.e., by the first of the month) and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

Five percent of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent shall be returned to Design-Builders. Owner shall return the remaining one percent upon Final Completion and acceptance of the Work by Owner.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

   a. [_____] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and
b. [ ] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage)

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to [ ] percent [Note: a typical amount here is 100%] of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less [ ] percent [Note: a typical amount here is 200%] of Owner’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

C. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

4.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price. Upon Final Completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.

4.04 District Pre-Payment and Credit

A. No later than ten (10) business days after receipt from Design-Builder of the certified copies of the recorded payment and performance bonds required by Section 255.05(1), Florida Statutes, Owner shall make a one-time total pre-payment to or on behalf of Design-Builder in the amount of $ ______________, which Design-Builder shall pay back to Owner in the form of credits (at a rate of $ ______________ per linear foot) against Design-Builder’s draws for the Work. Such credits paid back to Owner shall total $ ______________ upon Design-Builder’s Final Completion of the Work.

ARTICLE 5 – INTEREST

5.01 Interest Rate

A. All amounts not paid when due shall bear interest at the rate of [ ] percent per annum, or if applicable at the rate stated in a governing prompt payment statute. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes.

ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS

6.01 Representations

A. Design-Builder makes the following representations for Owner’s reliance:

1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.

5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder’s safety precautions and programs.

6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.

7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.

9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

10. Design-Builder’s entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement, as modified herein (pages 1 to [13], inclusive).
4. Other bonds:
   a. [ ] (pages [ ] to [ ], inclusive).
5. General Conditions, as modified therein (pages [1] to [66], inclusive).

   a. Supplementary Conditions Relating to Subsurface Conditions and Insurance Requirements (pages 1 to 3, inclusive)

7. Conceptual Documents (i.e., the Design Criteria Package).

8. Addenda, if any (numbers [  ] to [ ], inclusive).

9. Design-Builder’s Proposal (for reference purposes only; to the extent of any conflict, this Agreement, the General Conditions, the Supplementary Conditions, and the Technical Specifications shall control).

10. Proposal Amendment(s), if any.

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
   a. Work Change Directives.
   b. Change Orders.
   c. Record Drawings and Record Specifications

12. Other Exhibits to this Agreement (enumerated as follows):
   a. Resolution & the Project Manual (pages to inclusive)
   b. Permits (as identified and incorporated by reference; permit documents themselves are not attached but shall be provided separately) (pages to inclusive)
   c. Unit Pricing Sheet for Design-Build of Master Seawall Project, Section III (5,130 LF)
   d. Technical Specifications
   e. Daily Logs and Weekly Logs Forms

B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

E. In the event of any conflict between this Agreement, the General Conditions, and/or the Supplementary Conditions, and the Technical Specifications attached hereto, the Technical Specifications shall control.

ARTICLE 8 – MISCELLANEOUS

8.01 Terms
A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

8.02 Assignment of Contract
A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

8.03 Successors and Assigns

A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

8.04 Severability

A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 Assignment of Warranties

Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Design-Builder shall secure the material supplier’s and/or subcontractor’s consent to assign said warranties to Owner.

8.06 Design-Builder’s Certifications

A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.06:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.07 Direct Purchase of Materials

A. Owner represents to Design-Builder that Owner is a governmental entity exempt from
Florida sales and use tax, and will provide Design-Builder with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials (“Direct Purchase Materials”) necessary for completion of the Work directly from the suppliers to take advantage of Owner’s tax exempt status.

B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Design-Builder with a list of materials that will be treated as Direct Purchase Materials.

C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner’s consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by Owner and if the original contract contemplated sale of materials and installation by the same person, the change order needs to reflect sale of materials and installation by different legal entities.

D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Design-Builder. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties, and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Design-Builder will use in the identified public works; (2) the vendor’s invoice will be issued directly to the governmental entity; (3) payment of the vendor’s invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at time of delivery by the vendor.

E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Design-Builder as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Design-Builder.

F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.

G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Design-Builder, as Owner’s agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties, bonds, and guarantees for all material and products as required under the Contract Documents. All contract terms, including but not limited to warranties, payment and performance bonds, and other forms of indemnification, provided by Design-Builder as part of Contract shall continue to apply to all Direct Purchase Materials, as though Design-Builder had purchased the Direct Purchase Materials.

H. Design-Builder shall maintain builder’s risk insurance on the Direct Purchase Materials and
shall name Owner as an additional insured under such insurance policy or alternatively, in Owner’s sole discretion, Owner shall maintain such insurance.

8.08 Construction Defects

PURSUANT TO SECTION 558.005(1), FLORIDA STATUTES, CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

8.09 Public Records

Design-Builder understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Design-Builder agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to, Section 119.0701, Florida Statutes. Among other requirements and to the extent applicable by law, Design-Builder shall: 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if Design-Builder does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Design-Builder’s possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Design-Builder, Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Design-Builder acknowledges that the designated Public Records Custodian for the District is Joe Roethke. IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DESIGN-BUILDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 533-2950, jroethke@rizetta.com, 9428 CAMDEN FIELD PARKWAY, RIVERVIEW, FLORIDA 33578.

8.10 Restriction on Removal of Fill Dirt from Work Site

Design-Builder acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the District.

8.11 Public Entity Crimes

Pursuant to Section 287.133, Florida Statutes, Design-Builder acknowledges that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months.
following the date of being placed on the convicted vendor list. Design-Builder represents that neither itself nor any Subcontractors retained hereunder meet any of the prohibited criteria set forth in Section 287.133, Florida Statutes. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.133, Florida Statutes, or later been placed on the convicted vendor list, the Design-Builder shall immediately notify the District, at which time District may immediately terminate the Contractor Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.12 Scrutinized Companies

Pursuant to Section 287.135(2), Florida Statutes, Design-Builder represents that Design-Builder has not been placed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (together, “Scrutinized Companies Lists”), and is not engaged in business operations in Cuba or Syria. If the Design-Builder or any of its Subcontractors is found to have falsely represented its status under Section 287.135(5), Florida Statutes, or has been placed on any of the Scrutinized Companies Lists or has been engaged in business operations in Cuba or Syria, the Design-Builder shall immediately notify the District, at which time District may immediately terminate this Agreement or may require the Design-Builder, at the Design-Builder’s expense, to terminate any contractual relationship with any such Subcontractors.

8.13 Work

The term “Work” as used in all Contract Documents shall be construed to refer only to Section III (5,130 LF) of the Master Seawall Project as more particularly described in the Technical Specifications referenced in Section 7.01.A.12.d.

8.14 Good Faith Cooperation on Sheet Pile Purchases

Owner and Design-Builder shall cooperate in good faith to secure the lowest possible cost for the purchase of suitable sheet pile for the Work. Nothing in this paragraph, however, shall be construed as financially committing or otherwise legally obligating Owner to direct purchase sheet pile (if it chooses to do so) from any particular third-party vendor.

8.15 Electronic Transmissions

This Contract may be transmitted between the parties by facsimile machine or electronic mail. Owner and Contractor intend that faxed or emailed signatures constitute original signatures and that a faxed or emailed Contract containing the signatures (original or electronic) of Owner and Contractor is binding on Owner and Contractor.

8.16 Counterparts

This Contract may be executed by the parties signing different counterparts of this Contract, which counterparts together shall constitute the agreement of the parties.
IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

OWNER:  **HARBOR BAY COMM. DEV. DISTRICT**

__________________________

By:  **PAUL CURLEY**

Title:  **BOARD CHAIRMAN**

Attest:  

Name/Title:  **JOE ROETHKE, DISTRICT MANAGER**

DESIGN-BUILDER:  ____________________________

__________________________

By:  

Title:  

Attest:  

Name/Title:  

Address for giving notices:

__________________________

__________________________

__________________________
DESIGN-BUILD PERFORMANCE BOND

DESIGN-BUILDER (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

Harbor Bay Community Development District
c/o Joseph Roethke, District Manager
9248 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT

Effective Date of the Contract: ______________________
Amount: ______________________
Description (name and location): Design-Build of Master Seawall Project, Apollo Beach, Florida
Section III (5,130 LF)

BOND

Bond Number: ______________________
Date (not earlier than the Effective Date of the Contract): ______________________
Amount: ______________________
Modifications to this Bond Form: [ ] None [ ] See Paragraph 16

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Design-Build Performance Bond to be duly executed by an authorized officer, agent, or representative. [Note: Provide supplemental execution by any additional parties, such as joint venturers.]

DESIGN-BUILDER AS PRINCIPAL

Design-Builder’s Name ______________________

By: ______________________

Signature ______________________

Print Name ______________________

Title ______________________

Attest: ______________________

Signature ______________________

SURETY

Surety’s Name ______________________

By: ______________________

Signature (attach power of attorney) ______________________

Print Name ______________________

Title ______________________

Attest: ______________________

Signature ______________________

Title ______________________
1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Design-Build Contract, which is incorporated herein by reference.

2. If the Design-Builder performs the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation under this Bond shall arise after:
   
   3.1 The Owner first provides notice to the Design-Builder and the Surety that the Owner is considering declaring a Design-Builder Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Design-Builder, and Surety to discuss the Design-Builder’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Design-Builder, and the Surety agree, the Design-Builder shall be allowed a reasonable time to perform the Design-Build Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Design-Builder Default;

   3.2 The Owner declares a Design-Builder Default, terminates the Design-Build Contract, and notifies the Surety; and

   3.3 The Owner has agreed to pay the Balance of the Design-Build Contract Price in accordance with the terms of the Design-Build Contract to the Surety, or to a design-builder or contractor selected to perform the Design-Build Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:
   
   5.1 Arrange for the Design-Builder, with the consent of the Owner, to perform and complete the Design-Build Contract;

   5.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or independent contractors;

   5.3 Obtain bids or negotiated proposals from qualified design-builders or contractors acceptable to the Owner for a contract for performance and completion of the Design-Build Contract, arrange for a contract to be prepared for execution by the Owner and a design-builder or contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Design-Build Contract Price incurred by the Owner as a result of the Design-Builder Default; or

   5.4 Waive its right to perform and complete, arrange for completion, or obtain a new design-builder or contractor, and with reasonable promptness under the circumstances:
      
   5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

   5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional notice from the Owner to
the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Design-Builder under the Design-Build Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Design-Build Contract. Subject to the commitment by the Owner to pay the Balance of the Design-Build Contract Price, the Surety is obligated, without duplication, for:

7.1 the responsibilities of the Design-Builder for correction of defective work and completion of the Design-Build Contract;

7.2 additional legal, design professional, and delay costs resulting from the Design-Builder’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance of the Design-Builder.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety’s liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Balance of the Design-Build Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction where the construction portion of the Project is located, and shall be instituted within two years after a declaration of Design-Builder Default, or within two years after the Design-Builder ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice under this Bond to the Surety, the Owner, or the Design-Builder shall be in writing, and mailed or delivered to the recipient’s address as shown in this Bond.

13. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Design-Build Contract Price: The total amount payable by the Owner to the Design-Builder under the Design-Build Contract after all proper adjustments have been made including allowance for the Design-Builder for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Design-Builder is entitled, reduced by all valid and proper payments made to or on behalf of the Design-Builder under the Design-Build Contract.

14.2 Design-Build Contract: The agreement between the Owner and Design-Builder identified as such in this Bond, including all Contract Documents and changes duly made to such Design-Build Contract.
14.3 Design-Builder Default: Failure of the Design-Builder, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Design-Build Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

14.5 Contract Documents: All the documents that comprise the contract between the Owner and Design-Builder.

15. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

16. Modifications to this Bond are as follows: This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.
DESIGN-BUILD PAYMENT BOND

DESIGN-BUILDER (name and address): 

SURETY (name and address of principal place of business):

OWNER (name and address):

Harbor Bay Community Development District
 c/o Joseph Roethke, District Manager
9428 Camden Field Parkway
Riverview, Florida 33578

DESIGN-BUILD CONTRACT
   Effective Date of the Contract: 
   Amount: 
   Description (name and location): Design-Build of Master Seawall Project, Apollo Beach, Florida
   Section III (5,130 LF)

BOND
   Bond Number: 
   Date (not earlier than the Effective Date of the Contract): 
   Amount: 
   Modifications to this Bond Form: [ ] None [ ] See Paragraph 18

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative. [Note: Provide supplemental execution by any additional parties, such as joint venturers.]

DESIGN-BUILDER AS PRINCIPAL

Design-Builder’s Name

By: ________________________________
   Signature

Print Name

Title

Attest: ________________________________
   Signature

SURETY

Surety’s Name

By: ________________________________
   Signature (attach power of attorney)

Print Name

Title

Attest: ________________________________
   Signature

Title

________________________________________

EJCDC® D-615, Design-Build Payment Bond. 
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1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Design-Builder promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, then the Surety and the Design-Builder shall have no obligation under this Bond.

3. If there is no Owner Default under the Design-Build Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, and tendered defense of such claims, demands, liens, or suits to the Design-Builder and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety’s obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants that do not have a direct contract with the Design-Builder,

      5.1.1 have furnished a written notice of non-payment to the Design-Builder, stating with substantial accuracy the amount claimed and the name of the party to which the materials were, or equipment was, furnished or supplied, or for which the labor was done or performed, within ninety (90) days after having last performed labor or services, or last furnished materials or equipment included in the Claim; and

   5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

   5.2 Claimants who are employed by or have a direct contract with the Design-Builder have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Design-Builder, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.
7.3 The Surety’s failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Design-Builder may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Design-Builder under the Design-Build Contract shall be used for the performance of the Design-Build Contract and to satisfy claims, if any, under any design-build performance bond. By the Design-Builder furnishing and the Owner accepting this Bond, they agree that all funds earned by the Design-Builder in the performance of the Design-Build Contract are dedicated to satisfy obligations of the Design-Builder and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction where the construction portion of the Project is located, or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design-Build Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Design-Builder shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated here. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the individual or entity for which the labor or services were done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, services, materials, or equipment were furnished for use in the performance of the Design-Build Contract;

4. A brief description of the labor, services, materials, or equipment furnished;

5. The date on which the Claimant last performed labor or services, or last furnished materials or equipment, for use in the performance of the Design-Build Contract;

6. The total amount earned by the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim;

7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Design-Builder or with a subcontractor of the Design-Builder to furnish labor, services, materials, or equipment for use in the performance of the Design-Build Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, services, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Builder and the Design-Builder’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Design-Build Contract:** The agreement between the Owner and Design-Builder identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Design-Builder.

17. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

18. Modifications to this Bond are as follows: **This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.**
STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

These General Conditions have been prepared for use with one of the three Agreements between Owner and Design-Builder (EJCDC® D-512, D-520, and D-525, 2016 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design-Build Documents (EJCDC® D-001, 2016 Edition) are also carefully interrelated with the wording of these General Conditions.
STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.

2. Agreement: The written instrument, executed by Owner and Design-BUILDER, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.

3. Application for Payment: The form which is to be used by Design-BUILDER during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Authorized Representative: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.

5. Change Order: A document which is signed by Design-BUILDER and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

6. Claim: A demand or assertion by Owner or Design-BUILDER seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.

7. Conceptual Documents: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.

8. Constituent of Concern: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, chemical, element, compound, solution, mixture, material or other material matter of any nature whatsoever that is or becomes designated, classified, listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating,
relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, chemical, element, compound, solution, mixture, or material, or other matter.

9. Construction: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.

10. Construction Drawings: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.

11. Construction Specifications: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.

12. Construction Subcontract: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.

13. Construction Subcontractor: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.

14. Contract: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.

15. Contract Documents: Those items so designated in the Agreement, and which together comprise the Contract.

16. Contract Price: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.

17. Contract Times: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

18. Design-Builder: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.

19. Design Professional Services: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the
preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. **Design Agreement:** A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.

21. **Design Submittal:** A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).

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

23. **Engineer:** The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.

24. **Hazardous Environmental Condition:** The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

25. **Laws and Regulations; Laws or Regulations:** Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Such definitions shall further include, where the context reasonably allows, compliance with any applicable permits and/or other similar approvals issued by governmental bodies, agencies, and authorities.

26. **Liens:** Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. **Milestone:** A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.

28. **Notice of Award:** The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.

29. **Notice to Proceed:** A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. **Owner:** The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.

31. **Owner’s Consultant:** An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.

32. **Owner’s Site Representative:** A representative of Owner at the Site, as indicated in Paragraph 10.05.

33. **Project:** The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.

34. **Project Design Professionals:** The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.

35. **Proposal:** The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.

36. **Proposal Amendment:** A Contract Document that is prepared after submittal of Design-Builder’s Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.

37. **Proposer:** An entity that submits a Statement of Qualifications or Proposal to Owner.

38. **Record Documents:** The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.

39. **Record Drawings and Record Specifications:** Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.

40. **Request for Proposals:** The document prepared by or for Owner specifying and describing Owner’s objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.

41. **Request for Qualifications:** The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. **Schedule of Values**: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder’s Applications for Payment.

43. **Site**: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.

44. **Statement of Qualifications**: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.

45. **Submittal**: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.

46. **Substantial Completion**: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.

47. **Supplementary Conditions**: The part of the Contract Documents which amends or supplements these General Conditions.

48. **Supplier**: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.

49. **Technical Data**: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. **Underground Facilities**: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. **Underground Facilities Data**: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.

52. **Unit Price Work**: Work to be paid for on the basis of unit prices.

53. **Work**: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

54. **Work Change Directive**: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

1.02 **Terminology**

A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.

B. **Intent of Certain Terms or Adjectives**:

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance
   A. Bonds: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
   B. Evidence of Insurance: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

2.02 Copies of Documents
   A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
   B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

2.03 Conceptual Documents
   A. Design-Builder’s Review of Conceptual Documents:
      1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
      2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
      3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
      4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder...
to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.

B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.

C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

2.04 Before Starting the Work

A. Preliminary Schedules: Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner’s timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

Such schedules shall be consistent with the documents provided to the Owner as part of the Design-Builder’s proposal.

2.05 Authorized Representatives

A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 Initial Conference

A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.
2.07 Review of Schedules

A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner’s acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder’s progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.

2. Design-Builder’s schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.

3. Design-Builder’s Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

All such schedules shall be consistent with the documents provided to the Owner as part of the Design-Builder’s proposal.

2.08 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.

C. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.

D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Contract Documents

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).

C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a
functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.

D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 **Reference Standards**

A. **Standards, Specifications, Codes, Laws or Regulations:**

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 **Resolving Discrepancies**

A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.

B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.

C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 **Ownership and Reuse of Documents**

A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:

1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.

3. Owner may use its copy of the Record Drawings and Record Specifications for Owner’s purposes in operating and maintaining the constructed facilities.

4. Upon Owner’s termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder’s use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner’s behalf will be at Owner’s sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting from any such use or reuse.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times

A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 Starting the Work

A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

4.03 Progress Schedule

A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.

B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:

1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.

2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.

C. Continuing the Work: Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or
postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

4.04 Delays in Design-Builder’s Progress

A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.

C. If Design-Builder’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder’s entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions such as tropical storms, hurricanes, or tornados;
3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
4. Acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

H. Where Design-Builder is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of both Owner and Design-Builder, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Design-Builder’s sole and exclusive remedy for such delay. In no event shall Owner be liable to Design-Builder, any subcontractor, any supplier, or any other person or organization, or to any surety or employee or any agent of them, for damages, including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or resulting from:

1. Delays caused by or within the control of Design-Builder (or Subcontractor or Supplier);
2. Delays beyond the control of both Owner and Design-Builder, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work;
3. Nor shall Owner be liable to Design-Builder for any claims, costs, losses or damages sustained by Design-Builder on or in connection with any other project or anticipated project.

Nothing in this paragraph bars a change in Contract Price to compensate Design-Builder due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible. Except for an adjustment to the Contract Times and Contract Price, the Design-Builder shall not be entitled to and hereby waives any and all damages that it may suffer by reason of delay or for any Act of God, and waives all damages that it may suffer by reason of such delay including but not limited to lost profits, overhead, and other consequential damages. No payment of any claim for damages shall be made to the Design-Builder as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay is avoidable or unavoidable.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws or Regulations.

C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work, provided that such damage results from Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work.

2. Should any claim be made by any such owner or occupant because of Design-Builder’s negligent, reckless, or intentionally wrongful performance of the Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.

3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner, Owner’s consultants, and anyone directly or indirectly employed by any of them from and against all liabilities, suits, liens, demands, claims, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder’s negligent, reckless, or intentionally wrongful performance of any part of the Construction, or because of other negligent, reckless, or intentionally wrongful actions or conduct of the Design-Builder or those for which Design-Builder is responsible, including without limitation, Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

B. Removal of Debris: During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. Cleaning: Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

E. Reports and Drawings: The Supplementary Conditions identify:

1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and

3. Technical Data contained in such reports, design criteria, drawings, and specifications.

F. No Reliance by Design-Builder on Technical Data Authorized: Design-Builder may not rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness, or accuracy of that information. Design-Builder may not rely upon or make any claim against Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. The completeness of such reports and drawings for Design-Builder’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any Design-Builder interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

Design-Builder expressly acknowledges that soil conditions may vary widely across the Site, and Design-Builder takes responsibility for any and all issues arising from unsuitable soils, including but not limited to, varying soil conditions, etc. that may make it more difficult to install the repairs or otherwise conduct the Work. Furthermore, no additional costs will be charged by Design-Builder for matters associated with unsuitable and/or varying soils.

Design-Builder warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecuting of the Work. Design-Builder further warrants that the Contract Price is just and reasonable compensation for all the Work, including all foreseen and unforeseen risks, hazards, and difficulties in connection therewith, including any concealed conditions encountered in the performance of the Work below the surface of the ground at variance with conditions indicated by the Contract Documents or other Design-Build Documents and Design-Build Requirements furnished to Design-Builder for its information.

5.03 Reference Points

A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
5.04  **Differing Site Conditions**

A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder’s cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.

C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.

D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05  **Underground Facilities**

A. **Procedure for Identifying Underground Facilities:** Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” as a basis for establishing a procedure (“Underground Facilities Procedure”) for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site (if any). Owner does not warrant or guarantee the accuracy or completeness of any such information or data provided by others. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.

1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.

2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

B. **Design-Builder’s Responsibilities:** Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;

2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;

3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;

4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and

5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.

C. Results of Design-Builder’s Execution of Underground Facilities Procedure: If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.

D. Underground Facility Found During Construction: If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.

1. Owner’s Review: Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder’s adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder’s cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.
2. No request by Design-Build for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Build has given the written notice required.

E. Inadequate Establishment or Execution of Underground Facilities Procedure: If Design-Build does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” or Design-Build does not adequately execute a duly established Underground Facilities Procedure, then Design-Build shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 Hazardous Environmental Conditions at Site

A. No Reliance by Design-Build on Technical Data Authorized: Design-Build may not rely on the accuracy of the Technical Data with respect to environmental conditions at the Site. Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner’s benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness or accuracy of that information.

B. Design-Build shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

C. Design-Build shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Build, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Build is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern. Neither Design-Build nor any of its successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, shall store, place, generate, manufacture, refine, handle, or locate on the Site a Constituent of Concern.

D. If Design-Build encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Build or anyone for whom Design-Build is responsible creates a Hazardous Environmental Condition, then Design-Build shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Build the written notice required by Paragraph 5.06.E. If Design-Build or anyone for whom Design-Build is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remEDIATE
the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 9.

G. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence. Moreover, none of the indemnifications in this Paragraph 5.06.G shall extend to, or be deemed extended to, entities or individuals not specifically identified herein or to third parties.

H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnities (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to the Design-Builder’s negligent, reckless, or intentionally wrongful failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder’s obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment and performance bonds shall each contain the following language: “This Bond is hereby amended so that the notice and time limitation provisions of Section 255.05, Florida Statutes, are incorporated by reference herein.”

C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.

F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in
the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. All insurance required by the Contract to be purchased and maintained by Design-Build shall be primary and without contribution by insurance maintained by Owner.

D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.

E. Design-Builders shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation, employer’s liability, and professional liability (as applicable) insurance, and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor’s pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builders, unless otherwise indicated in the Supplementary Conditions. Such Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) shall also include, as additional insureds, the Additional Insureds identified in the Supplementary Conditions.

F. Design-Builders shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builders has obtained and is maintaining the policies, coverages, and endorsements required by the Contract, including the required additional insured endorsements, prior to commencing the Work and entering any lands upon which the Work shall be performed. Upon request by Owner or any other insured, Design-Builders shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builders’ Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builders may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

G. Owner shall deliver to Design-Builders, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builders or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

H. Failure of Owner or Design-Builders to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or
Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner’s termination rights under Article 15.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party’s interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder’s interests.

M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder’s liability under the indemnities granted to Owner and other individuals and entities in the Contract.

N. The fact that an entity or individual is named as an additional insured on a particular insurance policy required under this Contract is not intended to constitute a waiver of any rights of any kind, including subrogation rights, claims for indemnification, or any other rights or claims.

6.03 **Design-Builder’s Insurance**

A. **Workers’ Compensation and Employer’s Liability:** Design-Builder shall purchase and maintain workers’ compensation and employer’s liability insurance for:

1. Claims under workers’ compensation, disability benefits, and other similar employee benefit acts.
2. United States Longshoreman and Harbor Workers’ Compensation Act and Jones Act coverage (if applicable).
3. Claims for damages because of bodily injury, including without limitation, bodily injury by accident (each accident), bodily injury by disease (policy limit), or bodily injury by disease (each employee); occupational sickness or disease; or death of Design-Builder’s employees (by stop-gap endorsement in monopolist worker’s compensation states).

4. Foreign voluntary worker compensation (if applicable).

B. **Commercial General Liability—Claims Covered:** Design-Builder shall purchase and maintain a minimum of $2 million commercial (marine) general liability insurance, covering all operations by or on behalf of Design-Builder, including without limitation, premises-operations coverage (including explosion, collapse, and underground coverage) and $1 million products-completed operations coverage, on an occurrence basis, against:

1. Claims for damages because of property damage, bodily injury, sickness or disease, or death of any person other than Design-Builder’s employees.
2. Claims for damages insured by reasonably available personal injury liability coverage.

3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. Commercial General Liability—Form and Content: Design-Builder’s commercial liability policy shall have limits of not less than $2 million per occurrence, $2 million general aggregate limits and $2 million products-completed operations aggregate limits, or limits carried, whichever are greater, which limits may be satisfied by a combination of primary general liability and excess liability policies. Said insurance shall be issued by a solvent, reputable insurance company having an A.M. Best’s rating of A−VII or better and authorized to do business in the State of Florida, and written on a 1996 (or later) ISO commercial general liability form (occurrence form). The Additional Insureds identified in the Supplementary Conditions shall also be listed as insureds. The Additional Insureds, as provided for in the Supplementary Conditions, shall be listed on ISO Form 20 10 11 85 or, in lieu thereof, on both ISO Form 20 10 10 01 and 20 37 10 01, or equivalents, and include the policy should include the following coverages and endorsements:

1. Products and completed operations coverage:
   a. Such insurance shall be maintained for three years after final payment.
   b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder’s contractual indemnity obligations in Paragraph 7.19.

3. Broad form property damage coverage.

4. Severability of interests and no insured-versus-insured or cross-liability exclusions.

5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.

7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 11 85; or 20 10 10 01 and CG 20 37 10 01 (together) in lieu thereof, or equivalents. If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.

D. Commercial General Liability—Excluded Content: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:

1. Any modification of the standard definition of “insured contract.”

2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs.
4. Any exclusion of coverage relating to earth movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability.
6. Any limitation or exclusion based on the nature of Design-Builder’s work.
7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.

E. **Automobile liability**: Design-Builder shall purchase and maintain automobile liability insurance, including without limitation, liability arising out of all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation any machinery or apparatus attached thereto, with limits not less than those limits set forth in the Supplementary Conditions. The automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent, and shall include, without limitation, contractual liability coverage, against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

F. **Umbrella or excess liability**: Design-Builder shall purchase and maintain, written on an occurrence policy form, a minimum of $5 million umbrella and/or excess liability insurance, with limits of liability not less than those limits set forth in the Supplementary Conditions on a per occurrence/annual aggregate in excess of the limits of the, written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a “follow the form” basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

G. **Contractor’s pollution liability insurance**: Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder’s operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

H. **Additional insureds**: The Design-Builder’s commercial (marine) general liability, and automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, staff, supervisors, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. **Professional liability insurance**:

1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of
performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.

2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.

3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.

4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. General provisions: The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.

2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.

3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days’ prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.

4. Remain in effect at least until final payment and Design-Builder’s departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
6.04 **Owner’s Liability Insurance**

A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner’s option and expense, may purchase and maintain Owner’s own liability insurance to protect Owner against claims which may arise with respect to the Project.

B. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner’s liability policies for any of Design-Builder’s obligations to the Owner or third parties.

6.05 **Property Insurance**

A. **Builder’s Risk:** Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder’s risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. Include the Owner, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC, and NASH Vingt-Huit, LLC, and Design-Builder as named insureds, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, and all Construction Subcontractors, employees, and any individuals or entities required by the Supplementary Conditions to be insured under such builder’s risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as “insureds.”

2. Be written on a builder’s risk “all risk” policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.

3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the
Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.

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

5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).

6. Extend to cover damage or loss to insured property while in transit.

7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.

8. Provide for the waiver of claims and waiver of the insurer’s subrogation rights, as set forth in Paragraph 6.06.

9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.

10. Not include a co-insurance clause.

11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.

12. Include performance/hot testing and start-up.

13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.

B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days’ prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. Deductibles: The purchaser of any required builder’s risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

D. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder’s risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder’s risk insurer. The builder’s risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder’s risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.
E. **Additional Insurance:** If Design-Builder elects to obtain other special insurance to be included in or supplement the builder’s risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder’s expense.

F. **Insurance of Other Property:** If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

G. **Loss of Use and Delay in Start-up:** Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

### 6.06 Waiver of Rights

A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder’s risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner’s property or the Construction caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.

C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is...
allowed to waive the insurer’s rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder’s risk insurance and any other property insurance applicable to the Project.

6.07 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder’s risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder’s risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES

7.01 Design Professional Services

A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.

B. Standard of Care: The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 Construction

A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 Supervision and Superintendence of Construction

A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 Labor; Working Hours

A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction during regular working hours, Monday through Saturday. Design-Builder will not perform the Construction on a Sunday or on any legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder’s sole discretion. Design-Builder may perform the Construction outside regular working hours or on Sundays or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

7.05 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 “Or Equals” and Substitutions

A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the
Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
3. Has a proven record of performance and availability of responsive service; and
4. Is not objectionable.

B. Effect of Owner’s Determination: Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

C. Substitutes: During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner’s sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.

D. Design Professional Review: Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed “or equal” or substitute shall review and approve the proposal.

E. Construction Drawings and Construction Specifications: “Or equal” or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others

A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.

B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.

E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder’s own acts and omissions.

H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.

J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.

K. Nothing in the Contract Documents:

1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor

2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.
7.08 Patent Fees and Royalties

A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) Owner and Owner’s Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents, provided however that such infringement is caused by the negligent, reckless, or intentionally wrongful actions of the Design-Builder or those for which Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09 Permits and Utility Charges

A. Design-Builder shall be responsible The Contract Documents allocate responsibility for obtaining and paying for all required for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work that have not already been obtained by Owner. Owner shall be responsible for obtaining extensions to (but not modifications of) permits already obtained by Owner prior to the Effective Date of this Contract. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals. Owner will cooperate with Design-Builder’s permitting efforts.
B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner Design-Builder shall also pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto. Design-Builder shall provide all signage required by applicable permits and governmental authorities, including, but not limited to, navigational signs.

7.10 Taxes

A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder’s compliance with any Laws or Regulations.

B. If Design-Builder or those for which Design-Builder is responsible, including without limitation, the Design-Builder’s successors, assigns, agents, engineer, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, negligently, recklessly, or intentionally and wrongfully performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and shall indemnify, defend, and hold harmless Indemnitees (defined in Paragraph 7.19) from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs) arising out of or relating to such Work.

C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

7.12 Record Documents

A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.

B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.

C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.
7.13 Safety and Protection

A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary reasonable and customary precautions for the safety of, and shall provide the necessary reasonable and customary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.

B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. Among other requirements, Design-Builder or subcontractors performing trench excavation work on the Project shall comply with all applicable trench safety standards.

C. Design-Builder shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.

D. Design-Builder shall inform Owner of the specific requirements of Design-Builder’s safety program with which Owner and its employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder’s negligence, recklessness, or intentional misconduct in performance of the Work, or that of any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them for which Design-Builder is responsible to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder at its expense.

F. Design-Builder’s duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.

G. Design-Builder’s duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns
to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 Safety Representative

A. Design-Builders shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 Hazard Communication Programs

A. Design-Builders shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builders is obligated to act to prevent threatened damage, injury or loss. Design-Builders shall give Owner prompt written notice if Design-Builders believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builders in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 Post-Construction Phase

A. Design-Builders shall:

1. Provide assistance in connection with the start-up and testing of any equipment or system.

2. Assist Owner in training staff to operate and maintain the Work.

7.18 Design-Builders’ General Warranty and Guarantee

A. For a period of one (1) year following the Substantial Completion of the Construction by Design-Builders, Design-Builders warrants and guarantees to Owner that Design-Builders will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.

B. Design-Builders’ warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design-Builders, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builders is responsible; or

2. Normal wear and tear under normal usage.

C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builders’ obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

D. If the Contract requires Design-Builder to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Design-Builder’s performance obligations to Owner for the Work described in the assigned contract.

E. Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier or subcontractor to consent to same, then Design-Builder shall secure the material supplier’s or subcontractor’s consent to assign said warranties to Owner. The District may, but is not obligated to, help the Design-Builder secure such consent from any subcontractors and/or material suppliers.

F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.

7.19 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner’s Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Design-Builder under the Contract or otherwise, Design-Builder shall indemnify and hold harmless Owner, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (together, “Indemnitees”) from all claims, damages, losses, and costs including, but not limited to, reasonable attorney’s fees and costs and all fees and costs of mediation or alternative dispute resolution, but only to the extent directly caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the
Design-Builder, or any subcontractor, any supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

B. To the fullest extent permitted by Laws and Regulations, and without waiving any protections or immunities provided to Owner under Florida law, Owner shall indemnify and hold harmless Design-Builder, Project Design Professional, Subcontractors and Suppliers, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all the foregoing entities and individuals (together, “Design-Builder Indemnites”) from all claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and costs and all fees and costs of mediation or alternative dispute resolution for any and all Upland Claims. “Upland Claims” as used in this Contract shall mean any and all claims of property owners requesting the Owner to undertake repairs to their property on account of damages believed by such property owner to be a result of the compromised seawall located along the Mira Bay canal system within the Site including, but not limited to, requests made by any and all property owners to Owner pursuant to any one or more of the following: (i) Harbor Bay Community Development District Property Damage Repair Request Form, (ii) Harbor Bay Community Development District Procedure for Processing Property Damage Repair Requests, or (iii) Construction Guidelines for Upland Repairs; excluding, however, claims of such property owners directly caused in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Design-Builder, Project Design Professional, Subcontractors and Suppliers, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work.

C. In the event that any indemnification, defense, or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees or the Design-Builder Indemnites, as the case may be.

D. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, any Construction Subcontractor, Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

E. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner’s Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications, or any Upland Claims.
ARTICLE 8 – SUBMITTALS

8.01  Design-Builder’s Preparation of Submittals

A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.

B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder’s transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:

1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.

2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.

C. Before Design-Builder’s transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:

1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;

2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;

3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder’s responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.

F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner’s review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

8.02 Owner’s Review of Submittals

A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.

B. For those Submittals requiring Owner’s review and approval, Owner’s response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.

C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner’s review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.

D. Owner’s approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.

E. Owner’s review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner’s attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner’s review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.

F. Construction tasks and expenditures by Design-Builder prior to Owner’s review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.

G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.

H. The parties acknowledge that Design-Builder’s design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may
propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner’s interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

**ARTICLE 9 – OTHER CONSTRUCTION**

**9.01 Other Work**

A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner’s employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner’s employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.

C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner’s employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others’ work with the written consent of Owner and the others whose work will be affected.

D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

**9.02 Coordination**

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner’s employees, or to
arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

9.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner’s employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder’s rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner’s contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

C. When Owner is performing other work at or adjacent to the Site with Owner’s employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder’s failure to take reasonable and customary measures with respect to Owner’s other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.

D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through
Design-Builder’s failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder’s actions, inactions, or negligence, recklessness, or intentional misconduct in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Indemnitees (defined in Paragraph 7.19) Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), whether monetary or otherwise, arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 10 – OWNER’S RESPONSIBILITIES

10.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:

1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days’ notice to the Owner;

2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;

3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.

4. Furnish to Design-Builder, as required for performance of the Work, all of the following in Owner’s possession, all of which Design-Builder may use but may not and rely upon in performing services under this Agreement:

   a. Environmental assessment and impact statements;
   b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;
   c. Property descriptions;
   d. Zoning, deed, and other land use restrictions;
   e. Utility and topographic mapping and surveys;
   f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;

h. Engineering surveys to establish reference points which in Owner’s judgment are necessary to enable Design-Builder to proceed with the Work;

i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and

j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.

5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.

B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.

C. Recognizing and acknowledging that Design-Builder’s services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:

a. Accounting, bond and financial advisory (including, if applicable, “municipal advisor” services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.

c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.

D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 Insurance

A. Owner’s responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

10.03 Limitations on Owner’s Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.
10.04 Undisclosed Hazardous Environmental Condition
   A. Owner’s responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 Owner’s Site Representative
   A. Owner may furnish an Owner’s Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner’s Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 Owner’s Consultants and Managers
   A. Owner’s Consultant, if any, is identified in the Agreement.
   B. Owner shall advise Design-Build for the identity and scope of services of any independent consultant or manager retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
   C. Neither Owner’s Consultant, Owner’s Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Build unless expressly provided in this Contract. Owner’s Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Build’s means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Build to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Build’s failure to perform the Work in accordance with the Contract Documents.

10.07 Safety Programs
   A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Design-Build’s safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
   B. Owner shall inform Design-Build of any specific requirements of safety or security programs that are applicable to Design-Build while at the Site.

10.08 Permits and Approvals Staging Lot
   A. Owner will supply Design-Build an area for staging and lay-down of materials and equipment. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents
   A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
      1. Change Orders: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish
amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

2. *Work Change Directives:* The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive’s effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive’s addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.

B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may shall be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder’s safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 Unauthorized Changes in the Work

A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 Changes Involving the Design

A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder’s provision of Professional Design Services in response to the change.
11.05 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.

B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-BUILDER’s fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.

C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-BUILDER’s Fee for overhead and profit (determined as provided in Paragraph 11.05.D).

D. Design-BUILDER’s Fee: The Design-BUILDER’s fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-BUILDER’s fee shall be 15 percent;
  b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-BUILDER’s fee shall be 5 percent;
  c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-BUILDER’s fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-BUILDER itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;

f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder’s fee by an amount equal to 5 percent of such net decrease; and

g. When both additions and credits are involved in any one change, the adjustment in Design-Builder’s fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

11.06 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.

B. Design-Builder’s entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder’s ability to complete the Work within the Contract Times.

11.07 Execution of Change Orders

A. Owner and Design-Builder shall execute appropriate Change Orders covering:

1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner’s correction of defective Work under Paragraph 13.05 or Owner’s acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.

B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.
11.08 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder’s responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

12.01 Cost of the Work

A. Costs of the Work Adjustment: When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.

B. Costs Included: The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:

1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
   a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
   b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder. For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and
refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.

3. Cost of permits obtained by Design-Builder.

4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor’s Cost of the Work and fee shall be determined in the same manner as Design-Builder’s Cost of the Work and fee.

5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.

6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.

7. Supplemental costs including the following items:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder’s employees incurred in discharge of duties connected with the Work.
   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
   c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
   d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
   e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
   f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be
 included in the Cost of the Work for the purpose of determining Design-Builder’s fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.

h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.

C. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design-Builder’s officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder’s principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder’s fee.

2. Expenses of Design-Builder’s principal and branch offices other than Design-Builder’s office at the Site.

3. Any part of Design-Builder’s capital expenses, including interest on Design-Builder’s capital employed for the subject Work and charges against Design-Builder for delinquent payments.

4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.

D. Design-Builder’s Fee: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder’s fee shall be determined as set forth in Paragraph 11.05.D.

E. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

12.02 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The
estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.

B. If Design-Builder’s compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.

C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder’s overhead and profit for each separately identified item.

D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
   1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
   2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
   3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

13.01 Access to Construction
   A. Owner, Owner’s Consultant, Owner’s Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder’s Site safety procedures and programs so that they may comply therewith as applicable.

13.02 Tests, Inspections, and Approvals
   A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
      1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
      2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
      3. To attain Owner’s acceptance of materials or equipment to be incorporated in the Construction;
      4. By manufacturers of equipment furnished under the Contract Documents;
      5. To meet the requirements of the Construction Drawings and Construction Specifications;
      6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
      7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder’s purchase thereof for incorporation in the Construction.
B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.

C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.

D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.

E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.

F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.

H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.

I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder’s expense unless Design-Builder has given Owner timely notice of Design-Builder’s intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

13.03 Uncovering Construction

A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner’s request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner’s observation and re-covering it shall be at Design-Builder’s expense, regardless of whether it is defective.

2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Build shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

13.04 Defective Construction

A. It is Design-Build’s obligation to assure that the Construction is not defective.
B. Owner shall give Design-Build prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Build shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
D. When correcting defective Construction, Design-Build shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Construction.

13.05 Owner May Correct Defective Construction

A. If Design-Build fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Build fails to perform the Construction in accordance with the Contract Documents, or if Design-Build fails to comply with any other provision of the Contract Documents, Owner may, after 7 days’ written notice to Design-Build, correct and remedy any such deficiency.
B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Build from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Build’s services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Build but which are stored elsewhere. Design-Build shall allow Owner, Owner’s Consultant, Owner’s Site Representative, and Owner’s other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 Costs

A. Design-Build shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.
B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Build, by set-off against payment or otherwise.
C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 Owner’s Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 Owner May Stop Construction

A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

14.01 Progress Payments

A. Basis for Progress Payments: The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

B. Application for Progress Payment: On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner’s interest therein, all of which will be satisfactory to Owner. Except with respect to the purchase of sheet pile in the event Owner does not directly purchase said materials (in which case Design-Builder agrees to purchase and store only that quantity of material agreed upon by Design-Builder and Owner), progress payments are to be made only on
installed material; no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.

C. **Payment of Obligations:**

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder’s legitimate obligations associated with prior Applications for Payment.

2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. **Review of Applications:**

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), Florida Statutes. Design-Builder shall make payments due to subcontractors and suppliers within 10 days in accordance with the prompt payment provisions contained in Section 218.735(6) and 218.74, Florida Statutes. Invoices from Design-Builder should be directed to the District Manager, Rizzetta & Company, Inc., c/o Joe Roethke, 9428 Camden Field Parkway, Riverview, Florida 33578, with e-mail copies to JRoethke@rizzetta.com, jbudis@rizzetta.com, and Greg.Woodcock@cardno.com, and Christopher.Gamache@cardno.com.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. **Reduction in or Refusal to Make Payment:**

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the
results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:

a. Claims have been made against Owner on account of Design-BUILDER’s conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-BUILDER’s conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Design-BUILDER has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Design-BUILDER has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-BUILDER is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Construction is defective, requiring correction or replacement;

g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;

h. The Contract Price has been reduced by Change Orders;

i. An event that would constitute a default by Design-BUILDER and therefore justify a termination for cause has occurred;

j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-BUILDER’s failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;

k. Liens have been filed in connection with the Work, except where Design-BUILDER has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or

l. There are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, Owner will give Design-BUILDER immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-BUILDER any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-BUILDER the amount so withheld, or any adjustment thereto agreed to by Owner and Design-BUILDER, if Design-BUILDER remedies the reasons for such action. The reduction imposed shall be binding on Design-BUILDER unless it duly presents a written notice of Claim contesting the reduction.
14.02 Design-Build’s Warranty of Title

A. Design-Build warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.03 Substantial Completion

A. When Design-Build considers the Work ready for its intended use Design-Build shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Build as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Build shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Build in writing giving the reasons therefor.

B. If Owner considers the Work substantially complete:

1. Owner and Design-Build will confer regarding Owner’s use or occupancy of the Work following Substantial Completion, review the builder’s risk insurance policy with respect to the end of the builder’s risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Build agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner’s use or occupancy of the Work. Additionally, five percent (5%) of the Contract Price will be retained until Substantial Completion of the Work, at which point four percent (4%) shall be returned to Design-Build. Owner shall return the remaining one percent (1%) upon Final Completion and acceptance of the Work by Owner.

2. Owner will prepare and deliver to Design-Build a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.

C. After Substantial Completion the Design-Build shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Build may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

D. Owner shall have the right to exclude Design-Build from the Site after the date of Substantial Completion subject to allowing Design-Build reasonable access to remove its property and complete or correct items on the punch list.

E. To the extent this paragraph 14.03 is inconsistent in any way with Florida’s Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes, such Act shall control, and this Contract shall be construed to allow for the maximum amount of time allowable under the Act in order to review any punch lists and make payment.

14.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Build agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without
significant interference with Design-Builder’s performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.

2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

14.05 Final Inspection

A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 Final Payment

A. Application for Payment:

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by:

   a. All documentation called for in the Contract Documents;

   b. Consent of the surety, if any, to final payment;

   c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;

   d. A list of all disputes that Design-Builder believes are unsettled; and

   e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner’s property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance: If Owner is satisfied that the Work has been completed and Design-Builder’s other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.

C. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment.

D. Payment Becomes Due: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner’s notice of acceptability.

14.07 Waiver of Claims

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder’s failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder’s continuing obligations under the Contract.

B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

14.08 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner’s written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or
damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design-Builder’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).

2. Design-Builder’s disregard of Laws or Regulations of any public body having jurisdiction.


B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days’ written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such
excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding Paragraph 15.02.B, Design-Builder’s services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design-Builder’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

15.03 Owner May Terminate for Convenience

A. Upon 7 days’ written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers, and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and

4. Reasonable expenses directly attributable to termination.

In such case, Owner will pay Design-Builder all costs reasonably associated with Design-Builder’s mobilization on Site; the costs of materials purchased for the Construction and stored on Site by Design-Builder prior to such notice; all amounts due and not previously paid to Design-Builder for Work completed in accordance with the Contract prior to such notice; the cost of reasonably protecting Work in place, and for Work thereafter completed as specified in such notice; and the release and payment to Design-Builder of all retainage held by Owner related to the portion of the Work completed. No payments will be made for any potential costs of settling or paying claims arising out of termination of the Work under subcontracts, equipment leases, orders, or other related arrangements.

B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss, or any other consequential damages of any kind, arising out of or resulting from such termination.

C. Upon any such termination, Design-Builder shall:
1. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;

2. Place no further orders for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated.

3. Promptly make every reasonable effort to obtain cancellation upon terms reasonably satisfactory to Owner of all purchase orders and subcontracts to the extent they relate to the performance of Work terminated, or assign to Owner those orders and subcontracts and revoke agreements specified in such notice;

4. Reasonably assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of property acquired by Owner under the Contract, as may be necessary;

5. Complete performance of any Work which is not terminated; and

6. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors and the amounts due to each.

15.04 Design-Builder May Stop Work or Terminate

A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days’ written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days’ written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder’s stopping Work as permitted by this paragraph.

ARTICLE 16 – DISPUTES

16.01 Methods and Procedures

A. Notice of Claim: If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to
give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

B. Response: Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.

C. Direct Negotiations: Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.

D. Mediation: If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.

1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.

2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.

3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.

4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.

E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

F. In the event Owner or Design-Builder is required to enforce this Agreement by court proceedings or otherwise, then venue for any such legal action shall be in Hillsborough County, Florida, and the substantially prevailing party shall be entitled to recover from the other party all fees and costs incurred, including without limitation reasonable attorney’s fees and costs, paralegal fees, and expert witness fees.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:

1. In person, by a commercial courier service or otherwise; or

2. By registered or certified mail, postage prepaid; or

3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.
17.02 **Computation of Times**

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 **Cumulative Remedies**

A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. Any special warranty or guarantee; or
3. Other provisions of the Contract.

B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 **Limitation of Damages**

A. With respect to this Contract and any and all Claims and other matters at issue, neither Owner nor its supervisors or staff shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 **No Waiver**

A. A party’s non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 **Survival of Obligations**

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 **Controlling Law**

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 **Headings**

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
17.09 **Sovereign Immunity**

A. Design-Builder and Owner agree that nothing in this Contract shall be deemed as a waiver of the Owner’s sovereign immunity or the Owner’s limits of liability as set forth in Section 768.28, Florida Statutes or other statute or law, and nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.
SUPPLEMENTARY CONDITIONS RELATING TO SUBSURFACE CONDITIONS AND INSURANCE REQUIREMENTS

The following supplements establish insurance limits and other requirements relating to Article 6 of the Standard General Conditions of the Contract between Owner and Design-Builder, EJCDC Document No. D-700, 2016 Edition (the “General Conditions”), as well as identify certain reports relating to subsurface and physical conditions at the site, which reports relate to Article 5 of the General Conditions. Other changes have been marked directly in underlined and strike-through on the Standard Form of Agreement and the General Conditions. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS

Pursuant to Paragraph 5.02.E. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner and were used by Emergency Work Project Engineer in the preparation of the Reconstruction Solution:

1. Report dated May 2015 prepared by Langan Engineering and Environmental Services, Inc. The Technical Data contained in such report are Langan’s Confirmation Borings Location Plan and Subsurface Profiles.

2. Report dated August 13, 2012 prepared by HSA Engineers & Scientists and entitled “Results of Hand Cone Soundings Harbor Bay CDD (Mira Bay) Seawall Study.” The Technical Data contained in such report are the results of hand cone soundings.


Pursuant to Paragraph 5.02.E. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner:

1. None
ARTICLE 6 – BONDS AND INSURANCE

6.03 Design-Builder’s Insurance

Add the following new paragraphs after Paragraph 6.03.K. of the General Conditions:

K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:

1. Workers’ Compensation under Paragraph 6.03.A. of the General Conditions:
   a. State Worker’s Compensation – Greater of statutorily required amount or $1,000,000 per occurrence / $1,000,000 aggregate / $1,000,000 per disease
   b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or $1,000,000
   c. Employer’s Liability – $1,000,000

2. Commercial General Liability Insurance under Paragraphs 6.03.B, and Paragraph 6.03.C. and 6.03.D. of the General Conditions:
   a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - $2,000,000
   b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - $2,000,000
   c. Products-Completed Operations – $2,000,000
   d. Personal and Advertising Injury – $1,000,000
   e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

3. Automobile Liability under paragraph 6.03.E. of the General Conditions:
   a. Bodily Injury:
      Each Person $1,000,000
      Each Accident $2,000,000
   Property Damage:
      Each Occurrence $1,000,000

4. Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) $1,000,000

5. Protection and Indemnity Insurance $1,000,000

6. The Contractual Liability coverage required by paragraph 6.03.C. of the General Conditions shall provide coverage for not less than the following amounts:
   a. General Aggregate $2,000,000
   b. Bodily Injury and Property Damage
Combined Each Occurrence $2,000,000

7. Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
   a. General Aggregate $5,000,000
   b. Each Occurrence $5,000,000

8. Installation Floater to protect against fire, theft, or other loss of Project materials $1,750,000.

L. All insurance policies secured by Design-Builder pursuant to the General Conditions shall be written on an “occurrence” basis to the extent permitted by law. The Design-Builder’s commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: Owner, the District Engineer, Terrabrook Apollo Beach, LLC, Newland Real Estate Group, LLC, NASH Financing, LLC and NASH Vingt-huit, LLC, and their respective successors, assigns, members, parents, partners, subsidiaries, affiliates, lenders, managers, officers, directors, supervisors, representatives, staff, consultants, agents, contractors, subcontractors, and employees of each and any of all of the foregoing entities and individuals (the “Additional Insureds”). By virtue of such Additional Insureds being named as additional insureds to the aforementioned insurance policies or as indemnitees herein, such Additional Insureds are not responsible for any of the terms and/or provisions of the Contract and Design-Builder shall look only to the Owner regarding all obligations and liabilities arising from the Contract. A waiver of subrogation endorsements shall also be issued in favor of the Additional Insureds with respect to the Worker’s Compensation, Commercial General Liability, and Automobile Liability policies.

M. Design-Builder shall also require its Construction Subcontractors and Engineer to (1) obtain and maintain the insurance coverages identified in 6.02.E of the General Conditions for the coverage amounts identified above, and (2) include and list the Additional Insureds.

N. Such insurance as listed above is in addition to all other insurance required under the Contract.
CONSTRUCTION REQUIREMENTS

The contractor shall provide a written notice of construction to the residents within 30 days of the date of award or within 30 days of the start of work. Written notice shall provide a general construction timeline and information about construction, including but not limited to:

- Type of work
-预计施工日期
- 预计完成日期
- 工程周围交通影响
- 工程对环境的影响
- 工程噪音
- 工程振动
- 工程产生的垃圾
- 临时结构
- 工程进度检查
- 工程质量保证
- 工程安全

The contractor shall provide these notices to the residents within the specified timeframe, as well as any additional information that is required by local regulations or the project specifications.

GENERAL NOTES AND TECHNICAL SPECIFICATIONS

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
380 PARK PLACE BLVD, STE 300, CLEARWATER, FL 33759
TEL: (727) 531-3505 (800) 861-8314
www.cardno.com
Certificate of Authorization No. 29915

The contractor shall be responsible for the preparation of all necessary construction documentation, including:

- Construction plans
- Specifications
- Safety plans
- Environmental impact assessments
- Traffic management plans
- Noise control plans
- Dust control plans
- Other necessary regulatory documentation

The contractor shall be responsible for ensuring that all construction work complies with all applicable laws, regulations, and codes.

DESIGN CRITERIA PACKAGE

SECTION III

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
380 PARK PLACE BLVD, STE 300, CLEARWATER, FL 33759
TEL: (727) 531-3505 (800) 861-8314
www.cardno.com
Certificate of Authorization No. 29915

The contractor shall be responsible for the preparation of all necessary construction documentation, including:

- Construction plans
- Specifications
- Safety plans
- Environmental impact assessments
- Traffic management plans
- Noise control plans
- Dust control plans
- Other necessary regulatory documentation

The contractor shall be responsible for ensuring that all construction work complies with all applicable laws, regulations, and codes.

DESIGN CRITERIA PACKAGE

SECTION III

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Tab 5
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Amount</th>
<th>Seawall Repair Status</th>
<th>Claim Status</th>
<th>District Engineer Inspection Status</th>
<th>Current Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cirillo</td>
<td>501 Mirabay Blvd.</td>
<td>$18,199.00</td>
<td>Section I - Priority B</td>
<td>7/12/18 - resident submitted intake form &lt;br&gt;7/25/18 - resident submitted insurance docs &lt;br&gt;10/18/18 - settlement amount approved by the Board &lt;br&gt;10/23/18 - sent settlement agreement to resident</td>
<td>10/1/18 - Inspection report completed</td>
<td>Resident - needs to provide recorded deed of transfer to new homeowner</td>
</tr>
<tr>
<td>Miller</td>
<td>5705 Tortoise Pl.</td>
<td>$19,021.00</td>
<td>Repaired</td>
<td>7/31/18 - resident sent intake form but incomplete insurance &lt;br&gt;8/1/18 - resident sent full insurance policy &lt;br&gt;10/18/18 - settlement amount approved by the Board &lt;br&gt;10/23/18 - sent settlement agreement to resident</td>
<td>10/1/18 - Inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Williams</td>
<td>439 Mirabay Blvd.</td>
<td>$18,567.00</td>
<td>Section I - Priority B</td>
<td>11/7/17 - sent previous intake form and documents to counsel &lt;br&gt;12/28/17 - sent letter to resident to use new protocol &lt;br&gt;1/23/18 - resident sent intake form but no insurance &lt;br&gt;1/28/18 - received insurance documents &lt;br&gt;3/15/18 - Board approved settlement amount of $18,567 &lt;br&gt;3/22/18 - sent settlement agreement to resident</td>
<td>2/5/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Oliszewski</td>
<td>5705 Sea Turtle Pl.</td>
<td>$52,398.00</td>
<td>Section I - Priority A</td>
<td>11/7/17 - sent previous intake form and documents to counsel &lt;br&gt;12/28/17 - sent letter to resident to use new protocol &lt;br&gt;1/22/18 - resident sent intake form but no insurance &lt;br&gt;3/15/18 - Board approved settlement amount of $52,398 &lt;br&gt;3/22/18 - sent settlement agreement to resident</td>
<td>2/5/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Nicholson</td>
<td>432 Islebay Dr.</td>
<td>$11,150.00</td>
<td>Section I - Priority A</td>
<td>8/23/17 - requested homeowners’ insurance from resident, resident will not submit homeowners’ claim and they are named on the litigation &lt;br&gt;10/12/17 - sent follow-up to resident for insurance policy &lt;br&gt;10/23/17 - sent additional request for insurance policy &lt;br&gt;1/18/18 - settlement amount approved by the Board &lt;br&gt;1/23/18 - sent settlement agreement to resident</td>
<td>12/5/17 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Law</td>
<td>5720 Sea Turtle Pl.</td>
<td>$15,150.00</td>
<td>Emergency</td>
<td>11/15/17 - received intake form and insurance documents &lt;br&gt;2/8/18 - BOS approved settlement of $15,150 &lt;br&gt;2/19/18 - sent settlement agreement to resident</td>
<td>12/5/17 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Lilly</td>
<td>435 Mirabay Blvd.</td>
<td>$14,973.00</td>
<td>Section I - Priority B</td>
<td>11/7/17 - sent previous intake form and documents to counsel &lt;br&gt;12/28/17 - sent letter to resident to use new protocol &lt;br&gt;2/2/18 - resident sent intake form, needs to send insurance &lt;br&gt;2/19/18 - resident sent insurance docs &lt;br&gt;4/30/18 - engineer inspection report completed &lt;br&gt;6/21/18 - Board approved settlement offer &lt;br&gt;6/28/18 - sent settlement agreement to resident</td>
<td>4/30/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Warner</td>
<td>611 Islebay Dr.</td>
<td>$15,095.00</td>
<td>Section I - Priority B</td>
<td>2/19/18 - received intake form, requested insurance docs &lt;br&gt;3/6/18 - received insurance &lt;br&gt;3/12/18 - insurance incomplete, resident to send entire policy &lt;br&gt;3/13/18 - insurance docs submitted &lt;br&gt;4/30/18 - engineer inspection report completed &lt;br&gt;6/21/18 - Board approved settlement offer &lt;br&gt;6/28/18 - sent settlement agreement to resident</td>
<td>4/30/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Name</td>
<td>Address</td>
<td>Amount</td>
<td>Seawall Repair Status</td>
<td>Claim Status</td>
<td>District Engineer Inspection Status</td>
<td>Current Ownership</td>
</tr>
<tr>
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<td>-----------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>McKelligott</td>
<td>433 Mirabay Blvd.</td>
<td>$15,955.00</td>
<td>Section I - Priority B</td>
<td>5/8/17 - sent copy of protocol and contractor list to resident, have not received completed forms from resident 10/12/17 - sent intake form and protocol to the resident 1/28/18 - received intake form from resident, need insurance docs from resident 7/19/18 - Board approved settlement offer 7/25/18 - sent settlement agreement to resident</td>
<td>5/6/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>O'Leary</td>
<td>450 Islebay Dr.</td>
<td>$11,625.00</td>
<td>Section I - Priority A</td>
<td>4/20/18 - resident sent intake form, but no insurance docs 5/11/18 - resident sent insurance docs 5/30/18 - engineer inspection report completed 7/19/18 - Board approved settlement offer 7/25/18 - sent settlement agreement to resident</td>
<td>5/30/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Lamardo</td>
<td>5703 Tortoise Pl.</td>
<td>$23,769.00</td>
<td>Repaired</td>
<td>5/25/18 - resident submitted intake form and insurance docs 7/2/18 - engineer inspection report completed 8/16/18 - Board approved settlement offer 8/20/18 - resident to confirm ownership of property 8/27/18 - sent settlement agreement to resident</td>
<td>7/2/18 - inspection report completed</td>
<td>Resident - needs to sign settlement agreement</td>
</tr>
<tr>
<td>Kelly</td>
<td>511 Islebay Dr.</td>
<td>$23,600.00</td>
<td>Repaired</td>
<td>4/24/17 - revised settlement agreement sent to resident, have not received signed settlement agreement from resident 1/18/18 - BOS directed staff to rescind settlement agreement</td>
<td>N/A</td>
<td>Resident - received letter to rescind offer, waiting on response</td>
</tr>
<tr>
<td>Vickers</td>
<td>415 Islebay Dr.</td>
<td></td>
<td>Repaired</td>
<td>10/12/17 - received intake form from resident, requested proposals and insurance documents from resident 6/14/18 - resident sent incomplete insurance policy 7/31/18 - resident sent full insurance policy</td>
<td>10/1/18 - Inspection report completed</td>
<td>Claims adjuster - needs to provide claim amount</td>
</tr>
<tr>
<td>Smith</td>
<td>429 Mirabay Blvd.</td>
<td></td>
<td>Section I - Priority B</td>
<td>7/25/18 - resident sent intake form but no insurance docs 6/14/18 - resident sent insurance docs</td>
<td>10/1/18 - Inspection report completed</td>
<td>Claims adjuster - needs to provide claim amount</td>
</tr>
<tr>
<td>Keener</td>
<td>5723 Tortoise Pl.</td>
<td></td>
<td>Repaired</td>
<td>4/13/18 - sent intake form and protocol to resident 4/16/18 - resident sent intake form but no insurance docs 9/17/18 - resident sent incomplete insurance docs 9/20/18 - resident sent full insurance policy</td>
<td>10/12/18 - Inspection report completed</td>
<td>Claims adjuster - needs to provide claim amount</td>
</tr>
<tr>
<td>Seibert</td>
<td>5725 Sea Turtle Pl.</td>
<td></td>
<td>Repaired</td>
<td>9/5/18 - resident sent intake form but no insurance docs 10/16/18 - resident sent incomplete insurance docs 10/18/18 - resident sent complete insurance docs</td>
<td>11/2/18 - Inspection scheduled for 11/5/18</td>
<td>District Engineer - inspection scheduled for 11/5/18</td>
</tr>
<tr>
<td>Nargi</td>
<td>5632 Skimmer Dr.</td>
<td></td>
<td>Section I - Priority B</td>
<td>11/2/18 - resident sent intake form, needs to send insurance</td>
<td></td>
<td>Resident - needs to submit insurance docs</td>
</tr>
<tr>
<td>Lane</td>
<td>5711 Tortoise Pl.</td>
<td></td>
<td>Emergency</td>
<td>11/7/18 - resident sent intake form, needs to send insurance</td>
<td></td>
<td>Resident - needs to submit insurance docs</td>
</tr>
<tr>
<td>Lacey</td>
<td>5626 Skimmer Dr.</td>
<td></td>
<td>Section I - Priority B</td>
<td>12/6/17 - sent intake form and protocol to resident 12/18/17 - sent request to resident for insurance docs</td>
<td></td>
<td>Resident - needs to submit insurance docs</td>
</tr>
<tr>
<td>Owens</td>
<td>5717 Sea Trout Pl.</td>
<td></td>
<td>Repaired</td>
<td>8/21/17 - requested homeowners' insurance policy from resident 10/12/17 - sent follow-up to resident for insurance policy</td>
<td></td>
<td>Resident - needs to submit insurance docs</td>
</tr>
<tr>
<td>Pullara</td>
<td>5621 Skimmer Dr.</td>
<td></td>
<td>Section I - Priority B</td>
<td>11/7/17 - sent previous intake form and documents to counsel 12/28/17 - sent letter to resident to use new protocol 8/27/18 - resident sent intake, needs to submit insurance</td>
<td></td>
<td>Resident - needs to submit insurance docs</td>
</tr>
<tr>
<td>Name</td>
<td>Address</td>
<td>Amount</td>
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<td>Claim Status</td>
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</tr>
<tr>
<td>Parry</td>
<td>5617 Seagrass Pl.</td>
<td>Section I - Priority B</td>
<td>5/8/17 - sent copy of protocol and contractor list to resident, have not received completed forms from resident</td>
<td>10/12/17 - sent updated intake form and protocol to the resident</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Kirbach</td>
<td>440 Islebay Dr.</td>
<td>Section I - Priority A</td>
<td>11/7/17 - sent previous intake form and documents to counsel</td>
<td>12/28/17 - sent letter to resident to use new protocol</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Jaehe</td>
<td>509 Islebay Dr.</td>
<td>Section I - Priority A</td>
<td>11/7/17 - sent previous intake form and documents to counsel</td>
<td>12/28/17 - sent letter to resident to use new protocol</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Baker</td>
<td>521 Islebay Dr.</td>
<td>Section I - Priority A</td>
<td>11/7/17 - sent previous intake form and documents to counsel</td>
<td>12/28/17 - sent letter to resident to use new protocol</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Hess</td>
<td>617 Balibay Rd.</td>
<td>Section II/III</td>
<td>11/7/17 - sent previous intake form and documents to counsel</td>
<td>12/28/17 - sent letter to resident to use new protocol</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Weber</td>
<td>5628 Skimmer Dr.</td>
<td>Section I - Priority B</td>
<td>11/7/17 - sent previous intake form and documents to counsel</td>
<td>12/28/17 - sent letter to resident to use new protocol</td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Preston</td>
<td>5704 Sea Trout Pl.</td>
<td>Section I - Priority B</td>
<td>11/15/17 - sent intake form and protocol to resident</td>
<td></td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Cavin</td>
<td>601 Islebay Dr.</td>
<td>Section I - Priority B</td>
<td>12/6/17 - sent intake form and protocol to resident</td>
<td></td>
<td>Resident - needs to submit intake form and insurance docs</td>
<td></td>
</tr>
<tr>
<td>Norstrom</td>
<td>5711 Sea Trout Pl.</td>
<td>$44,720.63</td>
<td>3/20 - all completed, check mailed to resident</td>
<td></td>
<td>N/A</td>
<td>COMPLETED</td>
</tr>
<tr>
<td>Carter</td>
<td>513 Islebay Dr.</td>
<td>$23,600.00</td>
<td>3/20 - all completed, check mailed to resident</td>
<td></td>
<td>N/A</td>
<td>COMPLETED</td>
</tr>
<tr>
<td>Goldstone</td>
<td>5714 Tortoise Pl.</td>
<td>$10,000.00</td>
<td>10/5 - requested homeowners' insurance claim from resident, resident responded with issues, email forwarded to MPD Legal</td>
<td>10/12 - sent follow-up to resident for insurance policy</td>
<td>10/16 - resident sent insurance documents</td>
<td>10/16 - BOS approved settlement of $10,000</td>
</tr>
<tr>
<td>Henley</td>
<td>5713 Tortoise Pl.</td>
<td>$27,600.00</td>
<td>9/28 - claim approved, awaiting signed settlement form from resident, 10/10 - agreement signed, waiting on signed requisition</td>
<td>11/2 - all completed, check mailed to resident</td>
<td>4/27 - inspection report completed</td>
<td>COMPLETED</td>
</tr>
<tr>
<td>Kayat</td>
<td>5725 Sea Trout Pl.</td>
<td>$9,650.00</td>
<td>8/21 - requested homeowners' insurance policy from resident</td>
<td>10/12 - sent another follow-up to resident for insurance policy</td>
<td>10/23 - resident sent insurance documents</td>
<td>11/16 - BOS approved settlement of $9,650</td>
</tr>
<tr>
<td>Name</td>
<td>Address</td>
<td>Amount</td>
<td>Seawall Repair Status</td>
<td>Claim Status</td>
<td>District Engineer Inspection Status</td>
<td>Current Ownership</td>
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<td>-----------------------------------------------------------------------------</td>
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<td>-------------------</td>
</tr>
<tr>
<td>Gibbons</td>
<td>5710 Sea Turtle Pl.</td>
<td>$30,867.00</td>
<td>8/21 - requested homeowners' insurance claim from resident, resident provided homeowners' insurance denial letter</td>
<td>11/6 - inspection report completed</td>
<td>COMPLETED</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>10/12 - sent follow-up to resident for insurance policy</td>
<td>10/14 - resident sent insurance documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12/14 - settlement amount approved by the Board</td>
<td>1/3 - sent settlement agreement to resident</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1/31 - settlement agreement signed</td>
<td>3/12 - all completed, check mailed to resident</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gao</td>
<td>5722 Tortoise Pl.</td>
<td>$10,750.00</td>
<td>8/21 - requested homeowners’ insurance policy from resident</td>
<td>11/6 - inspection report completed</td>
<td>COMPLETED</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>10/12 - sent follow-up to resident for insurance policy</td>
<td>10/13 - resident sent insurance documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12/14 - settlement amount approved by the Board</td>
<td>1/3 - sent settlement agreement to resident</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1/18 - settlement agreement signed</td>
<td>2/16 - all completed, check mailed to resident</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawson</td>
<td>523 Islebay Dr.</td>
<td>$32,794.00</td>
<td>10/12 - sent intake form and protocol to resident</td>
<td>11/6 - inspection report completed</td>
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<td>10/14 - resident sent insurance documents</td>
<td>10/14 - settlement amount approved by the Board</td>
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<td>12/14 - settlement amount approved by the Board</td>
<td>1/3 - sent settlement agreement to resident</td>
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<td>1/23 - received incomplete settlement agreement</td>
<td>2/1 - settlement agreement fully executed</td>
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<td>3/12 - all completed, check mailed to resident</td>
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<td>Taylor</td>
<td>5713 Sea Trout Pl.</td>
<td>$11,150.00</td>
<td>10/30 - resident sent intake form and insurance documents</td>
<td>12/5 - inspection report completed</td>
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<td>1/18 - settlement amount approved by the Board</td>
<td>1/23 - sent settlement agreement to the resident</td>
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<td>1/28 - settlement agreement fully executed</td>
<td>3/23 - requisition signed</td>
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<td>3/29 - all completed, check mailed to resident</td>
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<td>Name</td>
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<td>Amount</td>
<td>Seawall Repair Status</td>
<td>Claim Status</td>
<td>District Engineer Inspection Status</td>
<td>Current Ownership</td>
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</tbody>
</table>
| Sheikh   | 5727 Sea Turtle Pl. | $10,600.00 | 10/23 - sent intake form and protocol to resident  
11/7 - resident sent intake form but did not submit the complete insurance policy documents  
11/17 - resident sent insurance documents  
1/18 - settlement amount approved by the Board  
1/23 - sent settlement agreement to resident  
3/15 - settlement agreement fully executed  
3/29 - requisition signed  
4/4 - all completed, check mailed to resident | 12/5 - inspection report completed | COMPLETED |
| Diana    | 527 Islebay Dr. | $49,835.00 | 8/21 - requested homeowners’ insurance policy from resident  
10/12 - sent follow-up to resident for insurance policy  
10/23 - sent additional request to resident for insurance policy  
1/18 - settlement amount approved by the Board  
1/23 - sent settlement agreement to resident  
3/26 - settlement agreement fully executed  
4/27 - all completed, check mailed to resident | 12/5 - inspection report completed | COMPLETED |
| Gao      | 526 Islebay Dr. | $12,000.00 | 11/7 - sent previous intake form and documents to counsel  
12/28 - sent intake form and insurance docs to counsel  
3/15 - Board approved settlement amount of $12,000  
3/22 - sent settlement agreement to resident  
4/16 - settlement agreement fully executed  
5/10 - requisition signed  
5/16 - all completed, check mailed to resident | 1/10 - inspection report completed | COMPLETED |
| Bennett  | 5611 Skimmer Dr. | $52,398.00 | 10/12 - received intake form and proposals from resident, requested insurance documents from resident  
10/13 - resident sent insurance documents  
12/14 - settlement amount approved by the Board  
1/3 - sent settlement agreement to resident  
3/15 - Board approved new settlement amount of $52,398  
3/22 - sent settlement agreement to resident  
5/14 - settlement agreement fully executed  
6/18 - requisition signed  
6/21 - all completed, check mailed to resident | 11/7 - inspection report completed | COMPLETED |
| Woodard  | 517 Islebay Dr. | $12,500.00 | 8/22 - requested homeowners’ insurance claim from resident, resident will not submit homeowners’ claim  
10/12 - sent follow-up to resident for insurance policy  
10/20 - resident sent insurance documents  
12/14 - settlement amount approved by the Board  
1/3 - sent settlement agreement to resident  
5/21 - sent updated settlement agreement to resident  
5/25 - settlement agreement fully executed  
6/18 - requisition signed  
6/22 - all completed, check mailed to resident | 11/7 - inspection report completed | COMPLETED |
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Amount</th>
<th>Seawall Repair Status</th>
<th>Claim Status</th>
<th>District Engineer Inspection Status</th>
<th>Current Ownership</th>
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<td>Krumme</td>
<td>5624 Skimmer Dr.</td>
<td>$13,250.00</td>
<td>11/7 - sent previous intake form and documents to counsel</td>
<td>12/28 - sent letter to resident to use new protocol</td>
<td>3/27 - inspection report completed</td>
<td>COMPLETED</td>
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<td></td>
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<td>1/23 - resident sent photos but no intake form or insurance</td>
<td>1/28 - resident sent intake form but no insurance docs</td>
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<td>2/5 - resident sent insurance docs</td>
<td>2/22 - engineer inspection completed</td>
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<td>3/27 - engineer inspection report completed</td>
<td>5/17 - settlement amount approved by the Board</td>
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<td>5/21 - settlement agreement sent to resident</td>
<td>6/18 - settlement agreement fully executed</td>
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<td>6/21 - requisition signed</td>
<td>6/26 - all completed, check mailed to resident</td>
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<td>Bufkin</td>
<td>525 Islebay Dr.</td>
<td>$16,360.00</td>
<td>11/7 - sent previous intake form and documents to counsel</td>
<td>12/28 - sent letter to resident to use new protocol</td>
<td>3/27 - inspection report completed</td>
<td>COMPLETED</td>
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<td>2/20 - resident sent intake form and insurance</td>
<td>2/27 - engineer inspection completed</td>
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<td>3/27 - engineer inspection report completed</td>
<td>5/17 - settlement amount approved by the Board</td>
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<td>5/21 - settlement agreement sent to resident</td>
<td>6/18 - settlement agreement fully executed</td>
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<td>6/21 - requisition signed</td>
<td>6/26 - all completed, check mailed to resident</td>
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<tr>
<td>Hodgskin</td>
<td>5710 Tortoise Pl.</td>
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<td></td>
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<td>3/12 - insurance docs insufficient, resident to send entire policy</td>
<td>3/22 - resident re-sent full insurance policy</td>
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<td>3/22 - resident re-sent full insurance policy</td>
<td>4/30 - engineer inspection report completed</td>
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<td>6/21 - Board approved settlement offer</td>
<td>7/12 - settlement agreement fully executed</td>
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<td>7/26 - all completed, check mailed to resident</td>
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<tr>
<td>Smolenski</td>
<td>539 Islebay Dr.</td>
<td>$12,325.00</td>
<td>11/7 - sent previous intake form and documents to counsel</td>
<td>12/28 - sent letter to resident to use new protocol</td>
<td>5/6 - inspection report completed</td>
<td>COMPLETED</td>
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<td></td>
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<td></td>
<td>1/17 - resident sent intake form, DM requested insurance</td>
<td>3/28 - resident sent insurance docs</td>
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<td>3/28 - resident sent insurance docs</td>
<td>5/6 - engineer inspection report completed</td>
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<td>6/21 - Board approved settlement offer</td>
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<td>7/26 - all completed, check mailed to resident</td>
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<tr>
<td>Constantinou</td>
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<td>$11,375.00</td>
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<td>3/27 - resident sent intake form and photos, but no insurance</td>
<td>5/6 - inspection report completed</td>
<td>COMPLETED</td>
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<td>3/30 - resident sent insurance docs</td>
<td>5/6 - engineer inspection report completed</td>
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<td>6/21 - Board approved settlement offer</td>
<td>7/12 - settlement agreement fully executed</td>
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<td>7/26 - all completed, check mailed to resident</td>
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<td>5/6 - engineer inspection report completed</td>
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<td>6/21 - Board approved settlement offer</td>
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<td>6/28 - sent settlement agreement to resident</td>
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<td>7/19 - settlement agreement fully executed</td>
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<td>8/23 - all completed, check mailed to resident</td>
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<td>Rybak</td>
<td>430 Islebay Dr.</td>
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<td>10/4 - followed up with resident for insurance information</td>
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<td>10/12 - sent another follow-up to resident for insurance policy</td>
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<td>10/24 - resident sent incomplete insurance documents</td>
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<td>11/21 - received insurance documents from resident</td>
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<td>2/8 - BOS approved settlement of $16,500</td>
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<td>3/6 - sent settlement agreement to resident</td>
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<td>5/31 - sent updated settlement agreement to resident</td>
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<td>8/23 - all completed, check mailed to resident</td>
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<td>O'Connell</td>
<td>5719 Sea Turtle Pl.</td>
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<td>3/22 - resident sent insufficient insurance docs</td>
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<td>3/23 - resident sent full insurance policy</td>
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<td>5/6 - engineer inspection report completed</td>
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<td>7/19 - Board approved settlement offer</td>
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<td>7/31 - settlement agreement fully executed</td>
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<td>Collins</td>
<td>437 Mirabay Blvd.</td>
<td>$20,393.00</td>
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<td>12/28 - sent letter to resident to use new protocol</td>
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<td>2/19 - received intake form but no insurance</td>
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<td>3/7 - sent insurance policy to upland counsel</td>
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<td>8/15 - settlement agreement fully executed</td>
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<td>8/30 - all completed, check mailed to resident</td>
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<tr>
<td>Cyhaniuk</td>
<td>5701 Tortoise Pl.</td>
<td>$20,075.00</td>
<td>Section I - Priority A</td>
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<td>3/12/18 - insurance incomplete, resident to send entire policy</td>
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<td>3/15/18 - received full policy and photos from resident</td>
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<td>4/30/18 - engineer inspection report completed</td>
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<td>7/19/18 - Board approved settlement offer</td>
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<td>7/25/18 - sent settlement agreement to resident</td>
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<td>9/5/18 - settlement agreement fully executed</td>
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<td>9/25 - all completed, check mailed to resident</td>
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<td>Shanberg</td>
<td>5715 Sea Trout Pl.</td>
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<td>Repaired</td>
<td>5/3/18 - resident sent intake form, but no insurance</td>
<td>5/30/18 - inspection report completed</td>
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<td>5/30/18 - engineer inspection report completed</td>
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<td>7/19/18 - Board approved settlement offer</td>
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<td>7/25/18 - sent settlement agreement to resident</td>
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<td>9/5/18 - settlement agreement fully executed</td>
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<td>9/25/18 - all completed, check mailed to resident</td>
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<td>Name</td>
<td>Address</td>
<td>Amount</td>
<td>Seawall Repair Status</td>
<td>Claim Status</td>
<td>District Engineer Inspection Status</td>
<td>Current Ownership</td>
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</tbody>
</table>
| Sardino | 5608 Skimmer Dr. | $12,325.00 | Repaired              | 6/7/18 - resident submitted intake form but insurance documentation was insufficient  
6/13/18 - resident sent insurance docs  
7/2/18 - engineer inspection report completed  
8/16/18 - Board approved settlement offer  
8/20/18 - sent settlement agreement to resident  
9/21/18 - settlement agreement fully executed  
10/10/18 - all completed, check mailed to resident | 7/2/18 - inspection report completed | COMPLETED                       |

TOTAL PAID $518,908.63  
TOTAL UNPAID $239,502.00  
GRAND TOTAL $758,410.63
Tab 6
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<th>Project</th>
<th>Cardno Project Manager</th>
<th>Task</th>
<th>Status</th>
<th>Anticipated Completion Date</th>
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<tbody>
<tr>
<td>Mangrove Trimming</td>
<td>Drew Sanders</td>
<td>Set meeting with EPC to review permit and trimming options</td>
<td>Not Required</td>
<td>6/22/2018</td>
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<td>Obtain Proposals for Trimming Tract C-1</td>
<td>Complete</td>
<td>7/16/2018</td>
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<tr>
<td>SWFWMD Operation and Maintenance Certification</td>
<td>Tom Burke/Greg Woodcock</td>
<td>Permit 18838.004</td>
<td>In progress</td>
<td>11/21/2018</td>
</tr>
<tr>
<td>Public Facilities Report</td>
<td>Greg Woodcock</td>
<td>Submit Proposal to CDD Board</td>
<td>In Progress</td>
<td>9/11/2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prepare Facilities Report</td>
<td></td>
<td>10-23-2018 to 11-10-2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facilities Report Approved by the CDD Board</td>
<td></td>
<td>11/22/2018</td>
</tr>
<tr>
<td>Dredging Around Dock Structure Summary</td>
<td>Greg Woodcock</td>
<td>Review dredging around docks and provide summary</td>
<td>In-Progress</td>
<td>11/22/2018</td>
</tr>
<tr>
<td>Boat Ramp Repair</td>
<td>Chris Gamache</td>
<td>Review and recommend repair drop off at end of boat ramp</td>
<td>In-Progress</td>
<td>12/21/2018</td>
</tr>
<tr>
<td>Boat Dock Roof Repair</td>
<td>Chris Gamache</td>
<td>Proposal approved HGS preparing agreement</td>
<td>In-Progress</td>
<td>1/15/2018</td>
</tr>
<tr>
<td>Canal Signage and lighting maintenance</td>
<td>Greg Woodcock</td>
<td>Requested proposal from Hecker</td>
<td>In-Progress</td>
<td>1/15/2018</td>
</tr>
<tr>
<td>Signage and Pavement Marking</td>
<td>Jeremy Runkle</td>
<td>Proposal Submitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot Clearing</td>
<td>Greg Woodcock</td>
<td>Work in progress</td>
<td>In-progress</td>
<td>11/21/2018</td>
</tr>
<tr>
<td>Pool Deck Texture Coating</td>
<td>Greg Woodcock</td>
<td>Work in progress</td>
<td>In-progress</td>
<td>11/21/2018</td>
</tr>
</tbody>
</table>
Tab 7
## The Pool Works of Florida, Inc
9191 130th Ave. North  
Largo, FL 33773  
(727) 938-8389  
thepoolworks1@gmail.com  
thepoolworks.net

### BILL TO
Harbor Bay Community  
Development District

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHANGE ORDER</td>
<td></td>
</tr>
<tr>
<td>Perform Crack repair per contract and Collins Engineering 87 Lin Ft. @ $125.00</td>
<td>10,875.00</td>
</tr>
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</table>

Please remit payment to address:  
9191 130th Ave. North  
Largo, FL 33773

### TOTAL DUE
$10,875.00

THANK YOU.
## Harbor Bay Community Development District
### Pool Project Schedule
Updated 11/7/2018

<table>
<thead>
<tr>
<th>ID</th>
<th>Task Name</th>
<th>Duration</th>
<th>Start</th>
<th>Finish</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Onsite Meeting to define scope</td>
<td>37 days</td>
<td>Wed 5/2/18</td>
<td>Thu 6/21/18</td>
</tr>
<tr>
<td>2</td>
<td>Pool Works Updated Proposal</td>
<td>9 days</td>
<td>Wed 5/2/18</td>
<td>Mon 6/4/18</td>
</tr>
<tr>
<td>3</td>
<td>Board Approval of Revised Pool Works Scope</td>
<td>1 day</td>
<td>Thu 6/21/18</td>
<td>Thu 6/21/18</td>
</tr>
<tr>
<td>4</td>
<td>Task 2</td>
<td>99 days</td>
<td>Thu 5/17/18</td>
<td>Tue 10/2/18</td>
</tr>
<tr>
<td>5</td>
<td>Geotechnical Report and Recommendations</td>
<td>1 day</td>
<td>Thu 5/17/18</td>
<td>Thu 5/17/18</td>
</tr>
<tr>
<td>6</td>
<td>Obtain Proposals for Subsurface Repair</td>
<td>13 days</td>
<td>Thu 5/17/18</td>
<td>Mon 6/4/18</td>
</tr>
<tr>
<td>7</td>
<td>Approve Proposal For Repair</td>
<td>1 day</td>
<td>Thu 6/21/18</td>
<td>Thu 6/21/18</td>
</tr>
<tr>
<td>8</td>
<td>Subsurface Repair Contract and Mobilization</td>
<td>13 days</td>
<td>Wed 9/5/18</td>
<td>Fri 9/21/18</td>
</tr>
<tr>
<td>9</td>
<td>Subsurface Repair</td>
<td>20 days</td>
<td>Wed 9/5/18</td>
<td>Tue 10/2/18</td>
</tr>
<tr>
<td>10</td>
<td>Task 3 Pool Resurfacing</td>
<td>90 days</td>
<td>Wed 9/5/18</td>
<td>Tue 1/8/19</td>
</tr>
<tr>
<td>11</td>
<td>Pre Construction Meeting</td>
<td>1 day</td>
<td>Thu 8/23/18</td>
<td>Thu 8/23/18</td>
</tr>
<tr>
<td>12</td>
<td>Pool Resurfacing Construction</td>
<td>75 days</td>
<td>Wed 9/5/18</td>
<td>Tue 12/18/18</td>
</tr>
<tr>
<td>13</td>
<td>Shut down Filtration System and Demo</td>
<td>13 days</td>
<td>Wed 9/5/18</td>
<td>Fri 9/21/18</td>
</tr>
<tr>
<td>14</td>
<td>Payment - Demo Complete - New Coping Pour</td>
<td>1 day</td>
<td>Fri 9/21/18</td>
<td>Fri 9/21/18</td>
</tr>
<tr>
<td>15</td>
<td>Tile Installation &amp; Repour apron at Bench</td>
<td>20 days</td>
<td>Mon 9/17/18</td>
<td>Fri 10/12/18</td>
</tr>
<tr>
<td>16</td>
<td>Pool Resurfacing with Hydrazzo</td>
<td>10 days</td>
<td>Mon 10/8/18</td>
<td>Fri 10/19/18</td>
</tr>
<tr>
<td>17</td>
<td>Substantial Completion and Final Punch List</td>
<td>24 days</td>
<td>Fri 10/19/18</td>
<td>Wed 11/21/18</td>
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<tr>
<td>18</td>
<td>Project Complete</td>
<td>1 day</td>
<td>Wed 11/21/18</td>
<td>Wed 11/21/18</td>
</tr>
<tr>
<td>19</td>
<td>Task 4 Misc Pool Repairs</td>
<td>41 days</td>
<td>Fri 9/28/18</td>
<td>Fri 11/23/18</td>
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<tr>
<td>20</td>
<td>Pool Retaining Wall Repair</td>
<td>50 days</td>
<td>Mon 10/22/18</td>
<td>Fri 12/28/18</td>
</tr>
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<td>21</td>
<td>Construction Access Gate Addition</td>
<td>36 days</td>
<td>Wed 9/5/18</td>
<td>Wed 10/24/18</td>
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<td>22</td>
<td>Texture Surface on Bridge and Coping</td>
<td>21 days</td>
<td>Mon 6/25/18</td>
<td>Mon 7/23/18</td>
</tr>
</tbody>
</table>

Cardno Proj. No. 00313-023-10
Date: Wed 11/7/18

Cardno Proj. No. 00313-023-10
Date: Wed 11/7/18
Tab 8
RESOLUTION 2019-01

A RESOLUTION OF THE HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT (THE “DISTRICT”) REPEALING RESOLUTIONS 2001-03 AND 2004-05; AUTHORIZING THE DISBURSEMENT OF FUNDS OF THE DISTRICT WITHOUT PRIOR APPROVAL OF THE DISTRICT’S BOARD OF SUPERVISORS (“BOARD”); SETTING CERTAIN MONETARY THRESHOLDS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the District is a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes for the purpose of providing, operating and maintaining infrastructure improvements, facilities and services to the lands within the District; and

WHEREAS, Section 190.011(5) of the Florida Statutes authorizes the District to adopt resolutions which may be necessary for the conduct of District business; and

WHEREAS, Rule 1.1(2)(h) of the District’s Rules of Procedure, adopted by virtue of Resolution 2011-04, contemplates that the Board may delegate authority to others to contract or make expenditures on behalf of the District; and

WHEREAS, the District previously adopted Resolutions 2001-03 and 2004-05, which authorized the District Manager to disburse funds for payment of certain expenses of the District without prior approval of the Board; and

WHEREAS, the Board hereby determines that for purposes of administrative and accounting necessity, it is in the best interests of the District, and necessary for the conduct of District business, to repeal Resolutions 2001-03 and 2004-05 and establish a revised policy governing the disbursement of funds without prior approval of the Board, as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT:

Section 1. Repeal of Resolutions 2001-03 and 2004-05. Resolution 2001-03 adopted by the Board on May 21, 2001 is hereby repealed. Resolution 2004-05 adopted by the Board on August 17, 2004 is hereby repealed.

Section 2. Payment of Expenses.

A. Continuing Expenses. The Board hereby authorizes the payment of invoices of continuing expenses, which meet the following requirements:

1. The invoices must be due on or before the next scheduled meeting of the Board of Supervisors.
2. The invoice must be pursuant to a contract or agreement authorized by the Board of Supervisors.

3. The total amount paid under such contract or agreement, including the current invoice, must be equal to or less than the amount specified in the contract or agreement.

B. Non-Continuing Expenses. The Board hereby authorizes the disbursement of funds for payment of invoices of non-continuing expenses which are 1) required to provide for the health, safety, and welfare of the residents within the District; or 2) required to repair, control, or maintain a District facility or asset beyond the normal, usual, or customary maintenance required for such facility or assets, pursuant to the following schedule:

1. Non-Continuing Expenses Not Exceeding $5,000 with approval of the District Manager; and
2. Non-Continuing Expenses Not Exceeding $25,000 with approval of the District Manager and Chairman of the Board of Supervisors.

C. Emergency Expenses. For emergency expenses exceeding the authorization in section 2.B. above, and in the event that an emergency meeting of the Board cannot timely be convened pursuant to the District’s Rule 1.3(6) and Florida law, the Board hereby authorizes the disbursement of funds in any amount necessary to address any emergency condition affecting the District, but only with the prior written approval of (i) the District Manager and (ii) the Chairperson of the Board of Supervisors, or in his or her absence, the Vice Chairperson, or in his or her absence, the Secretary or any Assistant Secretary of the District. For purposes of this Resolution, the term “emergency expense” means a purchase or payment necessitated by a sudden unexpected turn of events (for example, acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Board in the normal conduct of its business), where the delay of waiting for a board meeting would be detrimental to the interests of the District. This includes, but is not limited to, instances where delay will jeopardize the funding for the project, will materially increase the cost of the project, will likely cause damage to property, will prejudice the District’s interest in a project already in progress, or will create an undue hardship on the public health, safety, or welfare.

Section 3. Board Consideration. Any payment made pursuant to the Resolution shall be submitted to the Board at the next scheduled meeting for approval and ratification. Copies of any disbursements made under the authority of this Resolution
shall be included in the agenda package for the scheduled meeting or otherwise distributed to the Board at the meeting.

Section 4. Severability. The invalidity or unenforceability of any one or more provisions of this Resolution shall not affect the validity or enforceability of the remaining portions of this Resolution, or any part thereof.

Section 5. Effective Date. This Resolution shall take effect upon the passage and adoption of this Resolution by the Board of Supervisors of the Harbor Bay Community Development District.

Introduced, considered favorably, and adopted this 15th day of November, 2018.

ATTEST: HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

______________________________
Secretary/Assistant Secretary

______________________________
By: ____________________________

______________________________
Its: ____________________________
Tab 9
1. **Generally; Purpose.** The Harbor Bay Community Development District (“**District**”) was created pursuant to the provisions of Chapter 190, Florida Statutes and was established to provide for the ownership, operation, maintenance, and provision of various capital facilities and services within its jurisdiction. The purpose of these standards (“**Standards**”) is to establish a set of guidelines for advertising, whether conducted by the District through its newsletter, community bulletin board, or other form of advertising (“**Advertising Medium**”). The fundamental purpose of District advertising is to provide a means by which to augment the District’s operating budgets, and the Standards are designed to protect and promote the health, safety and welfare of residents within the District, consistent with that fundamental purpose.

2. **Application.**

   (a) In order to place an advertisement in an available **Advertising Medium** offered by the District (contact the District Manager for a current list), an applicant shall submit to the District an advertising application which shall set forth in writing a complete description of the proposed advertisement, including:

   i. The name, address and telephone number of the persons applying to advertise within the District; and

   ii. Complete description of the advertisement, including typography, sizing and actual text. In the alternative, applicants may attach an image of the proposed advertisement to the application.

   (b) Each applicant shall obtain and attach to the application the written consent for the display of such advertisement of the person having the right to use, and possession of, the advertisement’s content.

   (c) Any advertising in which the identity of the sponsor is not readily and unambiguously identifiable must include the following phrase to identify the sponsor in clearly visible letters: “Paid for by ________”

   (d) Each applicant shall enter into an agreement with the District for advertising, which agreement may require the payment of an advertising fee. Any advertising revenues will be used to augment the District’s operating budgets.

   (e) Applications shall be considered on a first-come, first-served basis and may be denied due to lack of availability of space for advertising, among other reasons.

3. **Limited Public Forum Status; Prohibited Advertisements.**

   (a) The District’s acceptance of advertising does not provide or create a general public forum for expression. Rather, as noted, the District’s fundamental purpose behind allowing advertisements is to generate revenue to support the District’s operating budgets, and the Standards are intended to protect and promote the health, safety and welfare of residents within the District.
(b) In furtherance of that limited purpose, the District retains strict control over the nature of the advertisements accepted, and finds that the following advertisements are not consistent with the limited purpose and Standards of the advertisement program and thus shall be prohibited:

i. Advertisements promoting obscene material, sexually-explicit material or illegal activities;
ii. Advertisement promoting alcohol or tobacco products; firearms; adult/mature rated films, television, or video games; or adult entertainment facilities or services;
iii. Advertisements that are false or misleading;
iv. Advertisements that contain any material that is an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal;
v. Advertisements that promote any activity or product that is illegal under federal, state, or local law;
vi. Advertisements that contain any profane language, or portray images or descriptions of graphic violence;
vii. Advertisements that are demeaning or disparaging toward an individual, group of individuals, entity, or entities;
viii. Advertisements that are harmful or disruptive to the District.

4. **No Endorsement.** The District’s acceptance of an advertisement from an applicant in no way constitutes an endorsement of the content or message of the advertisement.

5. **Reservation of Rights.** The District reserves the right to suspend, modify or revoke the application of any of the Standards in this policy as the District’s Board deems necessary in its sole discretion to comply with legal mandates, to accommodate the primary purpose of this policy, or otherwise to further serve the best interests of the District.

6. **Severability.** If any provision of these Standards for Advertising, or the application of these Standards to any person or circumstance, is held invalid, the remainder of this Standards for Advertising and the application to other persons or circumstances remain in effect.

7.
Tab 10
EXECUTIVE SUMMARY

Enviro-Logical Solutions, Inc. was contracted by Terrabrook to conduct a soil source removal at the Mirabay Development located at 205 Manns Harbor Drive, Apollo Beach, Hillsborough County, Florida. The soil excavation was performed on Parcel 12 in the northeast area of the development after a Discharge Notification Form was filed with the Florida Department of Environmental Protection on February 7, 2003. The work was conducted during the time period of February 26 through June 11, 2003. The soil excavation and removal was based on data presented in an Initial Site Assessment Report dated February 4, 2003 prepared for Terrabrook by Enviro-Logical Solutions, Inc. Data presented in this report indicated that soil, and to a minor degree groundwater, had been impacted by Polynuclear Aromatic Hydrocarbons.

Approximately 13,500 cubic yards of petroleum impacted soil were removed during the excavation activities. The excavated soil was transported to the southwestern area of the development, stockpiled and covered with plastic sheeting.

Enviro-Logical Solutions, Inc. supervised the soil excavation activities that were conducted by Terrabrook’s contractor, Woodruff Construction. During excavation activities, soil samples were collected for field screening with an Organic Vapor Analyzer to characterize subsurface conditions. Since the future land use will be residential, soils with Organic Vapor Analyzer readings above ten parts per million were removed. The soil vapor data indicated that soils impacted by petroleum hydrocarbons were detected at depths varying from four to twelve feet below land surface (bfs) and four to fifteen feet bbs. Soils were excavated to approximately twelve feet or fifteen bbs as dictated by the organic vapor readings. Soil samples were collected for laboratory analysis from the perimeter bottom of the excavation area. Samples were analyzed by USEPA Method 8260 for Volatile Organic Aromatics, USEPA Method 8270 for Polynuclear Aromatic Hydrocarbons and the FIPRO Method for Total Recoverable Petroleum Hydrocarbons. Results of the laboratory analysis showed all constituents were below the Soil Cleanup Target Levels (SCTLs) listed in Chapter 62-777 of the Florida Administrative Code. The excavation area was backfilled with clean soil and compacted.

Groundwater was present at approximately twelve feet bbs. Three temporary, post-excision groundwater monitoring wells were installed to assess post-excision groundwater quality. Samples were collected for analysis by USEPA Method 8260 for Volatile Organic Aromatics.
1.0 INTRODUCTION

Enviro-Logical Solutions, Inc. (ELS) was contracted by Terrabrook to oversee the excavation and removal of petroleum impacted soils discovered at the Mirabay residential development located at 205 Manns Harbor Drive, Apollo Beach, Hillsborough County, Florida. The Florida Department of Environmental Protection (FDEP) Facility Identification Number for this site is 299805663. The soil removal activities were conducted on Parcel 12, Lots 2, 3, 4, 5, 13, 14 and 15 in the northeast area of the development. The soil excavation activities were performed during the period of February 26 through June 11, 2003.

1.1 Background

A Discharge Report Form (DRF), dated February 7, 2003, was submitted to the Hillsborough County Environmental Protection Commission (EPC). The DRF was filed based on soil and groundwater analytical data presented in an Initial Site Assessment Report dated February 4, 2003 prepared for Terrabrook. Copies of the DRF and the Initial Site Assessment Report are included in Appendix I. Results of the Initial Site Assessment showed that soils had been impacted by Polynuclear Aromatic Hydrocarbons (PAHs). Laboratory analysis of groundwater samples collected from four monitoring wells installed during the assessment showed dissolved PAH concentrations slightly above Chapter 62-777, F.A.C. Cleanup Target Levels (CTLs) in samples collected from one of the monitoring wells (MW-2). Based on the assessment results, ELS recommended excavation and removal of the petroleum-impacted soils. A topographic map showing the site location is presented as Figure 1 and a pre-source removal site map is presented as Figure 2.

1.2 Source Removal Field Activities

The source removal field activities consisted of the following:

- Excavation of soils varying from 12 to 15 feet bgs in the approximate area shown on Figure 3
- Screening of soil samples with a Heath Organic Vapor Analyzer (OVA) during excavation activities
- Onsite stockpiling of hydrocarbon impacted soils
- Submittal of soil samples for laboratory analysis
- Backfilling and compaction of excavation area with clean fill material
- Post source removal installation of three groundwater-monitoring wells
- Post source removal groundwater sampling and laboratory analysis
2.0 SOIL SOURCE REMOVAL

2.1 Soil Excavation Activities

The soil excavation area is shown on Figure 3. The excavation was approximately 270 feet long at the longest point by 200 feet wide at the widest point. A series of test pits (TP-1 through TP-41) were excavated to remove soils to depths varying between 12 feet and 15 feet bgs. During excavation activities soil samples were screened in the field with a Heath OVA equipped with a Flame Ionization Detector. Samples were initially screened with an unfiltered OVA probe followed by screening with an activated charcoal-filtered probe. This procedure was used to record net OVA readings to estimate petroleum hydrocarbon vapor concentrations, less any naturally occurring organic constituents such as methane. Soils with net OVA readings above 10 parts-per-million (ppm) were removed.

Soil samples were collected for OVA screening at each test pit location at 4, 8 and 12 feet bgs in areas where soil was removed to 12 feet bgs and at 4, 10, and 15 feet bgs in areas where soil was removed to 15 feet bgs. The OVA soil sampling locations are shown on Figure 4. All net OVA readings from samples collected along the perimeter and bottom of the excavation area were below 10 ppm. The OVA screening results are summarized in Table 1. An estimated total of 13,500 cubic yards of soil were removed during excavation activities. The excavated soil is covered with plastic sheeting to prevent rainwater infiltration/runoff and is currently stockpiled on a six-acre parcel of land located in the southwestern area of the Mirabay property.

Soil samples were also collected for laboratory analysis. The samples were sent to U.S. Biosystems, Inc. of Boca Raton, Florida for analysis of Volatile Organic Aromatics (VOAs) by USEPA Method 8260, PAHs by USEPA Method 8270 and Total Recoverable Petroleum Hydrocarbons by the FLPRO Method. Sampling locations are shown on Figure 5. Soil samples were collected at 12 feet bgs at all sampling locations except TP-37N and TP-37S (collected at 15 feet bgs) and TP-39N and TP-39S (collected at 14 feet bgs). All constituents of concern were below detection limits with the exception of the following:

<table>
<thead>
<tr>
<th>Total xylenes (mg/kg)</th>
<th>TRPH (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TP-13 0.0063</td>
<td>43</td>
</tr>
<tr>
<td>TP-34 0.0091</td>
<td>BDL</td>
</tr>
<tr>
<td>TP-36 BDL</td>
<td>190</td>
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<td>TP-39N 0.0082</td>
<td>BDL</td>
</tr>
<tr>
<td>TP-39S 0.0057</td>
<td>BDL</td>
</tr>
</tbody>
</table>
3.0 CONCLUSIONS AND RECOMMENDATIONS

3.1 Conclusions

The following conclusions are based on the data presented in the Initial Site Assessment Report and the data obtained during the source removal activities:

- The petroleum impacted soils identified in the Initial Site Assessment Report were delineated both vertically and horizontally and removed during the source removal activities. A total of approximately 13,500 cubic yards of soil were removed and stockpiled on a six-acre parcel of the Minray property. The stockpiled soil is covered with plastic sheeting to prevent infiltration/runoff of rainwater.
- Soils with net OVA readings above 10 ppm were removed. Soil samples were collected from the perimeter and bottom of the excavation area for laboratory analysis. Concentrations of VOAs, PAHs, or TRPHs above the FDEP STGLs were not reported in any of the soil samples collected.
- Post excavation groundwater sampling results show that the low-level PAH concentrations reported in the Initial Site Assessment were effectively remediates by the source removal activities. Results of the May 15, 2003 and June 11, 2003 groundwater sampling events show all VOA, PAH and TRPH constituents were below detection limits.

3.2 Recommendations

Based on the source removal activities, ELS recommends the following:

- Based on the data presented herein, ELS requests that a No Further Action letter be issued as soon as possible for the petroleum discharge reported on February 7, 2003.
- Due to the excessive costs associated with offsite transportation and disposal of the approximately 13,500 cubic yards of excavated soil, ELS recommends land farming onsite to treat the PAH impacted soils. There is sufficient space (six acres) located over ½ mile from any residential housing available at the Minray property to land farm the soils. On behalf of Terrabrook, ELS will request a variance from the EPC to allow the onsite soil treatment. The variance request will include a plan for the onsite land farming activities.
Source: United States Department of the Interior Geological Survey
Gibsonton, FL Quadrangle Map, 2002

SITE LOCATION
MIRABAY
PARCEL 12 - NORTH SIDE
APOLLO BEACH, FLORIDA

TITLE
FIGURE 1
SITE LOCATION MAP
SCALE=1:19,000
Impacted soils may be required south of SB-10 and SB-11, south and east of SB-12 and in the vicinity of SB-20.

During monitoring well installation (discussed in the next section of this report) three soil samples were collected for laboratory analysis. Soil samples SS-1, SS-2 and SS-3 were collected from six feet bbls at MW-1, MW-3 and MW-4, respectively. The samples were analyzed by U.S. Biosystems Laboratory for the following:

- BTEX (Benzene, Toluene, Ethylbenzene, Total Xylenes) Compounds by USEPA Method 8260
- Polynuclear Aromatic Hydrocarbons (PAHs) by USEPA Method 8270
- Total Recoverable Petroleum Hydrocarbons by FLPRO Method

The soil laboratory analytical data are summarized in Table 1. Concentrations of PAH constituents above Florida Department of Environmental Protection (FDEP) Soil Cleanup Target Levels (SCTLs) were reported in the samples collected at MW-1 and MW-3. No hydrocarbon constituents were reported in the sample collected from MW-4. The soil laboratory analytical reports are included in Attachment II.

Groundwater Assessment

On December 19, 2002, ELS installed four groundwater monitoring wells: MW-1, MW-2, MW-3 and MW-4. Each well is constructed of 1-inch diameter Schedule 40 PVC and was installed using direct-push technology to a depth of 15 ft. bbls. The wells are screened from 5 to 15 feet bbls with 0.010-inch machine slotted well screen and are completed approximately three feet above land surface. Each well is capped with an expendable type well seal. Well construction logs for these monitoring wells are presented in Attachment III.

Groundwater samples were collected from the four wells on January 6, 2003. The samples were analyzed by U.S. Biosystems Laboratory for the following:

- Purgeable Aromatic Hydrocarbons by USEPA Method 8260
- PAHs by USEPA Method 8270
- Total Recoverable Petroleum Hydrocarbons by FLPRO Method
- Lead by USEPA Method 6010
- Ethylene Dichloride (EDC) by USEPA Method 503

Prior to sample collection, depth to water measurements were recorded at each well location. This data was used to determine the volume of water to be pumped from each well during sampling. The depth to water measurements along with the monitoring well construction details are summarized in Table 2. Groundwater sampling was conducted in accordance with FDEP sampling protocol effective April 10, 2002. FDEP water sampling logs and field equipment calibration logs are presented in Attachment IV. Table 3 summarizes the laboratory analytical results for the groundwater sampling conducted on January 6, 2003. The data are also depicted on Figures 7 and 8. Dissolved hydrocarbon concentrations were reported only in the sample collected from MW-2. Concentrations detected in this well were: naphthalene at 34 micrograms per liter (µg/L), 1-
methylcnaphthalene at 36 µg/L and 2-Methylnaphthalene at 45 µg/L. The FDEP Groundwater Cleanup Target Level (GCTL) for each of these constituents is 20 µg/L. Samples collected from MW-1, MW-3 and MW-4 were below GCTLs for all constituents tested. Based on the low PAH concentrations reported in the samples collected from MW-2 and the fact that samples collected from the remaining monitoring wells were below GCTLs, ELS believes the area of groundwater impacted by petroleum hydrocarbons is limited to the general vicinity of MW-2. The groundwater laboratory analytical report is presented in Attachment II.

Conclusions

Results of the soil assessment show that soils have been impacted by petroleum hydrocarbons. Most of the impacted soil was encountered from four feet to approximately eight to nine feet bgs.

Delineation of impacted soils may not be complete in the area south of SB-10 and SB-11, south and east of SB-12, and in the vicinity of SB-20. If appropriate, this can be addressed during soil remediation. Laboratory analysis of groundwater samples collected from the four monitoring wells show that limited concentrations of dissolved petroleum hydrocarbons (PAHs) are present in the groundwater in the vicinity of MW-2. Remediation of the source-soils should effectively reduce the groundwater PAH concentrations in the vicinity of MW-2 to below GCTLs.

Based on the data presented herein, ELS recommends excavation of the petroleum-impacted soils. This would involve excavation of an estimated 3,800 cubic yards of soil in the approximate areas shown inside the 50 ppm contours on Figures 5 and 6, from approximately 4 to 12 feet bgs. During excavation, additional field screening should be performed and soil samples collected to verify completion of remediation. The soils can either be taken offsite for disposal or land-farmed onsite. Considering the acreage available at the Mirabay site, remediation of the excavated soils by land farming on-site may be appropriate. This option would be less expensive than offsite disposal and would allow the soils to be used again when remediation is completed.

ELS appreciates the opportunity to provide Terrabrook with environmental services. If you have any questions concerning this report, please call me at 813-963-0811, ext. 109.

Sincerely,

Thomas K. Cook, P.G.
Vice President; Remediation

cc: Stephen C. Jones, Esq., Winston H. Brown
Gregory D. Packer, Esq., Terrabrook
ELS File 02-712-00
August 4, 2003

Mr. Mike McKelvey
Environmental Protection Commission of Hillsborough County
Waste Management Division, Cleanup Section
1410 North 21st Street
Tampa, Florida 33605

RE: SOIL SOURCE REMOVAL REPORT
Mirabay Development
205 Manns Harbor Drive
Apollo Beach, Florida 33572
FDEP Facility ID# 299805663

Dear Mr. McKelvey,

On behalf of Mirabay Development, please find enclosed two copies of the above-referenced document prepared by Enviro-Logical Solutions, Inc. (ELS). If you have any questions concerning the source removal activities documented in this report, please contact me at (813) 963-2417, ext. 109.

Sincerely,

ENVIRO-LOGICAL SOLUTIONS, INC.

Thomas K. Cook, P.G.
Vice President, Remediation

TKC:ja

cc: Gregory D. Packer
    Steve Gamm
    Stephen C. Jones
    ELS File 02-712-00

13135 North Dale Mabry Highway * Tampa, Florida 33618 • (813) 963-0811 • Fax (813) 963-2804 • //www.enviro-logical.com
Mr. Carl Heintz, P.G.
Hillsborough County
Environmental Protection Commission
1900 9th Avenue
Tampa, Florida 33605

Re: Summary of Stockpile Sampling and Analysis and Groundwater Assessment
Stockpiled Soil, Mirabay Development
FDEP Facility ID #2998055689—
Apollo Beach, Florida
Langan Project No. 6093501

Dear Mr. Heintz:

Langan Engineering and Environmental Services, Inc. (Langan) was retained to prepare this report for Newland Properties. This report presents the sampling methodologies, the laboratory analytical results and Langan's conclusions and recommendations based on our evaluation of the data collected at the above referenced site. The objective of the stockpile sampling and analysis and groundwater assessment ("study") was to characterize the quantity and quality of the stockpile material with respect to petroleum constituents, determine possible impact to groundwater in the immediate area of the stockpile via petroleum constituents leaching through the stockpile, and study and make recommendations regarding final disposition of the stockpiled soil. The work was completed pursuant to our 24 September 2004 plan, as modified on 30 November 2004 by HCEPC and again by Langan prior to implementation of the work plan.

PROJECT SITE
The project site is located within the 750-acre Mirabay development. Mirabay is located on the west side of US 41 and south of Leissey Road in Apollo Beach, Florida (Figure 1). Mirabay is a residential development with interior canals that drain to Tampa Bay. The subject stockpile is located at the southwest corner of the Mirabay development in the future RV and boat storage location. The stockpile location (Figure 2) is accessed from Villamaire Road, just to the south.

BACKGROUND
A Discharge Notification Form was filed by Terrabrook Apollo Beach, LLP (prior property owners) with Florida Department of Environmental Protection (FDEP) on 7 February 2004 in relation to an 18 December 2002 discovery of contamination during earthwork activities at the project site. In response to this discovery, an initial site assessment and source removal were conducted from February 2003 through June 2003 by Terrabrook. The Source Removal Report...
dated 4 August 2004, prepared by Enviro-Logical Solutions, Inc. documented the removal and stockpiling of a reported 13,500 cubic yards of petroleum-impacted soils. The Source Removal Report did not provide any rationale for the excavation of this volume of soil. The Source Removal Report indicates that the criterion for soil excavation was 10 parts per million (ppm) using an Organic Vapor Analyzer (OVA). Due to the large volume of excavated soil to be treated, land farming was proposed as the method of treatment. Post-extraction soil and groundwater sampling indicated that the petroleum discharge had been properly and adequately addressed and no impacted soil or groundwater remained in the source removal area.

In a letter dated 20 May 2004 letter, Hillsborough County Environmental Protection Commission (HCEPC) stated that “Pursuant to Rule 62-770.600(8) F.A.C., HCEPC staff approves the site assessment aspects concerning the December 18, 2002 petroleum discharge.” However, HCEPC disapproved the land farming proposal and identified additional site issues to be addressed in connection with that proposal.

2004 SAMPLING AND ANALYSIS PLAN
In September 2004, Langan prepared a Sampling and Analysis Plan (SAP) to address Comment No. 2 of HCEPC, 20 May 2004, letter to Terrabrook Apollo Beach LP. The purpose of the SAP was to appropriately characterize the soil stockpile for potential reuse and/or on-site treatment using the sampling frequency provided in Table A (non-volatile organics) of Chapter 62-713, F.A.C. At the time of the SAP preparation, it was believed the stockpile consisted of 13,500 cubic yards. Thus a total of 30 composite samples were proposed to be collected and analyzed for Total Recoverable Petroleum Hydrocarbons (TRPH) by the FL-PRO Method. Due to the ambiguity in how the stockpile volume was determined in the Source Removal Report, Langan also recommended surveying the stockpile to determine the actual volume and thus the correct number of samples, based on this volume, that should be collected for proper characterization of the pile.

In a meeting held at HCEPC offices on 30 November 2004, the following SAP amendments were agreed to by Newland Properties’ representatives and HCEPC staff:

- Based on an estimated volume of 13,500 cubic yards, 30 samples were deemed appropriate for pre-screening and to look for spikes.
- Because a liner had not been placed beneath the stockpile, a limited groundwater assessment would be required.
- The Source Removal Report identified exceedences of polynuclear aromatic hydrocarbons (PAH); therefore, in addition to TRPH, all samples were to be analyzed for PAH.

STOCKPILE VOLUME
Langan contracted a Florida-licensed Professional Land Surveyor, Heidt and Associates of Tampa, Florida, to survey the stockpile and determine the actual material volume. As noted, Langan requested the survey due to the ambiguity associated with prior stockpile volume estimates. The survey was conducted on 9 December 2004. The surveyed stockpile volume
was 5,335 cubic yards. The stockpile ranged in height from 1 ft to 20 ft and in width from 62 ft to 92 ft. The stockpile measured 213 ft in length. A copy of the volume survey, signed and sealed Heidt and Associates, is included in Appendix A.

**SAMPLING PLAN REVISIONS**

Based on the reduced stockpile volume, a corresponding reduction in the number of composite samples was calculated. Using a methodology similar to that in Table A of Chapter 62-713, F.A.C., Langan calculated that 14 composite samples would now be required rather than the originally proposed 30. Chapter 62-713, F.A.C. requires 5 samples be collected for the first 1,000 cubic yards and additional samples collected at a rate of one per 500 cubic yards thereafter.

Additionally, due to the reduction in volume and the new and varying stockpile geometry, it was necessary to evaluate the stockpile in 380 cubic yard transects rather than 450 cubic yard layers. Figure 3 depicts the transect locations.

**SAMPLING ACTIVITIES**

The sampling activities were conducted by Langan field personnel between 21 and 23 December 2004, and consisted of collecting 56 discrete soil samples (for composting) from the stockpile and collecting five groundwater samples in the immediate vicinity of the stockpile (Figure 3). At the time of sampling, the stockpile was covered with plastic sheeting and filter fabric, which were seated down by concrete blocks. After completion of the sampling, the sheeting was patched with visqueen and duct tape in the affected areas to minimize rainwater infiltration.

All sampling activities were performed in accordance with the following FDEP Standard Operating Procedures for Field Activities – DEP-SOP-001/011 January 1, 2002, revised June 2004:

- Soil samples were collected in accordance with DEP-SOP-001/01-FS3000
- Sampling equipment was decontaminated in accordance with DEP-SOP-001/01-FC1000

**Soil Sampling**

A three-dimensional uniform grid approach was used to locate 56 soil borings as shown in Figure 3. The stockpile was divided into 14 cells (C1 to C14) and each cell was subdivided into 4 Quadrants (Q1 to Q4). One sub-sample (discrete) was collected from the center of each grid Quadrant for a total of four sub-samples per Cell. Each sub-sample was assigned a sample identification number, e.g., Sample ID No. C2Q4 denotes the sample collected in Cell 2 and Quadrant 4. The four sub-samples were then composited by NELAC certified Laboratory into one composite sample per cell (C1 to C14). A sample collection summary is provided in Table 1.

During the sampling event, Langan personnel prepared a field log recording the observations at each cell location, i.e. OVA reading, soil types, odors, etc. Langan also made a note of the sampling time and sub-sample depth on the logs. All soil samples in Quadrants 2 and 3 were collected from soil borings drilled by a specialty drilling subcontractors – Wombat Environmental, Inc. and National Environmental Technology, Inc. using direct push drilling
techniques. The direct push drilling technique consists of driving a casing (2-inch outside diameter and 4-ft long) and a sampler (1-inch diameter Macrocoring and 4-ft long) into undisturbed soil. Both contractors used Geoprobes 54 DT drill rigs.

The soil sample locations in Quadrants 1 and 4 were located on the stockpile slope and were inaccessible by Geoprobe. Therefore, the samples in these locations were collected using a hand auger.

**Groundwater Sampling**

Five groundwater samples were collected using a Geoprobe at the sampling locations shown on Figure 3. Groundwater samples, DP-GW 1 to DP-GW 4, were collected at four corners of the stockpile. DP-GW 5 was collected from the soil boring at the highest OVA reading, sub-sample location C9O2.

**Field Quality Assurance/Quality Control**

All soil samples were collected and placed in laboratory-prepared sample containers. The four sub-samples collected from each cell were placed separately in a Ziploc bag for the convenience of the laboratory in composing the sample. All the groundwater samples were collected in 1 liter amber bottles. Three QA/QC samples were collected. To verify laboratory compositing procedures, one duplicate sample was collected at location C8. To verify field decontamination procedures, equipment blanks were collected from the direct-push equipment and the hand auger. To prevent the potential of cross-contamination all sampling equipment was cleaned with an Alconox and water solution between each soil sample collection.

The sample containers were stored in ice-filled coolers to maintain at 4°C and transported under full chain of custody procedures to Severn Trent Laboratories (STL) in Miramar, Fla. for analysis. STL is certified under NELAC by the Florida Department of Health. All the soil and groundwater samples were analyzed for PAH by EPA Method 8270 and TRPH by the FL-PRO Method.

**DATA EVALUATION**

The soil and groundwater analytical results were compared to the Clean-up Target Levels (CTL) provided in Chapter 62-777, F.A.C. The soil analytical data was compared to Residential Soil Cleanup Target Levels (RSCTL), and groundwater analytical data was evaluated with respect to the Groundwater Cleanup Target Levels (GCTL). For the purposes this assessment, impacts are defined as detected concentrations exceeding the applicable Chapter 62-777 F.A.C. CTLs.

**Soil Analytical Data**

Fourteen composite soil samples (C1 to C14) were analyzed for PAH and TRPH. A summary of the soil analytical results is presented in Table 2. The complete laboratory analytical reports are included in Appendix B.

The analytical testing results identified the following:

- **TRPH** was detected in samples C1, C5, C6, C7, C8, C9, C10, C11, C12 and C13. These samples exceeded their respective method detection limits but not the RSCTL of 340 mg/kg.
TRPH was not detected above method detection limits in soil samples C2, C3, C4 and C14.

No PAH compounds were detected above method detection limits in any of the 14 composite samples.

In addition to the soil analytical data, an OVA was used to screen the samples collected from the Geoprobe soil borings. Positive OVA readings were detected in the following samples:

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<th>Net OVA (ppm)</th>
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<td>10</td>
</tr>
<tr>
<td>C9Q2</td>
<td>30</td>
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In all the samples collected, a slight petroleum odor was detected in only sub-sample C9Q2.

Groundwater Analytical Data
Five groundwater samples DP-GW-1 to DP-GW-5 were collected and analyzed for PAH and TRPH. None of the analyzed compounds were detected above method detection limits in any of the five samples.

Quality Assurance Samples
No analytes were detected in the equipment blanks. The TRPH concentration in the duplicate sample collected at C8 was 5.1 mg/kg. The TRPH concentration at C8 was 16 mg/kg. No PAHs were detected in either sample. Based upon this, there were no QA/QC issues or concerns.

CONCLUSIONS AND RECOMMENDATIONS
Langan completed a stockpile sampling and analysis program and a groundwater assessment for the stockpile located at the Mirabay development. The work was completed pursuant to our 24 September 2004 plan, as modified on 30 November 2004 by HCEPC and again by Langan prior to implementation due to the reduction in stockpile volume. The results of this study indicate no exceedances of TRPH above Chapter 62-777 F.A.C. RSCTLs in the soil samples, no detection of PAHs in soil above RSCTLs, and no detections of PAH and TRPH in the groundwater samples. The field screening also did not detect significant concentrations within the stockpile.

Therefore, based on the information that has been collected and the findings of this evaluation, it is Langan’s opinion that the stockpile is not petroleum-impacted and further characterization is not warranted.

It is Newland Properties’ intention to re-use this material in the RV and boat storage area beneath asphalt paving. Additionally, some of the material may be re-used under the roadways within the residential portion of the development. Based on the data presented herein, it is Langan’s opinion that, from an environmental perspective, the material can be used in the areas...
identified above. Langan recommends that a "No Further Action without Conditions" be issued for the site.

CLOSURE
We trust that this letter addresses this matter and look forward to a prompt response. If there are any questions or additional information is required, please do not hesitate to call.

Sincerely,

Langan Engineering and Environmental Services, Inc.

R.S. Murali, M.S.
Associate

Vincent D. Yarini, P.G.
Project Manager
Florida Registration No. PG2077

cc:    Steve Jones, Greenberg Traurig
       Curt Toll, Greenberg Traurig
       RSM/VDY:abt

Attachments: Table 1 – Soil Collection Summary
              Table 2 – Soil Analytical Summary
              Figure 1 – Site Vicinity Map
              Figure 2 – Stockpile Location Map
              Figure 3 – Sample Location Map
              Appendix A – Heidt and Associates Stockpile Survey
              Appendix B – Laboratory Analytical Reports

T:\Data\56093501\Office Data\Reports\Final Draft Stockpile & GW Assess Report.doc
NOTES:

1. BASE PLAN REPRODUCED FROM USGS 7.5 MINUTE TOPOGRAPHIC MAPS FOR RUSKIN AND GIBSONTON, FLORIDA, PHOTOREVISED IN 1987.

SITE LOCATION MAP
MIRABAY DEVELOPMENT
APOLLO BEACH
FLORIDA

Job No: 6093501 Scale: 1" = 200' Date: JAN 2005

LANGAN ENGINEERING & ENVIRONMENTAL SERVICES

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Information Portal

Returned these documents available online from DEP’s unrestricted EDMS catalogs:

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Tab 11
Sorry, we have no imagery here

COUNTY OWNED PROPERTY  Folio # 290000-0105
Title: Florida Waterways: Hillsborough County Outline

Projection:

Source Bounding Coordinates:

W: E: N: S:

Description: This map was created by FCIT and shows the waterways of Hillsborough County. All major rivers, streams, creeks, lakes, and swamps are labeled. This map features Keystone Lake, Rocky Creek, Sweetwater Creek, Fish Creek, Archie Creek, Curiosity Creek, Brusshy Creek, Sherrys Brook, Cypress Creek, Hillsborough River, Lake Thonotosassa, Baker Creek, Flint Creek, Campbell Branch, Hollomans Branch, the New River, Indian Creek, Big Ditch, Pemberton Creek, Spartman Branch, English Creek, Itchepackesassa, Blackwater Creek, Howell Branch, Turkey Creek, the Alafia River, North Prong Alafia River, Thirtymile Creek, Little Fishhawk Creek, Fishhawk Creek, Bell Creek, Boggy Creek, Little Bullfrog Creek, Bullfrog Creek, Wolf Branch, Cockroach Creek, Dug Creek, the Little Manatee River, Howard Prairie Branch, Alderman Creek, Hurrah Creek, South Prong Alafia River, Halls Branch, Chito Branch, Owens Branch, Mizelle Creek, and West Branch.

Source: Florida Center for Instructional Technology, (Tampa, FL: University of South Florida, 2008)

Map Credit: Courtesy of the Florida Center for Instructional Technology
Tab 12
Suggested copy for the cover note to residents. Revise as you deem appropriate.

Outlined below are the District’s 2017 and 2018 accomplishments. In reviewing the 2018 accomplishments at the November Board meeting, the Chairman acknowledged the hard work of each Supervisor as well significant contributions by Cardno, Hopping Green & Sams, Rizzetta, WTS as well as numerous contractors and residents who have supported the efforts of the District.

2018 District Accomplishments

• Clubhouse Pool
  o Completed the repair of the pool slide, tower and stairs, saving over $300,000 compared to the complete replacement envisioned by the prior Board
  o Completed a geotechnical survey to determine whether the soil under the pool needed to be stabilized to prevent future cracks
    ▪ Based on the results of the geotechnical survey, stabilized the soil underneath the pool to prevent future cracking
  o Initiated the resurfacing of the pool; T-date for completion is November 22
  o Purchased new pool furniture; T-date for delivery is Nov 12.
  o Engaged a landscape designer to suggest how to refresh the pool landscaping, hardscaping, and shade structures as well as providing easy access to Outfitters and the lagoon.

• Clubhouse
  o Completed the refurbishment of the entire clubhouse for $208,640 saving $106,000 versus the original estimate of $315,000
  o Repaired the roof leak in the fitness center
  o In the men’s locker room at the fitness center, installed new flooring and wall tiles, repaired shower stalls, and repainted walls.
  o Replaced the ceiling fans on the pool deck patio and the second floor of the clubhouse
  o Installed kick plates and painted the clubhouse doors to extend their useful life.
    ▪ Because the doors had not been properly maintained, staining was no longer a viable option

• Facility management
  o Cleaned and sealed all pavers throughout the community
- Repaired sidewalks throughout the community
- Milled and resurfaced 1,300 linear feet of roadways on Manns Harbor and 1,000 feet on Fishersound
- Painted and completed other maintenance on the boat lift
- Engaged a contractor to install shades at the Clubhouse and Landing Park playgrounds
- Updated the Capital Reserve study to ensure the District is properly budgeting for repairs and replacement of all capital assets
- Signed a contract with Siesta Key to complete the outdoor maintenance painting of the clubhouse, fitness center, clubhouse patio and walkway, Dockers, Outfitters, gatehouses, tennis facility, and monuments throughout the community
- Engaged a contractor to replace the roof thatching on all Tiki Huts at Landing Park
- Approved the repair of the roof covering the boat dock cabana
- Approved the repair of all windows and doors at Dockers, our children’s facility
- Approved updating all street signs to conform with county guidelines

- **Landscaping**
  - Completed the pruning of all street trees and other oak trees on common property owned by the CDD.
  - While working within a constrained budget, sought to maintain/enhance the landscaping quality throughout the community

- **Boats, docks and lifts**
  - Took steps to ensure all vessels in the community are properly registered
  - Approved 19 docks and boat lift installations for residents
  - Installed a floating dock near the volleyball courts to facilitate water access for small vessels
  - The District reviewed the issue of dredging under and around private boat lifts and determined that at this time, this is an issue between the developer which owns the waterways and the affected resident who has an easement under the boat lift. The District identified a point of contact to whom concerns by residents about dredging can be communicated.
  - Updated the District Waterway and Boating Facilities rules
  - The Board approved negotiating with the Save the Manatee Club to give the District greater latitude in setting the amount and structure of vessel fees within the community

- **Seawall**
Authorized Land & Sea Master repairing four emergency lots and several restrictors post Hurricane Irma. After Land & Sea Masters would not agree to terms, the District terminated negotiations with Land & Sea Master and authorized staff to negotiate a contract for the Master Project (including the four emergency lots) with Dock Solutions
   - Subsequently, the contract with Dock Solutions was entered into and then terminated before actual work began, due to Dock Solutions failure to perform in accordance with the terms of the signed agreement, further delaying the repair of these four lots

Defined specifications for a Design Build RFP. Finalized the content of the Design Build RFP, advertised the RFP and posted the RFP to the CDD website.
   - Implemented actions to increase the likelihood of more bidders responding to the District’s Design Build RFP, resulting in 7 bidders attending the pre-proposal conference; however, only one contractor submitted a bid and it was non-responsive
   - After the District did not receive any responsive bids, the District began direct negotiations with Hecker, Land & Sea Masters and Dock Solution
   - Negotiated and executed a contract with Dock Solutions; however, Dock Solutions was unable to obtain a Public Construction Bond even after the District subsequently divided the original contract into four separate contracts; therefore, the District terminated the contract with Dock Solutions

Executed a contract with Hecker to complete the emergency repairs of 1322 linear feet of seawall.
Executed a Land Clearing Agreement with Hecker to restore old test sites and staging areas
Approved a weep hole maintenance program.
   - Cardno completed the initial inspection and maintenance
   - Rizzetta will complete subsequent inspections and associated maintenance.

Seawall litigation
   - After a vigorous defense by the District, the litigants voluntarily dismissed their case without prejudice; however, as stated in their notice, “a dismissal without prejudice does not preclude the Plaintiffs from bringing a new action”.

Upland repairs
Engaged an independent “adjuster” to provide Supervisors with an assessment of the cost to fix damage to each resident’s upland structures
Made settlement offers to 38 residents, totaling $758,410.63; 26 settlement offers have been accepted by residents
The District is working with 15 other residents to complete their upland claims.

- Finances
  Over the last two fiscal years, although the Board authorized Special Assessments, totaling $1,995,610.79, and increases in ad valorem fees totaling $600,000, all of these funds have been allocated to seawall expenses (construction, upland claims, engineering fees, litigation and legal fees).
  The District has $2,792,000 in seawall reserves (this number includes funds that will be transferred to the seawall fund after FY18/19 tax revenue is collected), despite the District’s inability to market a bond offering. These funds are for seawall reconstruction, upland claims, legal and engineering fees.
  Hired a new Auditing firm at a lower cost

- Amenities/WTS
  Identified all areas within the community that could be used for new amenities
  Approved converting the current tennis court lights to LED lights
  Updated the Amenity Rule Handbook
  Completed a survey of residents
  In 2017/2018, WTS exceeded their revenue budget by $45k and came in $50k under budget for total expenditures, ultimately costing the district $96k less than anticipated
    - In 2017/2018, increased revenue by $13k and decreased expenses by $41k, ultimately costing the district $54k less compared to 2016/2017
  Increased Summer Camp revenue by $13k from 2016/2017 to 2017/2018 ($50k versus $37k)
  Increased Afterschool revenue by $6k from 2016/2017 to 2017/2018 ($57K versus $51k)
  Currently offer 4-5 extracurricular programs for youth throughout the week, including tennis, dance, music and soccer
  Doubled tennis revenue from 2016/2017 to 2017/2018 ($53k versus $25k)
• Introduced several new, successful adult programs and events including Fall Madness, Sunset Sundays, and the Cypress Creek Produce Co-Op
• Introduced several new, successful youth and family programs and events including Mickey’s Pancake Breakfast, the MiraBay Choir, Doggy Pool Party and Boat Safety Fun Day

• Meeting management
  o Preliminary agendas are issued 14 days in advance
  o Agenda packets are issued 8 days in advance. Material in agenda packets are designed to facilitate decisions at meetings and improve communication and transparency with residents
  o Decisions needed at each meeting are outlined in the Agenda Packet in the Chairman’s Perspective. During meetings, Supervisors work hard to focus the meeting discussion on the decision needed
  o Audios of each meeting are posted online within 5 business days of a meeting
  o Meeting minutes are issued within 5 business days of their approval by Supervisors
  o Handled numerous, non-controversial issues via a Consent Agenda
  o Maintained an orderly and productive meeting environment without having FHP officers attend any meetings

• Terrabrook, aka Newland
  o Except for the wetland mitigation area located within Tract C-1, Newland trimmed mangroves throughout the community
  o Newland replaced the dead bushes at Winterside Dr. and Manns Harbor
  o Newland cleaned and, as needed, repainted perimeter walls
  o Newland is cutting the Shell Point lawn twice a month during the growing season
  o Newland completed maintenance and repair work around the Sales Center
  o Newland completed some repairs of the lagoon Rip Rap adjoining their property.

• Resident communication
  o The District is placing more resident information, e.g., vessel registration, dock and lift installation, upland protocol, upland intake forms, etc., on the CDD website
  o Supervisors have defined issues to be covered via a website Q&A for residents
- For ongoing capital projects, District Staff has begun posting on the CDD website start and completion dates
- With the goal of improving communication with residents, held the first Communication Workshop and scheduled similar monthly workshops for the balance of the year

- **Rizzetta**
  - Established and implemented a maintenance protocol for the community’s capital assets
  - Approved hiring of additional Rizzetta onsite staff, so more projects can be handled by Rizzetta at a lower cost to the District
  - Established a protocol for overseeing activities of all vendors and tracking of invoices, thereby reducing costs while increasing quality

- **Security**
  - Renegotiated the contract with Envera reducing our monthly fee by 12% and obtaining an $80,000 credit for new equipment
  - Installed faster, LED entry gates
  - Reversed the door swing on basketball courts resulting in no subsequent kick-ins
  - Installed additional as well as upgraded cameras in various locations throughout the community
  - Installed lane delineators to reduce gate strikes

- **Adopted a vision statement for the community**

**2017 District Accomplishments**

- **Pool**
  - Determined the pool slide and stairs could be repaired instead of being replaced, saving the community over $438,000 compared to prior estimates to refurbish the pool and replace the slide and tower ($700,000 vs $261,721).
  - Pool bathrooms are now air conditioned, improving resident enjoyment and minimizing the potential for mold

- **Clubhouse**
  - Conducted a workshop to gain resident input on how to refurbish the clubhouse
  - Used resident input to define a Scope of Work for the project
  - Engaged a Designer and General Contractor
  - “Completed” the refurbishment of the entire clubhouse for $208,640 saving $106,000 versus the original estimate of $315,000
• Landscaping
  o Throughout the community, removed ~35 palm trees and numerous shrubs. In some cases, palms were dead for over 2 years
    ▪ Maintenance staff cut and removed 12 palms and 6 shrubs, saving the community approximate $10,200 compared to contractor pricing
  o Identified a contractor to complete the mulching of the entire community at a savings of $16,000 compared to prior years.
    ▪ The chosen contractor did the mulching previously as a sub-contractor
  o Defined an RFP for pruning all street trees, solicited bids and will complete the project by the end of November.
  o Engaged John Toborg to oversee landscaping and provide recommendations to Board, thereby reducing costs while improving quality

• Boat registration, docks and lifts
  o To save money and increase efficiency, reversed the prior Board’s decision to establish a sub-committee (EAC) to handle vessel issues.
  o Established a process for registering boats as well as approving the construction of new docks and lifts
  o Established a process for renewing vessel registrations
  o Defined and approved Boating Rules as well as an efficient enforcement procedure.

• Seawall
  o To improve transparency and facilitate communication with residents who are unable to attend meetings, posted all reports, presentations and Q&As to the CDD website
  o Through effective representation by Hopping Green, the Courts validated our $19.8 million bond
  o Obtained from Hillsborough County Best Practices on design build RFPs as well as a list of seawall contractors
  o Defined specifications for a Design Build RFP. Finalized the content of the Design Build RFP, advertised the RFP and posted the RFP to the CDD website.
  o Implemented actions to increase the likelihood of more bidders responding to the District’s Design Build RFP, resulting in 7 bidders attending the pre-proposal conference
  o Initiated a Rip Rap pilot test
  o In consultation with a navigation expert, identified lots where Rip Rap is not viable due to navigation, cap rotation or other issues.
• Completed a survey to identify residents willing to pay extra for vinyl instead of Rip Rap
  • Evaluated a repair proposal submitted by Foundation Masters
  • Completed a study to identify areas of short sheeting
  • Approved emergency fixes of 4 lots post Hurricane Irma
    ▪ Signed a repair contract with Land and SeaMasters
• Seawall litigation
  • Defined a litigation strategy document
  • The District proposed the case be placed on an expedited court schedule; however, Plaintiff’s Counsel indicated the Plaintiff’s “do not agree to fast track” the litigation.
  • The District is attempting to expedite mediation; however, the scheduling of mediation is dependent on when Plaintiff’s respond to discovery and deposition requests.
  • Limited District expenses through effective utilization of Legal Counsel engaged by our insurance provider
• Upland repairs
  • Hired new legal counsel
  • Established a protocol for evaluating and settling upland claims. Protocol attempts to balance the needs of the District, affected residents and “paying” residents. The protocol establishes a time line for submission of claims (within 30 days of observing a potential problem) as well as target dates for each subsequent step in the settlement process.
  • Made settlement offers to four residents
  • Working with 30 other residents to complete their claims.
• Finances
  • For the first time in the community’s history, prioritized capital projects and defined a capital budget for the fiscal year
  • Reevaluated the need to spend $40,000 on crosswalk and new signage.
  • Opened a FEMA claim to potentially recover damages caused by Hurricane Irma
  • Hired a new Auditing firm at a lower cost
  • Approved a special assessment to ensure the District has adequate funding to stabilize prioritized seawalls.
  • Hired a new District Engineer with capabilities in numerous specialties thereby lowering District expenses while improving quality
  • Updated the capital reserve study to include all District assets and repair responsibilities
• Amenities/WTS
  o Extended hours at Admiral’s Pointe clubhouse and pool
  o Approved the installation of a floating dock
  o Approved and implemented a non-resident tennis membership
  o Pickle ball lines were installed on both basketball courts. Lines for the second court were installed “in-house”, saving the community $350.
  o Installed “No trespassing” signs to appropriately limit use of facilities by non-residents
  o Updated amenity rules and enforcement policies
  o Substantially grew the After School program, which meets every day of the week and includes an extracurricular program every day.
  o Increased tennis revenue by 280% ($25,420 versus $9,137)
  o Increased Fitness Buddy revenue by 25% ($9,681 versus $7,745)
  o Exceeded by 16% the budgeted food and beverage revenue for the 12-month, Oct to Sept time frame ($169,236 vs $145,354), even though the clubhouse renovation project severely limited café functionality for 3 weeks.
  o WTS presented to the Board spending priorities for new amenities, repair of amenities and for new community events

• Meeting management
  o Preliminary agendas are issued 14 days in advance
  o Agenda packets are issued 8 days in advance. Material in agenda packets are designed to facilitate decisions at meetings and improve communication and transparency with residents
  o Decisions needed at each meeting are outlined in the Agenda Packet, in the Chairman’s Perspective. During meetings, Supervisors work hard to focus the meeting discussion on the decision needed
  o Audios of each meeting is posted online within 5 business days of a meeting
  o Established responsibilities for Supervisor liaisons and assigned a Supervisor liaison for each complex project to improve efficiency.
  o Meeting minutes are issued within 5 business days of their approval by Supervisors
  o Handle numerous, non-controversial issues via a Consent Agenda
  o Maintained an orderly and productive meeting environment without having FHP officers attending most meetings

• Terrabrook, aka Newland
  o The District established a protocol for conveyances, to facilitate smooth transfers and ongoing maintenance of parcels
• Within 15 feet of the seawall at Parcel 101, Newland removed the Brazilian pepper and lead trees.
• Newland is in the process of obtaining permits to prune Mangroves and complete other maintenance work in Tract C-1
• Newland is replacing dead bushes at Winterside Dr. and Manns Harbor
• Newland is cleaning and, as needed, repainting perimeter walls
• Newland is cutting the Shell Point lawn twice a month during the growing season
• Newland is engaging contractors to complete maintenance and repair work around the Sales Center
• Newland is completing a study of their Rip Rap responsibilities and will initiate repair action as appropriate.
• A Newland representative is now attending most CDD meetings to improve communication between the District and Newland

• Resident communication
  • The District is placing more resident information, e.g., vessel registration, dock and lift installation, upland protocol, upland intake forms, etc., on the CDD website
  • Supervisors have defined issues to be covered via a website Q&A for residents

• Updated boating rules and enforcement policies
  • Reduced new boat registration fees

• Reduced the incidence of speeding in the community

• Established a parking and trespassing protocol

• Rizzetta
  • Established and implemented a maintenance protocol for the community’s capital assets
  • Purchased a truck, thereby lowering overall expenses by reducing what needs to be outsourced, e.g. pressure washing
  • Used Rizzetta employees instead of contractors to:
    ▪ Replace street bulbs with LED lights, thereby saving installation and operations costs
    ▪ Handle removal of the second entrance/exit gates, gate repairs, trespassing sign installation and roadway sign replacement, thereby reducing overall expenses while improving turnaround time
    ▪ Handle portions of the clubhouse renovation (bar, fixtures and wire distribution)
- Handle pool lighting repair and bulb replacement
- Handle raccoon relocation, saving the community $10,500 ($350 per raccoon)
- Repair the hot water heaters, saving the community $5,600 versus the vendors replacement estimate
- Replaced 50 landscaping lights, saving the community $10,500 versus the contractor’s estimate
- Repaired numerous voids behind residents’ seawall, saving thousands of dollars a month
  - Established a protocol for overseeing activities of all vendors and tracking of invoices, thereby reducing costs while increasing quality
  - Used a contractor to remediate the mold found in Dockers; however, used Rizzetta employees to handle the flooring and repainting, thereby reducing overall expenses
  - Determined the District’s preferred HVAC vendor was falling short on pricing, installation and ongoing maintenance; instituted corrective actions in each area
  - Switched the maintenance cell phone contract to Verizon to save money
  - Through effective negotiation:
    - Saved $7,000 in the purchase of power washing equipment
    - Reduced the boar trapping contract from $1,200/mth to $500/mth
    - Saved $800 on the lift inspection, $1,800 on the cherry picker rental and $3,500 on ???
  - Modified Rizzetta’s scope of responsibilities, thereby reducing overall costs while improving management efficiency
2018 District Priorities

- Seawall
  - Resolve litigation
    - Wherever possible, expedite the court case and the pathway to mediation
  - Obtain financing for Master Seawall Project
  - Award the Master Seawall Project and expedite project completion
- Complete the refurbishment of the clubhouse
- Complete the refurbishment of the pool area
- Reduce ongoing operations and maintenance costs as well as fee expenses for the District, while maintaining or improving the quality of output
  - With financials, add a column comparing current year expenses to prior year expenses
    - Track litigation expenses (Engineer, legal, Rizzetta) separately
  - Ask Staff for savings recommendations. If needed and appropriate, Board will approve actions early in the year
- WTS
  - Increase resident enjoyment, as determined through a survey instrument
    - Field baseline survey by Jan 2018
  - Launch an internet-based reservation and payment system for all activities and for food purchase
  - Introduce three new events for adults
  - Increase the percentage of residents involved in one or more activities
    - Measure in survey
    - In Club Manager report, track resident involvement in activities compared to prior year
  - Improve the cleanliness of all amenities
  - Improve WTS’s financial margins
    - Food/beverage revenue versus cost
    - Total revenue versus total cost, including manpower
    - Track summary financials compared to prior year in Club Manager report
  - Assuming appropriate financial margins can be maintained, provide consistent pool side service during peak season
  - Consistently enforce amenity rules and procedures
- Rizzetta
  - Reduce total operation and maintenance costs for the District
- Track summary financials compared to prior year, in the Club Director report
- Conduct an energy audit to identify savings opportunities
- Continue to identify projects that can be handled more cost-effectively by staff versus outside contractors
  - Sand and stain all clubhouse doors, extending their life by at least five years
  - Paint perimeter walls, monuments, etc.
  - Establish a recycling program for the clubhouse
- Improve communication with residents through more effective use of e-blasts and the District’s website
  - Track in survey instrument
- Utilizing the updated Capital Reserve Study, define and implement a 2018 capital project plan. Potential projects include:
  - Refurbish landscaping throughout the Community
  - Dockers expansion
  - Outfitter’s conversion to a Tiki Bar
  - Replace remaining HVAC units
  - Grind and paint boat lift
  - Roadway maintenance
Tab 13
MINUTES OF MEETING

The regular meeting of the Board of Supervisors of Harbor Bay Community Development District was held on **Thursday, August 30, 2018 at 6:00 PM** at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present and constituting a quorum were:

- Paul Curley, Board Supervisor, Chairman
- Ned Carr, Board Supervisor, Assistant Secretary
- Steve Lockom, Board Supervisor, Assistant Secretary
- Tim Nargi, Board Supervisor, Assistant Secretary (Via Phone)

Also present were:

- Joseph Roethke, Regional District Manager; Rizzetta & Company
- Greg Woodcock, District Engineer; Cardno
- Chris Gamache, District Engineer; Cardno
- Elliot Moseley, Club Director
- Ty Thompson, MPD Legal (Via Phone)
- Michael Eckert, District Counsel, HGS (Via Phone)

Audience

FIRST ORDER OF BUSINESS Call to Order and Pledge of Allegiance

The meeting was called to order and roll call performed, confirming that a quorum was present. The Pledge of Allegiance was conducted.

SECOND ORDER OF BUSINESS Audience Comments on Agenda Items

Mr. Curley discussed the order of items in the meeting agenda and reminded all those in attendance of District procedures, advising that in terms of audience comments, each person wishing to speak must submit a comment card and will be given three minutes to speak about any subject unless more than nine cards are submitted, in which case each speaker will be given two minutes. He explained that the Board probably will not respond to comments at this time but encouraged residents to email suggestions prior to the meeting to facilitate adjustments to the agenda.

Mr. Eckert reminded the Board and audience that the CDD meetings are not the proper venue to campaign for Board of Supervisor seats that are up for election in November.
A resident discussed potential issues with the asphalt repairs, boat lift painting, and communication. An audience member introduced his company that could provide an alternative solution to the seawall issues. A resident asked a seawall question.

**THIRD ORDER OF BUSINESS**  
**Consideration of Emergency Seawall Repairs**

Mr. Gamache reviewed the proposals for emergency seawall repairs with the Board and informed them that the emergency lots need to be repaired as soon as possible. Mr. Woodcock added comments on both of the contractors that submitted for this work.

- **On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board of Supervisors approved proposal from Hecker Construction for emergency Seawall repairs at a not-to-exceed amount of $816,018.70 for the Harbor Bay Community Development District.**

The Board entertained comments from a representative with H2R Corp regarding grouping solutions for interim repairs to some seawall issues. A discussion ensued regarding Cardno’s work authorization for oversight of emergency seawall reconstruction.

- **On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board of Supervisors approved Cardno’s work authorization for oversight of emergency seawall reconstruction at a not-to-exceed amount of $190,140.00 for the Harbor Bay Community Development District.**

- **On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board of Supervisors terminated Cardno’s existing work authorization for seawall reconstruction oversight that was approved in conjunction with the original Dock Solutions contract for the Harbor Bay Community Development District.**

**FOURTH ORDER OF BUSINESS**  
**Consideration of Proposals for Pool Projects**

The Board reviewed two proposals from Pool Works for the pool project.

- **On a Motion by Mr. Curley, seconded by Mr. Carr, with all in favor, the Board of Supervisors approved proposals from Pool Works at a total cost of $16,815.00 for the Harbor Bay Community Development District.**
Mr. Curley discussed pool area landscaping and ideas for moving forward. Mr. Lockom will take the lead on this and will work with District Staff on Options for Landscaping Upgrades at the Pool.

FIFTH ORDER OF BUSINESS  Community Security

Mr. Roethke updated the Board on the status of the current discussions with Envera and a roving security option. There are no substantial updates from the vendors, so this specific discussion will need to wait until the next meeting. Mr. Curley discussed other options that the District can move forward with that will be at no cost. This includes items such as community communication and criminal education. Mr. Curley will spearhead this initiative.

SIXTH ORDER OF BUSINESS  STAFF REPORTS

A. District Counsel

No Report

B. District Engineer

Mr. Woodcock discussed a punch list for the asphalt repairs that the contractor is currently working on. Mr. Moseley will follow up with Mr. Gamache on follow-up items related to the boat lift painting.

C. District Manager

Mr. Roethke informed the Board that a first draft of a proposal for upgrading the street signs to HCSO standards has been sent, and it is approximately $22,000.00. A final proposal will be included in the next meeting agenda.

SEVENTH ORDER OF BUSINESS  SUPERVISOR REQUEST

Mr. Curley discussed social media post by supervisors Mr. Eckert confirmed that social media use is discouraged by him among supervisors and recommended that they do not use social media for CDD purposes. Mr. Curley discussed social media posts by Mr. Nargi regarding budgeting and pointed out the following: The Aug 17, 2017 minutes indicate the FY 2018 budget increase was approved unanimously [1.03]. The Nov 16, 2017 minutes indicate the Special Assessments for the seawall construction and the seawall litigation were approved unanimously. [1.04] Because of a glitch in noticing, another vote on the Litigation assessment was taken at the Jan 18, 2018 meeting; once again, it was a unanimous vote. [1.04] Finally, Mr. Curley stated that while the Aug 2018 minutes were not published yet, he believed they would reflect another unanimous vote [1.05]. Mr. Nargi disagreed with Mr. Curley’s statements about how Mr. Nargi voted and about Mr. Nargi’s social media posts. Mr. Nargi stated he
knows how he voted. Mr. Nargi stated that he did not vote for the 9% increase, that he
did not vote for the $400,000 special assessment, that he did not vote for the bond with
the extra $2 million for amenities, and that he was forced to vote for the seawall
assessment of $1.6 million because the District did not have the money to repair the
seawall.

EIGHTH ORDER OF BUSINESS

AUDIENCE COMMENTS

A resident asked a question about seawall proposal costs.
A resident asked a question about closed security sessions.
An audience member discussed seawall repairs.

NINTH ORDER OF BUSINESS

Adjournment

On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board
adjourned the meeting at 7:20 p.m. for the Harbor Bay Community Development
District.

Secretary / Assistant Secretary

Chairman / Vice Chairman
Tab 14
MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

The Harbor Bay Community Development District workshop was held on Thursday, October 11, 2018 at 6:00 PM at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present were:

Paul Curley      Board Supervisor, Chairman
Steve Lockom     Board Supervisor, Assistant Secretary

Also present were:

Holly Faldetta   WTS
Audience

The meeting was called to order at 6:00 PM.

Mr. Curley discussed the purpose of the meeting and how the meeting would be conducted.

Residents asked questions and provided input on the following topics:

- Business relationships between Supervisors
- A variety of seawall issues
- Assessment methodology for the seawall
- Pickle ball alternatives
- Maintenance of infrastructure
- Lagoon rip rap
- Security and Envera
- Amenities
- Park Square
- Builder adherence to MARC guidelines
- Number of homes being built on Pocket 101
- Boat registration
- Upland repairs
- Board communication

No motions were made or Board votes taken.

The meeting was adjourned at 8:04.
Tab 15
MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of Harbor Bay Community Development District was held on Thursday, October 18, 2018 at 6:00 PM at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present and constituting a quorum were:

Paul Curley  Board Supervisor, Chairman
Ned Carr    Board Supervisor, Assistant Secretary
Steve Lockom  Board Supervisor, Assistant Secretary
Tim Nargi  Board Supervisor, Assistant Secretary

Also present were:

Joseph Roethke  Regional District Manager; Rizzetta & Company
Bryan Radcliff District Manager; Rizzetta & Company
John Toborg  Field Services Manager, Rizzetta & Company
   (via Phone)
Mike Eckert  District Counsel; Hopping Green & Sams
Greg Woodcock District Engineer; Cardno
Chris Gamache  District Engineer; Cardno
Elliot Moseley Clubhouse Director
Ashley Adkins  Clubhouse Manager
Matt Davis  MPD Legal
   (via Phone)
Holly Faldetta  WTS

Audience

FIRST ORDER OF BUSINESS  Call to Order and Pledge of Allegiance

The meeting was called to order and roll call performed, confirming that a quorum was present. The Pledge of Allegiance was recited.

SECOND ORDER OF BUSINESS  Audience Comments on Agenda Items

Mr. Curley discussed the order of items in the meeting agenda and reminded all those in attendance of District procedures, advising that in terms of audience comments,
each person wishing to speak must submit a comment card and will be given three
minutes to speak about any subject unless more than nine cards are submitted, in which
case each speaker will be given two minutes. He explained that the Board probably will
not respond to comments at this time but encouraged residents to email suggestions prior
to the meeting to facilitate adjustments to the agenda.

A resident asked a question about vessel registration fees

Another resident also asked a question about vessel registration fees

Mr. Curley responded to several of the comments made.

THIRD ORDER OF BUSINESS

Presentation of Audience Comment
Follow-up Sheet

There was no discussion on this item.

FOURTH ORDER OF BUSINESS

Chairman’s Perspective on Agenda Items

There was no discussion for this item

FIFTH ORDER OF BUSINESS

Ratification of Hecker Seawall Repair Contract

The status of the Hecker contract was discussed.

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On a Motion by Mr. Curley, seconded by Mr. Nargi, with all in favor, the Board of
Supervisors ratified Hecker Seawall Repair contract for the Harbor Bay Community
Development District.

SIXTH ORDER OF BUSINESS

Ratification of Hecker Construction Contract for Emergency Seawall Repairs (Void Fills)

The status of this Hecker Contract was discussed.

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On a Motion by Mr. Curley, seconded by Mr. Nargi, with all in favor, the Board of
Supervisors ratified the Hecker construction contract for void fills for the Harbor Bay
Community Development District.
SEVENTH ORDER OF BUSINESS  

Master Project Status

Mr. Woodcock updated the Board on the status of the overall seawall project. The work should be completed for the emergency repairs by April 19, 2019 as per the schedule from Hecker. The Board discussed the next steps for the remainder of the project. Mr. Woodcock reviewed several options for the next steps in the project with the Board. This includes an Engineering RFQ for the project management of the overall project and another RFP for services to repair the Seawall. Mr. Woodcock entertained various questions from the Board. Mr. Eckert discussed potential issues with the Board based on the direction that is taken with the seawall repairs. Mr. Gamache offered options for different solutions of Seawall repairs and discussed advantages and risks associated. Mr. Gamache entertained various questions from the Board. Because of differing wall stress and repair needs, Mr. Curley suggested the development of separate Design Build RFPs for Sections I, II and III. Mr. Curley discussed the evaluation criteria and complexity of the previous RFP that was distributed.

On a Motion by Mr. Curley, seconded by Mr. Nargi, with all in favor, the Board of Supervisors directed staff to create 3 different design build RFPs for each section of seawall repair for review at the next meeting for the Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS  

Weep Hole Inspection and Maintenance

Mr. Gamache discussed weep hole inspection and maintenance of the new walls. The inspection was completed and there is no maintenance needed at this time. A discussion ensued. Future inspections and maintenance will be conducted as needed.

NINTH ORDER OF BUSINESS  

Pavers Installed within District Easement

The Board discussed issues with pavers installed along the CDD’s seawall easement. Mr. Gamache discussed the impact of these pavers on the CDD drainage system. No action is required at this time.

TENTH ORDER OF BUSINESS  

Soil Testing by H2R

Mr. Gamache discussed a request from H2R to perform some soil testing along the seawall free of charge. Mr. Eckert added that this request is for testing on some developer lots, therefore an agreement for access with the CDD and H2R is not required.

(Matt Davis arrived Via Phone at 6:58 p.m.)
null
3. Pool Landscaping

The Board reviewed proposals for landscape architecture services. Mr. Lockom and Mr. Curley both strongly recommended moving forward with Canin’s proposal. Mr. Curley would like Canin’s scope of work to include details listed in an email from Greg Witherspoon from 09/18/2018.

On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board of Supervisors approved the proposal from Canin at a not-to-exceed amount $7,960.00 for the Harbor Bay Community Development District.

4. Ratification of Pro-Crete Proposal

The Board reviewed a proposal from Pro-Crete for pool deck texture coating that has previously been executed and requires Board ratification.

On a Motion by Mr. Curley, seconded by Mr. Lockom, with all in favor, the Board of Supervisors ratified the proposal from Pro-Crete for pool deck texture coating in the amount of $4,877.23 for the Harbor Bay Community Development District.

5. Audio Equipment

The Board reviewed a proposal for audio equipment for the pool area, café, and walkway to sales center.

On a Motion by Mr. Lockom, seconded by Mr. Nargi, with all in favor, the Board of Supervisors approved upgraded audio equipment at a not-to-exceed amount of $15,000.00 subject to comments from Canin for the Harbor Bay Community Development District.

6. Boat Lift Maintenance

Mr. Gamache updated the Board on the status of the boat lift maintenance. All repairs have been made by the original contractor.

7. Asphalt Repairs

Mr. Woodcock updated the Board on the status of the asphalt repairs. The punch list is completed and this project is done.
Rizzetta Managed

1. Playground Shades

Mr. Moseley informed the Board that the playground shades should be installed by mid to late November

2. Painting of Buildings

Mr. Moseley informed the Board that this project is in progress and color schemes are being reviewed.

3. Power Washing

Mr. Moseley informed the Board that staff is still looking to hire a part-time maintenance employee for this position. The Power washing cannot be completed until this position is filled.

4. Fountain Repair

Mr. Moseley detailed issues that have arisen while trying to complete this project.

5. Tiki Huts

Mr. Moseley informed the Board that this project will commence on October 25.

6. Dockers Doors and Windows

Mr. Moseley presented a proposal for repairs to Dockers doors and windows to the Board.

On a Motion by Mr. Curley, seconded by Mr. Nargi, with all in favor, the Board of Supervisors approved the proposal from CDS Group for Dockers Door & window replacement at a cost of $12,695.26 for the Harbor Bay Community Development District.

7. Boat Dock Roof Repairs

Mr. Moseley presented a proposal for boat dock roof repairs to the Board.

On a Motion by Mr. Curley, seconded by Mr. Nargi, with all in favor, the Board of Supervisors approved the proposal from CDS Group for boat dock roof repairs at a cost of $9,558.80 for the Harbor Bay Community Development District.
Mr. Curley requested that going forward, Mr. Moseley provide an update to the Board on current large projects that maintenance staff is working on.

FOURTEENTH ORDER OF BUSINESS Discussion Regarding Vessel Registration Fines

The Board discussed issues regarding the current status of Vessel Registration Fines. Mr. Moseley reviewed current outstanding fines on file with the District. Mr. Curley provided guidance for District staff to move forward with these current outstanding fines. Mr. Eckert discussed issues with instances where residents continue to not pay fines. A discussion ensued. The Board would like to offer a one-time amnesty to residents who have not paid fines up to this point.

On a Motion by Mr. Nargi, seconded by Mr. Curley, with all in favor, the Board of Supervisors will forgive outstanding fines, provided that residents pay original fees within 30 days, and the one resident that paid a fine is refunded for the Harbor Bay Community Development District.

(Chris Gamache left 8:08 p.m.)

FIFTEENTH ORDER OF BUSINESS Save Manatee Agreement

Mr. Eckert reviewed the Save the Manatee agreement with the Board. Mr. Curley recommended looking at changing the fee amounts and fee structure for this agreement. A discussion ensued. The Board directed the chairman to work on opening the dialogue on the agreement with save the Manatee Club and directed staff to also work on providing proposals for navigational markers and signage.

SIXTEENTH ORDER OF BUSINESS Amenity and Fee Comparison Across Communities

Mr. Curley reviewed and discussed an amenity fee comparison spreadsheet with the Board. The Board discussed this but did not move forward on this item.

SEVENTEENTH ORDER OF BUSINESS Newland Update

Mr. Curley discussed this item and asked if park square had closed with Newland yet. It is anticipated that this should be completed by the end of the year. Mr. Eckert discussed the lack of Tract C-1 mangrove trimming by Newland, boat removal from the clubhouse, and water meters that Newland is still paying. Mr. Roethke will follow up on the water meters. Mr. Eckert entertained various questions from the Board.
EIGHTEENTH ORDER OF BUSINESS  Community Security

1. Consideration of Proposal for Signage

The Board discussed options for roving security, and will not be moving forward at this time. This will be revisited in the future. Mr. Lockom discussed the signage proposal with the Board, and he would like to see this approved and then have the District work with HCSO going forward.

On a Motion by Mr. Nargi, seconded by Mr. Curley, with Mr. Curley opposed, the Board of Supervisors approved the proposal from Onsight Signage for signage updates at a cost of $22,639.30 for the Harbor Bay Community Development District.

NINETEENTH ORDER OF BUSINESS  CONSENT AGENDA ITEMS

A. Consideration of Minutes of the Board of Supervisors’ Regular Meeting Held on August 16, 2018

B. Consideration of Operation & Maintenance Expenditures for August 2018 & September 2018

C. Consideration of Operations & Maintenance Expenditures for August 2018 & September 2018– Reserve Fund

D. Consideration of Operations & Maintenance Expenditures for August 2018 & September 2018– MiraBay Amenity Center

E. Consideration of Operations & Maintenance Expenditures for August 2018 & September 2018– Evergreen Fund

G. Ratification of Insurance Renewal Proposal

H. Ratification of Lee T. Kim work authorization for emergency repairs

I. Consideration of Proposal for Drainage maintenance

J. Consideration of Proposal Preparation of a Public Facilities Report

K. Acceptance of Modification of Professional District Services Agreement

L. Consideration of Master Project Requisitions #MP 98-109

M. Consideration of Supplemental Project Requisition (if any)

N. Presentation of Monthly Staff Report: MiraBay Club Manager

O. Presentation of Monthly Staff Report: Club Director

P. Dock and Boat Lift Approvals (if any)

Mr. Nargi would like to make changes to the August 30, 2018 minutes. These will be removed from the consent agenda in order for the Board to review any changes. Mr.
Eckert reviewed the Rizzetta contract and Public Facility Report proposal with the Board.
Mr. Curley asked questions about various invoices.

On a Motion by Mr. Curley, seconded by Mr. McNeil, with all in favor, the Board of Supervisors approved the consent agenda items, excluding the August 30, 2018 meeting minutes, for the Harbor Bay Community Development District.

TWENTIETH ORDER OF BUSINESS

A. District Counsel

Mr. Eckert discussed the current fence issue at Admiral Pointe that has been ongoing with the homebuilder. Lennar is offering to pay half of the cost from the lowest bid for repair.

On a Motion by Mr. Nargi, seconded by Mr. Lockom, with all in favor, the Board of Supervisors approved the settlement of fence dispute for Lennar to pay half of the total cost of the lowest bid for repairs for the Harbor Bay Community Development District.

Mr. Eckert discussed potential liability from AIG for the recently dismissed lawsuit. The Board directed District Manager to find local law firms and present these proposals at the next meeting. Mr. Eckert cautioned Board members on excessive public records requests and potential sunshine issues with these requests. Mr. Eckert discussed Board liaisons and Board members giving direction to staff outside of meetings. Board members should not be individually directing staff members outside of meetings.

B. District Engineer

No report.

C. District Manager

Mr. Roethke reminded the Board that the next regularly scheduled meeting will be held on Thursday, November 15, 2018 at 6:00 PM at the MiraBay Clubhouse.
Mr. Roethke reminded the Board that although the election takes place on November 6, 2018, any newly elected Supervisors will not take their seats on the Board until the December meeting, since the county does not certify results until 2 weeks after election day.

TWENTY-FIRST ORDER OF BUSINESS

Supervisor Requests

Mr. Curley discussed the community communication workshop and noted that it was well-attended and valuable to the community.
Mr. Lockom agreed that the communication workshop was helpful and discussed the financial statement that was recently released.

TWENTY-SECOND ORDER OF BUSINESS  Audience Comments

Mr. Moseley asked about Envera issues. The Board is in agreement with temporarily disabling the basketball court alarm.

A resident asked about issues with tower light, weep hole maintenance, and H2R soil testing

TWENTY-THIRD ORDER OF BUSINESS  Adjournment

On a Motion by Mr. Curley, seconded by Mr. Carr, with all in favor, the Board adjourned the meeting ended at 9:06 p.m. for the Harbor Bay Community Development District.

Secretary / Assistant Secretary  Chairman / Vice Chairman
Tab 16
MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

The Harbor Bay Community Development District workshop was held on Thursday, November 8, 2018 at 6:00 PM at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present were:
Paul Curley            Board Supervisor, Chairman
Steve Lockom           Board Supervisor, Assistant Secretary

Also present were:
Audience

The meeting was called to order at 6:00 PM.

Mr. Curley discussed the purpose of the meeting and how the meeting would be conducted. In addition, utilizing dates referenced in the Design Build RFP and the District’s historical experience working with contractors, Mr. Curley reviewed target dates for key milestones leading to the initiation of work on the Master Project.

Residents asked questions and provided input on the following topics:

• Seawall
  o RFP
  o Risk stratification and sequencing of repairs
    ▪ Impact on real estate values
  o Use of Langan/Cardno designs
  o Financing

• Mangrove trimming
  o 800 block of IsleBay
  o Tract C-1

• Park Square
  o HOA meetings
  o MARC guidelines
  o Allocating land and funding for amenities
  o Multi-family units next to shopping center
  o Conveyance standards
  o New signage

• Pickleball wind screens
• Envera
  o Monitoring of basketball courts
  o Availability and use of speakers

• Landscaping
  o Oak tree removal
  o Irrigation and erosion issues in Bay Breeze
  o Dying palms on Ibisview

• Cardno performance

• Dates and times for future Town Hall meetings

No motions were made or Board votes taken.

The meeting was adjourned at 7:22.
Tab 17
Operation and Maintenance Expenditures
October 2018
For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from October 1, 2018 through October 31, 2018. This does not include expenditures previously approved by the Board.

The total items being presented: $120,067.71

Approval of Expenditures:

__________________________________
Chairperson

______ Vice Chairperson

______ Assistant Secretary
<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Invoice Number</th>
<th>Invoice Description</th>
<th>Invoice Amount</th>
</tr>
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<tr>
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<td>201984ES</td>
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# Harbor Bay Community Development District
## Paid Operation & Maintenance Expenditures
### October 1, 2018 Through October 31, 2018

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Invoice Number</th>
<th>Invoice Description</th>
<th>Invoice Amount</th>
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<tbody>
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<td>Rizzetta &amp; Company, Inc.</td>
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<td>311000030115 09/18</td>
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<td>Legal Advertising 10/18</td>
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<td>Trees 09/18</td>
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</table>

**Report Total** $120,067.71
Tab 18
Attached please find the check register listing the Operation and Maintenance expenditures paid from October 1, 2018 through October 31, 2018. This does not include expenditures previously approved by the Board.

The total items being presented:  **$105,091.25**

Approval of Expenditures:

__________________________________
Chairperson

______ Vice Chairperson

______ Assistant Secretary
Reserve Fund at Harbor Bay Community Development District
Paid Operation & Maintenance Expenditures
October 1, 2018 Through October 31, 2018

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Invoice Number</th>
<th>Invoice Description</th>
<th>Invoice Amount</th>
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<tr>
<td>American Outdoor Concepts, LLC</td>
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<td>Chris Rossi Studio, LLC</td>
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<td>100518</td>
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<td>Tiki Hut 10/18 - 50% Deposit</td>
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<td>NEC Keystone, Inc</td>
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<td>The Pool Works of Florida Inc</td>
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<td>Pool Resurfacing 10/18</td>
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Report Total                                                                 $105,091.25
Tab 19
Operation and Maintenance Expenditures  
October 2018  
For Board Approval  
Mirabay Club

Attached please find the check register listing the Operation and Maintenance expenditures paid from October 1, 2018 through October 31, 2018. This does not include expenditures previously approved by the Board.

The total items being presented: **$46,754.66**

Approval of Expenditures:

__________________________________  
Chairperson

______ Vice Chairperson

______ Assistant Secretary
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<th>Vendor Name</th>
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## Mirabay at Harbor Bay Community Development District

### Paid Operation & Maintenance Expenditures

**October 1, 2018 Through October 31, 2018**

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Invoice Number</th>
<th>Invoice Description</th>
<th>Invoice Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pepin Distributing Company Inc</td>
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<td>Sysco-West Coast Florida</td>
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<td>Food, Beverage &amp; Supplies 10/18</td>
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<td>Victoria's School of Dance LLC</td>
<td>003912</td>
<td>MBMIR0102018</td>
<td>Dance Classes 10/18</td>
<td>$ 1,404.00</td>
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<td>Victoria's School of Dance LLC</td>
<td>003894</td>
<td>MBMIR092018</td>
<td>Dance Classes 09/18</td>
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<td>003906</td>
<td>IN000087242</td>
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<td>WTS International, Inc.</td>
<td>ACHWTSEBR10118</td>
<td>RC000049448</td>
<td>Health Insurance 10/18</td>
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<td>WTS International, Inc.</td>
<td>003901</td>
<td>RC000049888</td>
<td>Management Fee 11/18</td>
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<td>WTS International, Inc.</td>
<td>ACHWTSPR100318</td>
<td>RC000050003</td>
<td>Payroll PPE 09/29/18</td>
<td>$ 21,257.32</td>
</tr>
</tbody>
</table>

**Report Total**

$ 46,754.66
Tab 20
Operation and Maintenance Expenditures  
October 2018  
For Board Approval  
Evergreen

Attached please find the check register listing the Operation and Maintenance expenditures paid from October 1, 2018 through October 31, 2018. This does not include expenditures previously approved by the Board.

The total items being presented:  $1,300.00

Approval of Expenditures:

__________________________________
______ Chairperson

______ Vice Chairperson

______ Assistant Secretary
### Evergreen at Harbor Bay Community Development District

#### Paid Operation & Maintenance Expenditures

**October 1, 2018 Through October 31, 2018**

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Check Number</th>
<th>Invoice Number</th>
<th>Invoice Description</th>
<th>Invoice Amount</th>
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<tbody>
<tr>
<td>Scott E Jones</td>
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<td>Off Duty Evergreen 09/18</td>
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<td>Justin E. Pass</td>
<td>000128</td>
<td>09/18 Pass</td>
<td>Off Duty Evergreen 09/18</td>
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<td>000129</td>
<td>33596</td>
<td>Admin/Boat Fees 09/18</td>
<td>$580.00</td>
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</table>

**Report Total**

$1,300.00
RESOLUTION NO. 2019-02

A RESOLUTION OF THE HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT REGARDING REIMBURSEMENT OF CERTAIN COSTS RELATING TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Harbor Bay Community Development District (the "District") has incurred and/or expects to incur various costs in relation to the reconstruction of the District’s storm water management system, including but not limited to retaining walls and seawalls (the "Project");

WHEREAS, the District has determined it is in its best interest to reimburse such costs from proceeds of tax-exempt debt to be issued (the “Bonds”); and

WHEREAS, the United States Department of Treasury has issued various regulations in regard to reimbursement of governmental costs through the issuance of tax-exempt debt;

BE IT RESOLVED BY THE HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. It is the intent of the District to reimburse various costs and expenditures relating to the construction and equipping of the Project. The District has paid for, and/or reasonably anticipates that it will pay for, such costs and expenditures from moneys on deposit in its General Fund, Reserve Fund, Seawall Fund, and/or Capital Projects Fund pending a determination of the optimal timing for the issuance of the Bonds based on market conditions. It is reasonably expected that reimbursement of such costs and expenditures for the Project shall come from the issuance of tax-exempt Bonds, the new money portion of which is currently not expected to exceed twenty million dollars ($20,000,000) in aggregate principal amount. The expenditures to be reimbursed shall be consistent with the District's budgetary and financial policy as being the type of expenditures which shall be paid on a long-term basis.

SECTION 2. The District shall comply with all applicable law in regard to the public availability of records of official acts by public entities such as the District, including making this Resolution available for public inspection.
SECTION 3. It is the intent of the District that the purpose of this Resolution is to meet the requirements of Treasury Regulations Section 1.150-2 and to be a declaration of official intent under such Section.

SECTION 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED at a Regular Meeting this 15th day of November, 2018.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

(SEAL)

By: ________________________________
Chairman

ATTEST: ________________________________
Secretary
Tab 22
WEBSITE QUESTIONS AND ANSWERS

GATES

Q – Who should I call when a gate is broken?

A – Call Envera at (877) 936-8372. District Staff or Envera will fix the gate as quickly as possible.

Q – Does the District seek to collect repair costs when a gate is damaged?

A – Yes, each time a gate is damaged staff investigates and identifies the car or person that caused the damage, then invoices the responsible party or pursues the responsible party’s insurance coverage.

Q – Why are gates opened during storms?

A – In case of power outages, gates are left open to facilitate ingress and egress, protect the entry system from damage, and comply with law enforcement requirements.

SECURITY

Q – If a crime occurs, can video evidence be provided to authorities?

A – Yes, both the CDD and residents can provide video evidence to the police. However, video evidence is not released by the CDD to individuals.

Q – Who should I call if I observe a crime?

A – If it is an emergency call 911; otherwise, call the nonemergency Hillsborough County District 4 Sheriff’s Office at (813) 247-0455.

Q – Who do I call if I see someone trespassing on CDD property?

A – Call the nonemergency Hillsborough County District 4 Sheriff’s Office at (813) 247-0455. A trespassing authorization is on file at the sheriff’s office that allows law enforcement to come out without any further resident/management interaction.
GENERAL CDD ISSUES

Q – Who should I call if I observe a broken irrigation line, fallen tree, pothole, etc.?

A – If the observation is made during ordinary business hours, call (813) 649-1500. If the observation is made outside of ordinary business hours (i.e. at night or on the weekend), and you believe it is an emergency, you may also call that same number and leave a message with your name, number, and what you observed. If it is truly an emergency, someone will call you back immediately, but if not, the CDD will address the issue during ordinary business hours.

SEAWALL RELATED ISSUES

Q – How can I determine the status of the seawall repair project?

A – Please go to the “Projects” tab on the CDD website, then click on “Seawall Project,” or click here.

Q – How can I submit a claim for damage to my property that I believe was caused by seawall repair work?

A – Please go to the “Projects” tab on the CDD website, then click on “Upland Claims,” or click here.

Q – When will the seawall adjoining my property be repaired?

A – Please click here for a seawall priority map, which indicates via color-coding how the District is prioritizing the repairs of the seawall. As information becomes available, target dates for starting the repairs of specific lots will be added to this map.

Q – How will the District pay for the repair of the seawall?

A – The Board anticipates obtaining a long-term bond.
Q – How do I obtain approval to dredge underneath my boat lift?

A – The Developer needs to authorize the work. You can contact the developer directly or send an email with your address and phone number to Joe Roethke, and he will forward the information to the relevant party.

CDD RULES AND POLICIES

Q – Where can I view a copy of HOA and CDD rules and policies?

A – Links for various handbooks are listed below.
  • CDD Waterways and Boating Facilities Rules and Policies
  • CDD Amenity Rules and Policies
  • CDD Parking Rules (see below)

CDD PARKING AREAS AND ROADWAYS

Q – Which parking areas and roadways are regulated by the CDD?

A – The CDD regulates the following areas with respect to parking:
  • Street Parking*
  • MiraBay Clubhouse Parking (Map)
  • Tennis Facility Parking Lot (Map)
  • Landings Park (Map)
  • Admiral Pointe (Map)

*Please refer to the MiraBay Architectural Guidelines, Page 7, Chapter 6 – Vehicles and Vehicle Parking (6.3.3)

Q – What are the rules for each parking area and roadway owned by the CDD?

A – For a complete recitation of rules applicable to all CDD parking areas, please go to the “Policies” tab on the CDD website, then click on “Parking/Towing Policy,” or click here. The following is a summary:

With respect to all CDD parking areas:
  • All vehicle parking is for recreational facilities users and District staff, employees, and vendors/consultants only.
There is no parking permitted in the area in front of the MiraBay Clubhouse. This area is reserved for emergency and law enforcement vehicle parking only.

No parking is available at a CDD facility after that CDD facility closes.

Generally, overnight parking is not permitted. However:
- Reserved overnight parking is available for Anchor Cove residents at the MiraBay Clubhouse, but only where indicated in the Parking/Towing Policy (see Parking/Towing Policy for details).
- Reserved overnight parking at the MiraBay Clubhouse is also available to others but by permit only and only at the MiraBay Clubhouse (the permit must be displayed on bottom left side of windshield; non-permitted vehicles will be subject to immediate tow (not subject to standard tow protocol) at owner’s expense; the permit cost is $10.00 per permit per year; and permits are valid for one (1) year and run in accordance with the CDD’s fiscal year (October 01 – September 30)).
- Reserved overnight parking is enforced between 7:00 PM (EST) and 7:00 AM (EST).

With respect to the Boat Lift:
- There are no designated parking areas in the vicinity of the Boat Lift.
- Parking on grass or on landscaped areas is prohibited.

With respect to parking exceptions and special dispensations and circumstances:
- Parking exceptions will be granted by way of written correspondence through expressed authority of certain individuals identified in the Parking/Towing Policy (see Sect. II, Paragraph 1 of the Parking/Towing Policy for details).
  - No verbal exceptions will ever be issued or held valid.
  - It is the responsibility of the person requesting a parking exception to secure all necessary documentation and approvals.
  - Failure to secure all necessary documentation and approvals will result in the towing and/or removal of the vehicle from premises.
  - Upon expiration of a written exception notice, the owner will have 24 hours to remove the vehicle in accordance with the Parking/Towing Policy.
Q – Who do I contact to obtain a temporary parking sticker for a CDD parking lot?

A – Please contact CDD Club Director Elliot Moseley by phone at (813) 649-1500 or by email for a temporary parking sticker to park in a CDD parking lot.

Q – If I see a potential parking violation in a CDD parking lot, who do I contact?

A – If you see a potential parking violation in a CDD parking lot, please contact CDD Club Director Elliot Moseley by phone at (813) 649-1500 or by email.

Q – Who is responsible for calling the towing company to remove a car, truck, or trailer parked illegally in a CDD lot?

A – The CDD is responsible for calling the towing company to remove a car, truck, or trailer parked illegally in a CDD lot.

Q – If my vehicle was towed from a CDD parking lot, who do I contact?

A – If your vehicle has been towed from a CDD parking lot, please contact Sunpoint Automotive at (813) 645-7653. Sunpoint Automotive’s street address is 2212 East College Avenue, Ruskin, FL 33570. It is the designated tow company for all CDD parking lots, including the MiraBay Clubhouse, Admiral Pointe, the Tennis Facility Parking Lot, and Landings Park.

HOA PARKING AREAS AND ROADWAYS

Q – What are the parking rules for roadways and parking lots located within each HOA?

A – The parking rules for roadways and parking lots located within each HOA are as follows:

- Mirabay HOA. No overnight street parking is permitted. Please refer to the MiraBay Architectural Guidelines, Page 7, Chapter 6 – Vehicles and Vehicle Parking (6.3.3) for details.
- Anchor Cove.
All owner/renter vehicles should be parked in the garage or in their specified driveway with no overhang into the alley.

There are overflow spaces located next to the back gate by the pool. These may be used on an as need basis.

Visitors staying for less than 3 days may use the spaces located in front of the units.

Alley parking is not authorized because it could prevent garbage trucks and emergency vehicles from reaching the end units. This requirement is strictly enforced for the safety of all community members.

Anchor Cove has towed vehicles in the past. If a vehicle is towed, the resident needs to contact the towing company. Signs are posted. Please refer to the Anchor Cove Parking Rules for details.

- Bay Breeze HOA. Bay Breeze HOA does not have any specific parking rules or regulations. However, the governing documents do indicate that all street parking must be on a temporary basis.

**Q – Who has responsibility for enforcing HOA parking rules?**

A – The respective HOAs based on each HOA board’s direction with the assistance of the homeowners.

**Q – If I see a potential parking violation in an HOA parking lot or roadway, who do I contact?**

A – If you see a potential parking violation in an HOA parking lot or roadway, please contact HOA Manager Michelle George by phone at (813) 833-2950 or by email.

**Q – Who is responsible for calling the towing company to remove a car, truck, or trailer parked illegally in an HOA parking area or roadway?**

A – Anchor Cove grants board members and/or community managers authority to tow cars, trucks, or trailers that are illegally parked in an HOA parking area or roadway; however, residents are not authorized to have a vehicle towed. Mirabay HOA and Bay Breeze HOA do not tow.

**Q – If my vehicle was towed from an HOA parking area or roadway, who do I contact?**
A – The towing company as indicated by signage.
Tab 23
November 7, 2018

RIZZETTA & COMPANY, INC.
Harbor Bay, Supplemental Account
Attn: Natasha Dhanpat
9428 Camden Field Parkway
Riverview, FL 33578

RE: Supplemental Account, Master Project Interim Repairs
  Requisitions for Payment

Dear Natasha:

Below please find a table detailing the enclosed requisition(s) ready for payment from the District’s Supplemental Account.

PLEASE EXPEDITE PAYMENT TO THE PAYEE(S) AS FOLLOWS:

A) HECKER VIA UPS
B) ALL OTHERS VIA USPS

<table>
<thead>
<tr>
<th>REQUISITION NO.</th>
<th>PAYEE</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>MP 113</td>
<td>Burby Engineering</td>
<td>$573.75</td>
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<tr>
<td>MP 114</td>
<td>Hecker Construction Company, Inc.</td>
<td>$4,500.00</td>
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<tr>
<td>MP 115</td>
<td>Mills Paskert Divers</td>
<td>$1,413.99</td>
</tr>
<tr>
<td>MP 116</td>
<td>Hecker Construction Company, Inc.</td>
<td>$82,000.00</td>
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If you have any questions regarding this request, please do not hesitate to call me at (813) 533-2950. Thank you for your prompt attention to this matter.

Sincerely,

HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

Joe Roethke
District Manager
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
REQUISITION FOR PAYMENT
SUPPLEMENTAL CONSTRUCTION ACCOUNT - SEAWALL REPAIR PROJECT

DATE: October 31, 2018
PAYEE: Burby Engineering
ADDRESS: 1001 South MacDill Avenue, Suite 600, Tampa, FL 33629
REQUISITION NO. MP 113
AMOUNT DUE: $573.75
FUND: Supplemental Construction

DESCRIPTION: Invoice # 1372 for Project E17-057 for Engineering Services

The undersigned hereby certifies that obligations in the stated amount set forth above have been incurred by the District, that each disbursement set forth above is a proper charge against the Supplemental Construction Account and the sub account, if any, referenced above, that each disbursement set forth above was incurred in connection with the acquisition and the construction of the Seawall Repair Project (herein after the “Project”) and each represents a cost of the project and has not previously been paid.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the Payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage, which the District is at the date of such certificate entitled to retain.

It is hereby represented by the undersigned that the Governing Body of the District has approved this requisition or has approved the specific contract with respect to which disbursements pursuant to this requisition are due and payable.

Attached hereto are copies of the invoice(s) from the vendor of the property acquired or services rendered with respect to which disbursement is hereby requested.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
BY: ____________________________
Chairman or Vice-Chairman

DISTRICT ENGINEER’S APPROVAL FOR PROJECT EXPENDITURES

The undersigned District Engineer hereby certifies that this disbursement is for a cost of the Seawall Repair Project and is consistent with: (i) the applicable acquisition or construction contract; and, (ii) the plans and specifications for the portion of the Project with respect to which such disbursement is being made.

BY: ____________________________
GREG WOODCOCK/THOMAS BURKE, P.E.
DISTRICT ENGINEER CARDNO, INC.
## Invoice

**Bill To**

Harbor Bay Community Dev. District  
c/o Mills Paskert Divers  
100 N Tampa Street  
Suite 3700  
Tampa, FL 33602

---

**Service**

Engineering

---

### Project

**E17-057 Harbor Bay Comm. District**

**Terms**

Due on receipt

---

<table>
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<th>Quantity</th>
<th>Description</th>
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<th>Amount</th>
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<td>1.5</td>
<td>Senior Engineer I: Lamardo Claim: Coordination regarding foundations. (9/14, 9/17, 9/18, 9/21)</td>
<td>225.00</td>
<td>337.50</td>
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<tr>
<td>0.75</td>
<td>Principal Engineer: Lamardo Claim: Review site observation photographs to determine if footer is present. Meeting with Senior Engineer to discuss inspection. Coordinate with Client. (9/18, 9/21)</td>
<td>250.00</td>
<td>187.50</td>
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<tr>
<td>0.75</td>
<td>Administrative: Lamardo Claim: General administrative assistance. Project coordination. Administrative, file handling and processing. (9/17, 9/19, 9/24)</td>
<td>65.00</td>
<td>48.75</td>
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</table>

---

**Total**

$573.75

**Payments / Retainer**

$0.00

---

**Balance Due**

$573.75

---

Thank you for your business. Call if you have questions.
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

REQUISITION FOR PAYMENT

SUPPLEMENTAL CONSTRUCTION ACCOUNT - MASTER PROJECT INTERIM REPAIRS

DATE: October 31, 2018
PAYEE: Hecker Construction Company, Inc.
ADDRESS: 12619 US Highway 41
Gibsonton, FL 33534

REQUISITION NO. MP114
AMOUNT DUE: $4,500.00
FUND: Supplemental Construction

DESCRIPTION: Invoice # 2507 for Installation of Fill Behind Seawalls

The undersigned hereby certifies that obligations in the stated amount set forth above have been incurred by the District, that each disbursement set forth above is a proper charge against the Supplemental Construction Account and the sub account, if any, referenced above, that each disbursement set forth above was incurred in connection with the acquisition and the construction of the Master Project Interim Repairs (herein after the “Project”) and each represents a cost of the project and has not previously been paid.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the Payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage, which the District is at the date of such certificate entitled to retain.

It is hereby represented by the undersigned that the Governing Body of the District has approved this requisition or has approved the specific contract with respect to which disbursements pursuant to this requisition are due and payable.

Attached hereto are copies of the invoice(s) from the vendor of the property acquired or services rendered with respect to which disbursement is hereby requested.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

BY: [signature]
CHAIRMAN or VICE-CHAIRMAN

DISTRICT ENGINEER'S APPROVAL FOR PROJECT EXPENDITURES

The undersigned District Engineer hereby certifies that this disbursement is for a cost of the Master Project Interim Repairs and is consistent with: (i) the applicable acquisition or construction contract; and, (ii) the plans and specifications for the portion of the Project with respect to which such disbursement is being made.

BY: [signature]
GREG WOODCOCK/THOMAS BURKE, P.E.
DISTRICT ENGINEER CARDNO, INC.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The installation of fill behind seawalls at 446, 444 and 5' LF of 442 Island Bay Drive.</td>
<td>4,500.00</td>
</tr>
<tr>
<td>Specifications:</td>
<td></td>
</tr>
<tr>
<td>1. Remove sod - dig 2' behind existing wall approximate 18” below top of cap.</td>
<td></td>
</tr>
<tr>
<td>2. Hydraulic compact or hand tamper clean fill and existing excavated fill.</td>
<td></td>
</tr>
<tr>
<td>3. Re-sod 2’ behind cap.</td>
<td></td>
</tr>
<tr>
<td>4. Sprinkler and water lines are in working area - add $1000 extra to replace new in all three areas, if required.</td>
<td></td>
</tr>
<tr>
<td>5. (3) site have brick pavers n/c to remove and stack, $900 to re-install if required for all (3) sites.</td>
<td></td>
</tr>
<tr>
<td>6. Area to be secured off with plastic construction fencing during repairs.</td>
<td></td>
</tr>
<tr>
<td>7. All employees are covered by USLH insurance due to work on seawalls.</td>
<td></td>
</tr>
</tbody>
</table>

All Credit Card - 3.5% Service Charge Fee

<table>
<thead>
<tr>
<th>Phone #</th>
<th>Fax #</th>
</tr>
</thead>
<tbody>
<tr>
<td>(813) 236-9306</td>
<td>(813) 236-9358</td>
</tr>
</tbody>
</table>

Total $4,500.00

Balance Due $4,500.00
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
SUPPLEMENTAL CONSTRUCTION ACCOUNT - SEAWALL REPAIR PROJECT

DATE: October 31, 2018
PAYEE: Mills Paskert Divers
ADDRESS: 100 N. Tampa Street
          Suite 3700
          Tampa, FL 33602

DESCRIPTION: Invoice # 42721 for Resident Litigation - Services through 09/30/18

The undersigned hereby certifies that obligations in the stated amount set forth above have been incurred by the District, that each disbursement set forth above is a proper charge against the Supplemental Construction Account and the sub account, if any, referenced above, that each disbursement set forth above was incurred in connection with the acquisition and the construction of the Seawall Repair Project (herein after the "Project") and each represents a cost of the project and has not previously been paid.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the Payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage, which the District is at the date of such certificate entitled to retain.

It is hereby represented by the undersigned that the Governing Body of the District has approved this requisition or has approved the specific contract with respect to which disbursements pursuant to this requisition are due and payable.

Attached hereto are copies of the invoice(s) from the vendor of the property acquired or services rendered with respect to which disbursement is hereby requested.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

BY: [Signature]
CHAIRMAN or VICE-CHAIRMAN

DISTRICT ENGINEER'S APPROVAL FOR PROJECT EXPENDITURES

The undersigned District Engineer hereby certifies that this disbursement is for a cost of the Seawall Repair Project and is consistent with: (i) the applicable acquisition or construction contract; and, (ii) the plans and specifications for the portion of the Project with respect to which such disbursement is being made.

BY: [Signature]
GREG WOODCOCK/THOMAS BURKE, P.E.
DISTRICT ENGINEER CARDNO, INC.
October 5, 2018

Harbor Bay Community Development District
Attn: Mr. Joseph Roethke, District Manager
12750 Citrus Park Lane, Suite 115
Tampa, Florida 33625

Re: Monthly Invoice – Services rendered through September 30, 2018

Dear Joe:

Enclosed is our firm’s invoice for services rendered and costs incurred through September 30, 2018 in the following matters:

<table>
<thead>
<tr>
<th>Matter Name</th>
<th>Harbor Bay Community Development District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matter No.</td>
<td>117210</td>
</tr>
<tr>
<td>This Month’s Charges</td>
<td>$1,413.99</td>
</tr>
<tr>
<td>Total Currently Due</td>
<td>$1,413.99</td>
</tr>
</tbody>
</table>

(Note: These charges include past due amounts, if applicable. If you have previously paid the past due amounts, only the amount of this month’s charges are due. Please check your records prior to submitting payment in order to avoid duplicate payments.)

I trust that you will find the invoice in order and would appreciate your making arrangements to pay the invoice at your earliest convenience. If you have any questions, please do not hesitate to call me.

Best regards,

MILLS PASKERT DIVERS

Ty G. Thompson, Esq.

Enclosure
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT
Harbor Bay Community Development District
12750 Citrus Park Lane, Suite 115
Tampa, FL 33625
Attention:  Mr. Joseph Roethke, District Manager

Re: Harbor Bay Community Development District

<table>
<thead>
<tr>
<th>Date</th>
<th>Atty</th>
<th>Description of Services</th>
<th>Hours</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/01/17</td>
<td>TGT</td>
<td>Revised settlement agreement.</td>
<td>0.40</td>
<td>120.00</td>
</tr>
<tr>
<td>09/04/18</td>
<td>MGD</td>
<td>Receipt, review and response to Mr. Roethke's e-mail regarding unique claim with owner attempting to sell property.</td>
<td>0.10</td>
<td>25.00</td>
</tr>
<tr>
<td>09/06/18</td>
<td>MGD</td>
<td>(Sardino) receipt review and response to Mr. Sardino's question regarding impact of settlement release.</td>
<td>0.20</td>
<td>50.00</td>
</tr>
<tr>
<td>09/06/18</td>
<td>MGD</td>
<td>Prepare and send e-mail to Mr. Gamache regarding claim that new seawall is rotating.</td>
<td>0.10</td>
<td>25.00</td>
</tr>
<tr>
<td>09/06/18</td>
<td>TGT</td>
<td>Analyzed Harbor Bay agenda.</td>
<td>0.20</td>
<td>60.00</td>
</tr>
<tr>
<td>09/12/18</td>
<td>MGD</td>
<td>Receipt, review and response to Mr. Roethke's e-mail regarding remaining claims and prepare and send e-mail to Mr. Gamache regarding same.</td>
<td>0.20</td>
<td>50.00</td>
</tr>
<tr>
<td>09/13/18</td>
<td>MGD</td>
<td>Review protocol and master settlement agreement to make recommendation regarding situation in which claimant sells property during the claims process.</td>
<td>0.80</td>
<td>200.00</td>
</tr>
<tr>
<td>09/13/18</td>
<td>TGT</td>
<td>Corresponded with Mr. Curley regarding matter; issues pertaining to claim summary issues; concerns.</td>
<td>0.20</td>
<td>60.00</td>
</tr>
<tr>
<td>09/13/18</td>
<td>TGT</td>
<td>Working on issues related to unique scenario where claimant sells home during pendancy of claim.</td>
<td>0.30</td>
<td>90.00</td>
</tr>
<tr>
<td>09/14/18</td>
<td>MGD</td>
<td>(Lamardo) Receipt, review and response to follow up e-mail from Burby regarding strategy if wall does not have a footer.</td>
<td>0.10</td>
<td>25.00</td>
</tr>
<tr>
<td>09/14/18</td>
<td>MGD</td>
<td>(Lamardo) receipt, review and response to Mr. Bott's e-mail regarding potential issue with footer.</td>
<td>0.10</td>
<td>25.00</td>
</tr>
</tbody>
</table>
09/18/18  TGT  Corresponded with Mr. Davis regarding possible affirmative claims against Newland.  0.40  120.00
09/19/18  TGT  Corresponded with Mr. Davis regarding potential claim against Newland and basis for same.  0.40  120.00
09/19/18  MGD  Phone call with Mr. McNeal regarding potential claim against Newland and basis for same.  0.20  50.00
09/20/18  TGT  Corresponded with Mr. Roethke regarding claim summaries for supervisor review.  0.20  60.00
09/21/18  MGD  Prepare and send e-mail to Mr. Gamache regarding reports for Miller, Smith, Vickers and Cirillo properties.  0.10  25.00
09/21/18  MGD  (Keener) review of 76 page insurance policy to determine whether coverage exits to cover claim.  0.60  150.00
09/21/18  MGD  (Lamardo) phone call with Burby regarding Helicon questions about potential lack of footer and strategy to resolve.  0.20  50.00
09/21/18  MGD  (Keener) receipt and review of documents to determine completeness, prepare and send e-mail to Mr. Roethke regarding same, update spreadsheet to reflect new claim.  0.20  50.00
09/22/18  MGD  Receipt and review of correspondence between Mr. Roethke and Mr. Curley regarding additional information needed for upland claims.  0.10  25.00
09/24/18  MGD  Prepare and send e-mail to Mr. Roethke regarding process for resolving claims when home is on the market.  0.10  25.00

**Total Professional Services:** 5.20  $1,405.00

**TIMEKEEPER SUMMARY**

<table>
<thead>
<tr>
<th>Person</th>
<th>Level</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TGT</td>
<td>Ty G Thompson</td>
<td>Partner</td>
<td>2.10</td>
<td>$300.00</td>
</tr>
<tr>
<td>MGD</td>
<td>Matthew G Davis</td>
<td>Partner</td>
<td>3.10</td>
<td>$250.00</td>
</tr>
</tbody>
</table>

**DISBURSEMENTS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>08/31/18</td>
<td>Legal Research</td>
<td>8.99</td>
</tr>
</tbody>
</table>

**Total Disbursements:** 8.99
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees for Professional Services</td>
<td>$1,405.00</td>
</tr>
<tr>
<td>Disbursements</td>
<td>$8.99</td>
</tr>
<tr>
<td><strong>TOTAL THIS INVOICE</strong></td>
<td><strong>$1,413.99</strong></td>
</tr>
</tbody>
</table>

Payment is Due Within 30 Days of This Invoice Date
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT  
REQUISITION FOR PAYMENT  
SUPPLEMENTAL CONSTRUCTION ACCOUNT – MASTER PROJECT INTERIM REPAIRS  

<table>
<thead>
<tr>
<th>DATE:</th>
<th>November 1, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAYEE:</td>
<td>Hecker Construction Company, Inc.</td>
</tr>
</tbody>
</table>
| ADDRESS: | 12619 US Highway 41  
Gibsonton, FL 33534 |
| REQUISITION NO.: | MP 116 |
| AMOUNT DUE: | $82,000.00 |
| FUND: | Supplemental Construction |

DESCRIPTION: Invoice # 2534 for Master Seawall Project - Section I Emergency  
The undersigned hereby certifies that obligations in the stated amount set forth above have been incurred by the District, that each disbursement set forth above is a proper charge against the Supplemental Construction Account and the sub account, if any, referenced above, that each disbursement set forth above was incurred in connection with the acquisition and the construction of the Master Project Interim Repairs (herein after the "Project") and each represents a cost of the project and has not previously been paid.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the Payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage, which the District is at the date of such certificate entitled to retain.

It is hereby represented by the undersigned that the Governing Body of the District has approved this requisition or has approved the specific contract with respect to which disbursements pursuant to this requisition are due and payable.

Attached hereto are copies of the invoice(s) from the vendor of the property acquired or services rendered with respect to which disbursement is hereby requested.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT  
CHAIRMAN or VICE-CHAIRMAN  

DISTRICT ENGINEER’S APPROVAL FOR PROJECT EXPENDITURES  
The undersigned District Engineer hereby certifies that this disbursement is for a cost of the Master Project Interim Repairs and is consistent with: (i) the applicable acquisition or construction contract; and, (ii) the plans and specifications for the portion of the Project with respect to which such disbursement is being made.

BY: GREG WOODCOCK/THOMAS BURKE, P.E.  
DISTRICT ENGINEER CARDNO, INC.
# Invoice

**Date**: 10/31/2018  
**Invoice #**: 2534

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepayment due pursuant to Section 6.02 B of the Contract between the</td>
<td>$82,000.00</td>
</tr>
</tbody>
</table>

**Total**: $82,000.00  
**Balance Due**: $82,000.00

<table>
<thead>
<tr>
<th>Phone #</th>
<th>Fax #</th>
</tr>
</thead>
<tbody>
<tr>
<td>(813) 236-9306</td>
<td>(813) 236-9358</td>
</tr>
</tbody>
</table>
Tab 24
MONTHLY SUMMARY REPORT

November, 2018
Submitted by:
Ashley Adkins, Club Manager
Holly Faldetta, Activities Director
Jen Ashley, Café Manager
Amy Gallogy, Corporate Operations Direction
## KEY STATISTICS
### AUGUST 2018

<table>
<thead>
<tr>
<th>AREA</th>
<th>ACTUAL</th>
<th>BUDGET</th>
<th>VARIANCE</th>
<th>ACTUAL YTD</th>
<th>BUDGET YTD</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenues</td>
<td>$ 44,653</td>
<td>$ 35,067</td>
<td>$ 9,351</td>
<td>$ 424,243</td>
<td>$ 377,039</td>
<td>$ 47,205</td>
</tr>
<tr>
<td>Total Cost of Goods</td>
<td>$ 12,973</td>
<td>$ 9,726</td>
<td>$ (3,246)</td>
<td>$ 114,470</td>
<td>$ 106,984</td>
<td>$ (7,488)</td>
</tr>
<tr>
<td>Total Payroll &amp; Related</td>
<td>$ 52,756</td>
<td>$ 58,937</td>
<td>$ 6,181</td>
<td>$ 597,413</td>
<td>$ 648,320</td>
<td>$ 50,908</td>
</tr>
<tr>
<td>Total Administrative / Operating Expense</td>
<td>$ 17,973</td>
<td>$ 13,715</td>
<td>$ (4,257)</td>
<td>$ 167,258</td>
<td>$ 158,595</td>
<td>$ (8,661)</td>
</tr>
<tr>
<td>Excess of Revenues Over</td>
<td>$(39,049)</td>
<td>$(47,311)</td>
<td>$ 8,262</td>
<td>$(454,898)</td>
<td>$(536,860)</td>
<td>$ 81,962</td>
</tr>
</tbody>
</table>

## KEY STATISTICS
### SEPTEMBER 2018

<table>
<thead>
<tr>
<th>AREA</th>
<th>ACTUAL</th>
<th>BUDGET</th>
<th>VARIANCE</th>
<th>ACTUAL YTD</th>
<th>BUDGET YTD</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenues</td>
<td>$ 26,284</td>
<td>$ 31,853</td>
<td>$ (5,570)</td>
<td>$ 450,527</td>
<td>$ 408,893</td>
<td>$ 41,633</td>
</tr>
<tr>
<td>Total Cost of Goods</td>
<td>$ 4,157</td>
<td>$ 9,726</td>
<td>$ 5,569</td>
<td>$ 118,628</td>
<td>$ 116,709</td>
<td>$ (1,919)</td>
</tr>
<tr>
<td>Total Payroll &amp; Related</td>
<td>$ 43,885</td>
<td>$ 58,937</td>
<td>$ 15,051</td>
<td>$ 641,299</td>
<td>$ 707,257</td>
<td>$ 65,959</td>
</tr>
<tr>
<td>Total Administrative / Operating Expense</td>
<td>$ 19,110</td>
<td>$ 14,715</td>
<td>$ (4,396)</td>
<td>$ 186,367</td>
<td>$ 173,310</td>
<td>$ (13,057)</td>
</tr>
<tr>
<td>Excess of Revenues Over</td>
<td>$(40,868)</td>
<td>$(51,525)</td>
<td>$ 10,657</td>
<td>$(495,767)</td>
<td>$(588,383)</td>
<td>$ 92,616</td>
</tr>
</tbody>
</table>
FACILITY USAGE
(Also includes Admiral Pointe)

OCTOBER 2018

- Fitness Center: 44%
- Resort Pool: 19%
- Lagoon Room: 11%
- Outfitters: 8%
- Dockers, Playground & Volley Court: 6%
- Lounge, Café & Promenade: 4%
- Pickleball: 2%
- Basketball: 1%
- Tennis: 0%
- Volleyball: 0%
- Camp: 2%
- Admiral Point: 2%
GALLEY CAFÉ BEVERAGE REPORT

% Beverage Sales

- Harvest Fest: 49%
- Wine: 14%
- Happy Hour Wine: 13%
- Liquor: 10%
- Bottled Beer: 9%

Top Sellers

<table>
<thead>
<tr>
<th>Beverage</th>
<th>Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bottled Beer</td>
<td>$302.72</td>
</tr>
<tr>
<td>Liquor</td>
<td>$317.00</td>
</tr>
<tr>
<td>Happy Hour Wine</td>
<td>$405.50</td>
</tr>
<tr>
<td>Wine</td>
<td>$434.80</td>
</tr>
<tr>
<td>Harvest Fest</td>
<td>$1,575.00</td>
</tr>
</tbody>
</table>
% Food Sales

- Sand/Wrap/Panini/Salad: 57%
- Build a Burger: 14%
- Quesadilla: 5%
- Kids Meal: 2%
- Ice Cream: 2%
- Events: 6%
- Appetizers: 4%
- French Fries/Tater Tots: 0%
- Snacks: 1%
- Flatbread: 6%

Top Sellers

- Sand/Wrap/Panini/Salad: $850.28
- Build a Burger: $208.90
- Events: $85.96
- Quesadilla: $75.14
- Pizza: $50.48
- Ice Cream: $33.14
- Kids Meal: $30.03
## GALLEY CAFÉ FINANCIAL BREAKDOWN

### SEPTEMBER 2019 *(latest from Rizzetta)*

<table>
<thead>
<tr>
<th></th>
<th>Month Actual</th>
<th>Month Budget</th>
<th>Month Variance</th>
<th>YTD Actual</th>
<th>YTD Budget</th>
<th>YTD Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food Sales</td>
<td>4,195</td>
<td>5,737</td>
<td>(1,543)</td>
<td>81,338</td>
<td>81,716</td>
<td>(378)</td>
</tr>
<tr>
<td>Beverage Sales (Alcohol)</td>
<td>2,770</td>
<td>3,750</td>
<td>(980)</td>
<td>60,274</td>
<td>58,768</td>
<td>1,506</td>
</tr>
<tr>
<td>Beverage Sales (Non-Alcoholic)</td>
<td>268</td>
<td>753</td>
<td>(485)</td>
<td>5,754</td>
<td>9,036</td>
<td>(3,282)</td>
</tr>
<tr>
<td><strong>Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td>1,858</td>
<td>6,129</td>
<td>4,271</td>
<td>76,605</td>
<td>73,546</td>
<td>(3,059)</td>
</tr>
<tr>
<td>Beverage (Alcohol)</td>
<td>1,120</td>
<td>2,933</td>
<td>1,813</td>
<td>32,449</td>
<td>35,199</td>
<td>2,750</td>
</tr>
<tr>
<td>Beverage (Non-Alcoholic)</td>
<td>288</td>
<td>626</td>
<td>338</td>
<td>8,058</td>
<td>7,514</td>
<td>(544)</td>
</tr>
</tbody>
</table>
## PROGRAMS & EVENTS – OCTOBER RECAP

<table>
<thead>
<tr>
<th>PROGRAMS &amp; EVENTS</th>
<th>REGISTRATION #’S 2017</th>
<th>REGISTRATION #’S 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afterschool Program</td>
<td>111</td>
<td>103</td>
</tr>
<tr>
<td>Fitness Buddies</td>
<td>246</td>
<td>114</td>
</tr>
<tr>
<td>Music Lessons</td>
<td>31</td>
<td>22</td>
</tr>
<tr>
<td>Victoria’s Dance</td>
<td>16</td>
<td>23</td>
</tr>
<tr>
<td>MiraBay Co-Op</td>
<td>N/A</td>
<td>80+</td>
</tr>
<tr>
<td>Friday Night Poker</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>First Friday</td>
<td>55</td>
<td>60</td>
</tr>
<tr>
<td>Sunset Sundays</td>
<td>N/A</td>
<td>35</td>
</tr>
<tr>
<td>Harvest Fest</td>
<td>300</td>
<td>350</td>
</tr>
<tr>
<td>MiraBay Market</td>
<td>45 vendors</td>
<td>55 vendors</td>
</tr>
<tr>
<td>Halloween Scavenger Hunt &amp; Movie on the Lawn</td>
<td>N/A</td>
<td>75</td>
</tr>
<tr>
<td>Birthday Happy Hour</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td>Build-a-Burger</td>
<td>38</td>
<td>24</td>
</tr>
<tr>
<td>Parent’s Night Out</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Kids Pumpkin Painting</td>
<td>N/A</td>
<td>45</td>
</tr>
<tr>
<td>Halloween Spooky Hour</td>
<td>30</td>
<td>60</td>
</tr>
</tbody>
</table>
# UPCOMING PROGRAMS & EVENTS

<table>
<thead>
<tr>
<th>UPCOMING PROGRAMS &amp; EVENTS</th>
<th>DATE(S)</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fitness Buddies</td>
<td>Monday-Friday</td>
<td>9am-12pm</td>
</tr>
<tr>
<td>Afterschool</td>
<td>Monday-Friday</td>
<td>2:30-6:30pm</td>
</tr>
<tr>
<td>Music Lessons</td>
<td>Every Tuesday &amp; Wednesday</td>
<td>Afternoons</td>
</tr>
<tr>
<td>MiraBay Co-Op</td>
<td>Every Tuesday</td>
<td>5pm</td>
</tr>
<tr>
<td>Victoria’s Dance</td>
<td>Every Wednesday</td>
<td>Evenings</td>
</tr>
<tr>
<td>Youth Yoga</td>
<td>Every Wednesday</td>
<td>2:45-3:30pm</td>
</tr>
<tr>
<td>Friday Night Poker</td>
<td>Every Friday</td>
<td>6-9pm</td>
</tr>
<tr>
<td>Soccer Shots</td>
<td>Every Monday</td>
<td>5-7pm</td>
</tr>
<tr>
<td>First Friday</td>
<td>November 2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>6-9pm</td>
</tr>
<tr>
<td>Sunset Sundays</td>
<td>Every Sunday</td>
<td>3-6pm</td>
</tr>
<tr>
<td>Fall Rummage Sale</td>
<td>November 3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>8:00am-12:00pm</td>
</tr>
<tr>
<td>Birthday Happy Hour</td>
<td>November 9&lt;sup&gt;th&lt;/sup&gt;</td>
<td>5-9pm</td>
</tr>
<tr>
<td>Build-a-Burger</td>
<td>November 16&lt;sup&gt;th&lt;/sup&gt;</td>
<td>5-8pm</td>
</tr>
<tr>
<td>Fall Wine Tasting</td>
<td>November 17&lt;sup&gt;th&lt;/sup&gt;</td>
<td>5-7pm</td>
</tr>
<tr>
<td>Pancake Breakfast with Mickey Mouse</td>
<td>November 18&lt;sup&gt;th&lt;/sup&gt;</td>
<td>9-11am</td>
</tr>
<tr>
<td>MiraBay Market</td>
<td>November 18&lt;sup&gt;th&lt;/sup&gt;</td>
<td>11am-3pm</td>
</tr>
<tr>
<td>Fall Camp</td>
<td>November 19&lt;sup&gt;th&lt;/sup&gt; - 23&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>9am-6pm</td>
</tr>
</tbody>
</table>

## Special Events

- **Sunset Sundays at Outfitters**
  - Sundays in November 3-6 pm
  - Enjoy Happy Hour Draft Beer and Wine while watching the sunset over the Harbor!

- **You’re invited to Mickey’s 90th Birthday Party**
  - Sunday, November 18th
  - 9-11am Lagoon Room

- **MiraBay Market**
  - November 18<sup>th</sup>
  - 11am-3pm

- **Fall Camp**
  - November 19<sup>th</sup> - 23<sup>rd</sup>
  - 9am-6pm

- **Fall Wine Tasting**
  - November 17<sup>th</sup>
  - 5-7pm
A great time was had by all at our Annual Harvest Festival! MiraBay families gathered on the front lawn to celebrate the Harvest season with a huge festival! Kids enjoyed rock climbing, bungee bouncing, petting zoo, warrior races, pie eating contests, hay and train rides and so much more!! Adults relaxed with seasonal specialty drinks and food trucks while listening to Green Light Go perform live!!
Operational Points of Interest:

- Ordered Christmas lights, ready to install after Thanksgiving
- 48 docks placards need to be distributed to residents
- Little response for posted ad on additional part time painter/pressure washer. Hired a temp for absence of one of our team members until January.
- Interviewing for Administrative Assistant
- Envera change order being executed - truck button at bay breeze.
- Admiral’s Pointe wall issue: Signed agreement, contractor scheduled for November
- 16 navigational water way poles needing repair
- Fountain down, motor was installed and there was a problem. Needs to get parts and they are waiting on it now.
- Tiki Huts scheduled for completion on 11/09
- Playground shades installed in Nov.
- Water spouts identified on the oak trees, need to be removed. Confirmed with Jody they are getting removed.
- LED tennis court lights in progress – Replaced all lights on one court as a test and ordered remaining lights-shipping date pending
- Clubhouse Exterior Fan Replacements- First floor fans replaced. Second floor fans scheduled to ship on Nov. 13th.
- Finalized order for rope for Clubhouse entry-Budget $3000 – Final order $673
- Boat lift inspection produced report that heavy rusting and all else in good working condition
- Acrylic work around pool – completion scheduled after the resurfacing
- Pool furniture delivery scheduled
- 2 contractors came to site visit for audio. Meeting with Canin to discuss vision on Nov. 12.
- Speaking with alternative energy specialist. Possible conversion proposal coming.
- Sprinkler at volleyball court damaged by pool crew replaced.
- Bathroom proposal for pool needs to be obtained from Cardno inspection. Still waiting on contractor to provide specs on the windows and doors to get before further engagement.
- Implementation of coding on reserve budget line items

Voids: 2 in the month of October

Vessels:

- 4 2017 vessel violations pending. 42 residences are still missing 2018 registrations. There is a total of 249 boats, 27 jet skis and 2 sail boats within the community.
2018 notice of violation will go out in November to the 42 remaining 2018 pending/missing registrations.

Gates: 15 total gate strikes for the month. Of those, 5 have the ability to be collected. The others will not receive invoices
- One was a builder contractor
- One was a Resident
- One was a secondary malfunction
- One was pizza delivery
- One was an Envera Error
- Two were Resident Guests
- Seven were unable to obtain license plate
- One is pending more information from Envera

Operations and Maintenance Report

Clubhouse:
- Playground shades scheduled for install
- Pavers phase 2 scheduled and underway
- Playgrounds mulched
- Paint agreement underway

Pool:
- Furniture delivery in November
- Pool closure scheduled for Sep. 5 – Nov. 22, reopens Nov. 23.

Basketball/Tennis Courts/Parks:
- Locks on gates were switched to the outside preventing the ability to be kicked open
- Basketball alarm installed which prevents gate to be propped open - DISABLED
- Trespassing stickers allow anyone to call non-emergency law enforcement for unwanted nonresidents removed.

Team Current Projects:
- Repair all monuments
- Replace Admiral Point Mirabay sign lights
- Replace Outfitters walkway lights
- Hide Cable Box wires in fitness center
- Install bottom bar on tennis court fence
- Fix Bar window in lounge
- Survey CDD sidewalks for repair
- Replace landscaping up lights-20 remain
- Repair pool pump house gate
- Replace dock lights-18 completed, 3 remain
- Install towel hooks in men’s shower
- Paint CDD office
- Power washing- Seacrest, playgrounds & CDD message boards
- TECO electrical efficiency inspection-pending scheduling
- Replace avenue banners on Mirabay Blvd- banners received
- Install exterior ceiling fans on Clubhouse-bottom floor complete
- Change color of fountain lights
- Install new tennis court lights- 6 complete, 26 pending
- Install nautical rope at entry
- Clean light fixtures in breezeway
- Order new column lights for breezeway/Outfitters/front of clubhouse fountain walkway
- Stripe parking lots/paint curbing
- Remove rust at Wolf Creek playground
- Lower light on tower at pool
- Repair yoga room speakers
- Secure park trash can lids-order new lid for Landing Park

**Maintenance Completed:**

<table>
<thead>
<tr>
<th>Task Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>South Gate Exit Down</td>
<td>Changed Community Message Boards</td>
</tr>
<tr>
<td>Cleaned ID Scanner at all Gates</td>
<td>Closed Pool</td>
</tr>
<tr>
<td>Met with Fence Repair Company at A/P</td>
<td>Repaired water head at Volleyball</td>
</tr>
<tr>
<td>Troubleshoot Dumbwaiter then called Service Company</td>
<td>Changed locks at Boat Launch</td>
</tr>
<tr>
<td>Clean &amp; Stripped Parking Lot</td>
<td>Hung new fans on first floor of Clubhouse</td>
</tr>
<tr>
<td>Met with Mark with ATS</td>
<td>Lock at Boat Lift</td>
</tr>
<tr>
<td>Met with Mark King with United Rentals</td>
<td>Replaced Back Light on truck</td>
</tr>
<tr>
<td>Changed timer in guard shack</td>
<td>Received trash cans for pool and stored upstairs</td>
</tr>
<tr>
<td>Cleared around no parking signs at clubhouse</td>
<td>Repaired Drain Leak in Men’s Bathroom at Admiral Point</td>
</tr>
<tr>
<td>Caulked and Taped Stairwell at Clubhouse</td>
<td>Replace Bolt at Clubhouse Playground</td>
</tr>
<tr>
<td>Worked on Pool opening list</td>
<td>Marked sidewalk on Ibisview for repair</td>
</tr>
<tr>
<td>Painted Stairwell at Clubhouse</td>
<td>Water Main Leak at Admiral Point</td>
</tr>
<tr>
<td>2 North Gates Down</td>
<td>Removed Bandit signs</td>
</tr>
<tr>
<td>Finished stairwell at Clubhouse</td>
<td>Painted Fire Extinguisher box in Gym</td>
</tr>
<tr>
<td>Test Painted Hall Bathroom</td>
<td>Cleaned ID scanners at Gates</td>
</tr>
<tr>
<td>Cleaned truck</td>
<td>Sprayed for Bees at Landing Park</td>
</tr>
<tr>
<td>Met with Envera at Basketball Court</td>
<td>Remounted Outfitters sign</td>
</tr>
<tr>
<td>Cleared gutter at Outfitters</td>
<td>2nd cost of paint in gym</td>
</tr>
<tr>
<td>Striped Clubhouse parking lot</td>
<td>Found pot hole on Manns Harbor</td>
</tr>
<tr>
<td>Chained new scoop to fence at Outfitters</td>
<td>Installed new light in Outfitters bathroom</td>
</tr>
<tr>
<td>Measured for bottom bar at Tennis Court</td>
<td>Looked into low water pressure at Admiral Point</td>
</tr>
<tr>
<td>Painted Hall Bathroom</td>
<td>Filled Pot Holes on Manns Harbor</td>
</tr>
<tr>
<td>No Power at Boat Lift</td>
<td>Water Leak in Front of Clubhouse</td>
</tr>
<tr>
<td>Toilet overflow in woman's bathroom at Admiral Point</td>
<td>Replaced towel hook in men’s bathroom</td>
</tr>
<tr>
<td>Removed mouse from Admiral Point Clubhouse</td>
<td>Put up CDD meeting sign</td>
</tr>
<tr>
<td>Looked into rust at playground</td>
<td>Swept fountain</td>
</tr>
<tr>
<td>Power washed the playground at Landing Park</td>
<td>Cleaned Gate Scanners</td>
</tr>
<tr>
<td>Re-installed No Trespass sign at Basketball Court</td>
<td>Void Inspection at 716 Islebay</td>
</tr>
<tr>
<td>Task</td>
<td>Location/Details</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Replaced lights at Tennis Courts</td>
<td>Interview for maintenance position</td>
</tr>
<tr>
<td>Measured for pool lap lanes</td>
<td>Cleaned Admiral Point showerhead</td>
</tr>
<tr>
<td>Void inspection and repairs</td>
<td>Replaced lights at Tennis Courts</td>
</tr>
<tr>
<td>Replaced lights in parking lot</td>
<td>Replaced lights pool side</td>
</tr>
<tr>
<td>Met with Jody w/ LTK about water leak—Call Plumber</td>
<td>Boat Lift repair</td>
</tr>
<tr>
<td>Replaced lights pool side</td>
<td>Work order for bare wire on café grill</td>
</tr>
<tr>
<td>Limit switch on outbound side of boat light not working</td>
<td>Reset gate at Admiral Point</td>
</tr>
<tr>
<td>Took down CDD meeting sign</td>
<td>Repaired 3 voids at 716 Islebay</td>
</tr>
<tr>
<td>Water leak at Tennis Court</td>
<td>Unclogged drain in café</td>
</tr>
<tr>
<td>Replaced lights poolside</td>
<td>North visitor gate down</td>
</tr>
<tr>
<td>Cleaned awning on east side of pool</td>
<td>Cleaned awning on west side of pool</td>
</tr>
<tr>
<td>Cleaned Clubhouse columns</td>
<td>Cleaned awnings on east side of pool-2nd time</td>
</tr>
<tr>
<td>Got left ready for return</td>
<td>Cleaned all scanners at gates</td>
</tr>
<tr>
<td>Replaced lantern light on bridge</td>
<td>Clean pool restroom floors</td>
</tr>
<tr>
<td>Trouble shoot dock lights</td>
<td>Worked on the Landing Park awning poles</td>
</tr>
<tr>
<td>Worked on Bird wire poles at Outfitters</td>
<td>Patched pothole on Mirabay Blvd</td>
</tr>
<tr>
<td>Met with Main Gate at Bay Breeze</td>
<td>Checked depth at the boat launch at the Landing</td>
</tr>
<tr>
<td>Installed latch at guard shack</td>
<td>Installed latch shield at north guard shack</td>
</tr>
<tr>
<td>Stopped water leak at Dock</td>
<td>Spoke with Drew with Main Gate regarding Bay Breeze</td>
</tr>
<tr>
<td>Fixed TV at Admiral Point</td>
<td>Changed lights at Dock</td>
</tr>
</tbody>
</table>