

TERRA LAGO

**COMMUNITY DEVELOPMENT
DISTRICT**

December 11, 2023

**BOARD OF SUPERVISORS
REGULAR MEETING AND
AUDIT COMMITTEE
MEETING AGENDA**

TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT

AGENDA
LETTER

Terra Lago Community Development District
OFFICE OF THE DISTRICT MANAGER
2300 Glades Road, Suite 410W•Boca Raton, Florida 33431
Phone: (561) 571-0010•Toll-free: (877) 276-0889•Fax: (561) 571-0013

December 4, 2023

Board of Supervisors
Terra Lago Community Development District

Dear Board Members:

The Board of Supervisors of the Terra Lago Community Development District will hold a Regular Meeting and Audit Committee Meeting on December 11, 2023 at 1:00 p.m., at Indiantown Realty, 16654 S.W. Warfield Boulevard, Indiantown, Florida 34955. The agenda is as follows:

1. Call to Order/Roll Call
2. Public Comments
3. Consideration of Standard Form of Agreement Between Owner and Design-Builder [Wastewater Treatment Plant]
4. District Engineering Services
 - A. Consideration of Termination of Engineering Services with Haley Ward, Inc.
 - B. Consideration of Resolution 2024-01, Appointing an Interim District Engineer for the Terra Lago Community Development District, Authorizing its Compensation and Providing an Effective Date
 - C. Consideration of Interim Engineering Services Agreement
 - D. Authorization of Request for Qualifications (RFQ) for Engineering Services
5. Recess Regular Meeting/Commencement of Audit Selection Committee Meeting
6. Review of Response to Request for Proposals (RFP) for Annual Audit Services
 - A. Affidavit of Publication
 - B. RFP Package
 - C. Respondents
 - I. Berger, Toombs, Elam, Gaines & Frank
 - II. Grau & Associates
 - D. Auditor Evaluation Matrix/Ranking

ATTENDEES:

Please identify yourself each time you speak to facilitate accurate transcription of meeting minutes.

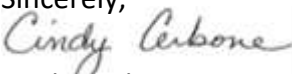
7. Termination of Audit Selection Committee Meeting/Reconvene Regular Meeting
8. Consider Recommendation of Audit Selection Committee
 - Award of Contract
9. Acceptance of Unaudited Financial Statements as of October 31, 2023
10. Approval of August 14, 2023 Public Hearing and Regular Meeting Minutes
11. Staff Reports
 - A. District Counsel: *Kutak Rock LLP*
 - B. District Engineer:
 - C. District Manager: *Wrathell, Hunt and Associates, LLC*
 - NEXT MEETING DATE: January 8, 2024 at 1:00 PM

○ QUORUM CHECK

SEAT 1	JOSH KELLAM	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 2	TOM KENNY	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 3	JASON DUGAN	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 4	DAVID POWERS	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 5	KEVIN POWERS	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO

12. Board Members' Comments/Requests
13. Public Comments
14. Adjournment

Should you have any questions or concerns, please do not hesitate to contact me directly at (561) 346-5294.

Sincerely,

 Cindy Cerbone
 District Manager

FOR BOARD MEMBERS AND STAFF TO ATTEND BY TELEPHONE
CALL-IN NUMBER: 1-888-354-0094
PARTICIPANT PASSCODE: 801 901 3513

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

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DRAFT AIA® Document A141® - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the « » day of « » in the year « 2023 »
(In words, indicate day, month and year.)

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

« TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT »« a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, as amended »
« c/o District Manager
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431
Telephone: (561) 571-0010
Email: gillyardd@whhassociates.com »
« »
« »

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

« Florida Design Drilling, LLC »« a Florida limited liability company »
« 7733 Hooper Road »
« West Palm Beach, Florida 33411 »
« Telephone: (561) 844-2967 »

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

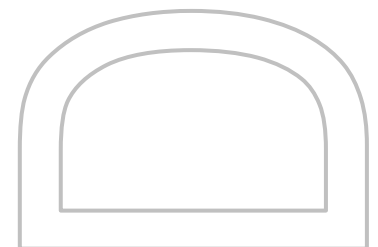
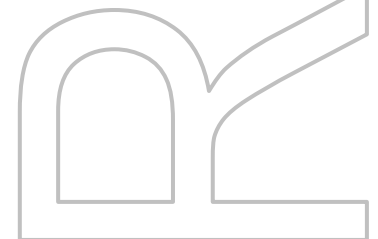
« The development of a new wastewater treatment plant (“WWTP”) and associated buildings and related site work to replace the existing plant of the Village of Indiantown, Florida, as set forth in more detail in Exhibit D»
« »
« »

The Owner and Design-Builder agree as follows.

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

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

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



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5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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7	OWNER'S RESPONSIBILITIES
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12	COPYRIGHTS AND LICENSES
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14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

Exhibit A- AIA Document A141™-2014, Design-Build Amendment, once executed

Exhibit B- AIA Document A141™-2014, Insurance and Bonds

Exhibit C- [RESERVED].

Exhibit D- Owner's Criteria, including Addendum No. 1 dated August 1, 2023

Exhibit E- Key Personnel

Exhibit F- Hourly Rates

Exhibit G- Schedule of Values- Assumptions & Design Services

Exhibit H – Project Schedule

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

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

§ 1.1.1 The Owner's program for the Project:

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

Refer to the Owner's Criteria attached hereto as Exhibit D.

« »

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

Refer to the Owner's Criteria attached hereto as Exhibit D.

« »

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

Refer to the Owner's Criteria attached hereto as Exhibit D.

« »

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

Not applicable.

« »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not applicable.

« »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Refer to the Schedule of Values, Assumptions & Design Services attached hereto as **Exhibit G**.

« »

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

.1 Design phase milestone dates:

« Refer to the Project Schedule attached hereto as Exhibit H. »

.2 Submission of Design-Builder Proposal:

« Refer to the Project Schedule attached hereto as Exhibit H. »

.3 Phased completion dates:

« Refer to the Project Schedule attached hereto as Exhibit H. »

.4 Substantial Completion date:

« All WWTP facilities operational no later than June 30, 2026. Refer to the Project Schedule attached hereto as Exhibit H. »

.5 Other milestone dates:

« Refer to the Project Schedule attached hereto as Exhibit H. »

§ 1.1.8 The Owner requires the Design-Builder to retain the Design-Builder Parties (as hereinafter defined) necessary to fully design, permit and construct the Project at the Design-Builder’s cost. All agreements between the Design-Builder and its Design-Builder Parties shall be subject to Owner’s prior written approval. As of the date of this Agreement, the parties hereto have agreed that the Design-Builder shall retain the following Architect, Consultants and Contractors at the Design-Builder’s cost:
(List name, legal status, address and other information.)

.1 Architect

« Holtz Consulting Engineers, Inc., a Florida corporation
607 SW St. Lucie Crescent, Suite 103
Stuart, Florida 34994 »

.2 Consultants

« C & W Engineering, Inc., a Florida corporation
6903 Vista Parkway N., Suite 10
West Palm Beach, Florida 33411

« Andersen Andre Consulting Engineers, a Florida corporation
834 SW Swan Avenue
Port St. Lucie, Florida 34983

« Wekiva Engineering, LLC, a Florida limited liability company
711 N. Orange Avenue, Suite A
Winter Park, Florida 32789»

.3 Contractors

« Unknown at time of execution of this Agreement. »

§ 1.1.9 Additional Owner’s Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

The owner of the Project site is the Village of Indiantown, Florida, and the Owner is responsible for completing the Project pursuant to the terms of that certain Amended and Restated Interlocal Agreement Relating to the Construction of Water Distribution and Wastewater Collection and Treatment System Project, dated August 10, 2023, as may be further amended and restated from time to time (the “Interlocal Agreement”).

« »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner’s Criteria complies with applicable federal, state, and/or local laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities and requirements of applicable utilities, including, without limitation, environmental, health, safety,



building, employment, immigration, lien laws, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements (collectively, "Applicable Laws and Requirements").

No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of FDEP and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. Design-Builder shall include this provision in all contracts issued as a result of this Agreement.

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

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

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

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

« District Engineer
Haley Ward, Inc.
Attention: Melissa Corbett, P.E.
10975 S.E. Federal Highway,
Hobe Sound, Florida 33455
Telephone: (772) 223-8850
Email: mcorbett@haleyward.com »

« »
« »
« »
« »
« »

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

« Village of Indiantown
Attention: Patrick Nolan, Public Works & Utilities Director
15516 SW Osceola Street, Suite B
Indiantown, Florida 34956
Telephone: 772-341-3098
Email: pnolan@indiantownfl.gov

Wade Vose, Esq., Village Counsel
324 W. Morse Boulevard
Winter Park, Florida 32789
Telephone: 407-645-3735
Email: wvose@indiantownfl.gov

District Counsel
Kutak Rock LLP
Attention: Tucker Mackie, Esq.

107 West College Avenue
Tallahassee, Florida 32301

District Manager
Wrathell, Hunt and Associates, LLC
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431
Telephone: (561) 571-0010
Email: gillyardd@whhassociates.com »

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

« Not applicable. »

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

« »
« »
« »
« »
« »
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

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

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

[] Arbitration pursuant to Section 14.4

[] Litigation in a court of competent jurisdiction. Each of the parties hereby (i) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Martin County (the "Applicable Courts"), (ii) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (iii) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (iv) agrees that such party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

[] Other: (Specify)

« »

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder other than as provided for in the Agreement, including, but not limited to, third-party beneficiaries and indemnitee rights.

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

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

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder and Design-Builder Parties under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials, whether in oral, written graphic, electronic, machine readable, human readable or any other form and in whatsoever medium now known or hereinafter developed, and all copies of the foregoing and all information, data and knowledge incorporating, based upon or derived from the foregoing.

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

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative. For purposes of this Agreement, the Terra Lago Community Development District is considered the Owner of the Project; provided, however, the Village is the owner of the site where the Project is to be performed. Upon acceptance of the Project, ownership of the Project will be transferred to the Village by Bill of Sale, and the Village will be solely responsible for the operation, maintenance, repair and replacement of the Project as part of the Village’s utility system.

§ 1.4.7.1 Village. The Village is the Village of Indiantown, Florida. The Village is the owner of the site where the Project is to be performed. Upon acceptance of the Project, ownership of the Project will be transferred to the Village by Bill of Sale, and the Village will be solely responsible for the operation, maintenance, repair and replacement of the Project as part of the Village’s utility system. Pursuant to the terms of the Interlocal Agreement, the Village has approved construction of the Project on the site where the Project is to be performed, and Design-Builder is granted a license for access to the site for construction of the Project. Design-Builder must coordinate access to the Project site with representatives of the Village. Design-Builder may not affect the operation of the Village’s existing utility operations on the Project site without the consent of the Village.

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

§ 1.4.8.1 Design-Builder Party or Parties. The term “Design-Builder Party” or “Design-Builder Parties” means, individually or collectively, as applicable, the Architect, Contractor, Consultant and any subcontractors, sub-subcontractors, and suppliers, materialmen, and laborers of any tier, and all of their respective employees and agents, and all other persons and entities at any time utilized by any of the foregoing in the in the performance of any aspect of the Work. As of the date of this Agreement, the Design-Builder Parties are identified in Section 1.1.8 of this Agreement.

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

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

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

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

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

§ 1.4.14 **Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. The term “business day” as used in the Design-Build Documents shall mean Monday, Tuesday, Wednesday, Thursday and Friday of each calendar week, except for legal holidays when banks in Martin County are permitted or are required to be closed.

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

§ 1.4.16 **Knowledge.** The terms “**knowledge**,” “**recognize**” and “**discover**,” their respective derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which the Design-Builder knows, recognizes or discovers in exercising the reasonable care, skill and diligence required by the Design-Build Documents. Analogously, the expression “**reasonably inferable**” and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the reasonable care, skill and diligence required of the Design-Builder by the Design-Build Documents.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

« See Hourly Rates attached hereto as **Exhibit F.** »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder Parties, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« See Hourly Rates attached hereto as **Exhibit F.** »

Individual or Position	Rate
------------------------	------

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder Parties, as follows:

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

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder Parties incurred, without markup. Notwithstanding anything herein to the contrary, the Design-Builder shall not incur any Reimbursable Expense in excess of Five Hundred Dollars (\$500) without the Owner's prior written consent.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments of undisputed amounts are due and payable 30 days after presentation of the Design-Builder's proper invoice and supporting documents. The Design-Builder will submit monthly invoices to the Owner for the fees earned in accordance with this Section 2.1 of this Agreement during such month. All such invoices shall include duly executed and notarized unconditional waivers and releases of lien for payments received, and, if requested by the Owner conditional waivers and releases of lien for payments requested, from the Design-Builder and the Design-Builder Parties, all in form and substance to acceptable to the Owner.

Pursuant to the terms of the Interlocal Agreement, within the 30-day payment window discussed above, the Owner will submit all invoices to the Village for review. Upon approval of invoices, the Village will transfer funds to the Owner and the Owner will utilize such funds to make payment to Design-Builder.

Undisputed amounts unpaid « more than thirty » (« 30 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

« one percent (1%) per month on the unpaid balance »

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two (2) years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

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

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

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

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with, and ensure that its Design-Builder Parties comply with, any applicable licensing requirements in the jurisdiction where the Project is located.

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

§ 3.1.2.1 The key members of the Design-Builder's and its Design-Builder Parties' staff ("**Key Personnel**") shall be persons agreed upon by Owner and the Design-Builder and identified in **Exhibit E** attached hereto and incorporated herein as **Exhibit E**. Such Key Personnel shall not be changed without the written consent of Owner, unless such person(s) become unable to perform any required duties due to death, disability or termination of employment with the

Design-Builder or applicable Design-Builder Party. If the Key Personnel are no longer capable of performing in this capacity, Owner and the Design-Builder shall agree on a mutually acceptable substitute.

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

§ 3.1.3.1 The Design-Builder and the Design-Builder Parties shall perform the Work in compliance with Applicable Laws and Requirements. If the Design-Builder or the Design-Builder Parties performs Work contrary to Applicable Laws and Requirements, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction and shall be responsible for payment of any and all fines, penalties and interest levied as a result of such Work.

§ 3.1.3.2 Neither the Design-Builder nor any Design-Builder Party shall be obligated to perform any act which they believe will violate any Applicable Laws and Requirements. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Project Criteria, would cause a violation of any Applicable Laws and Requirements, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Project Criteria is required to remedy the violation, the Owner and the Design-Builder shall discuss whether a Modification to this Agreement is required and, if the Owner and Design-Builder determine after such discussion that a Modification is necessary, the parties shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design-Builder, to the extent that it performs professional services, shall, and shall cause the Design-Builder Parties to, perform its services consistent with the professional skill and care ordinarily provided by similarly licensed professionals practicing in the same or similar locality under the same or similar circumstances (“**Standard of Care**”) and to review Applicable Laws and Requirements, applicable to the Design-Builder’s or the Design-Builder Parties’ services. The Design-Builder shall, and/or shall cause the Design-Builder Parties, as applicable, to conform the design of the Project and all documents prepared or furnished by the Design-Builder and the Design-Builder Parties to the Standard of Care and to all applicable requirements imposed by Applicable Laws and Requirements.

§ 3.1.3.4 The Design-Builder represents that the Design-Builder has an understanding of and expertise with projects of similar size and complexity as the Project, which understanding and expertise the Design-Builder represents to Owner and the Village will help facilitate the efficient and economical completion of the Project as compared to other design-builders, architects, engineers and contractors without such existing understanding and expertise. The Design-Builder acknowledges that Owner and the Village are relying on the Design-Builder’s representations in this regard.

§ 3.1.3.5 The Design-Builder shall be responsible for identifying any information that it needs and that is to be provided by Owner pursuant to Article 7 of this Agreement. Owner and the Village are relying on the expertise of the Design-Builder to identify the information and services the Design-Builder believes are necessary for the proper execution of the Work and the successful completion of the Project.

§ 3.1.3.6 The Design-Builder acknowledges that the Owner and the Village are relying on the Design-Builder’s skill, knowledge, experience and ability to fully perform the services and its obligations under this Agreement. Nothing in this Agreement is intended or shall be construed to require the Owner or the Village to determine the adequacy, accuracy or sufficiency of the design, the Design-Builder’s or its Design-Builder Parties’ designs, documents or services and nothing in this Agreement shall impose upon the Owner or the Village a duty to third-parties to assure that the Design-Builder Parties or others for whom they are responsible are adhering to Applicable Laws and Requirements.

§ 3.1.4 **General Consultation and Coordination.** The Design-Builder shall schedule and conduct meetings twice per month with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.4.1 The Design-Builder shall be responsible to the Owner and the Village for negligent, reckless and intentional acts and omissions of the Design-Builder Parties. The Design-Builder shall coordinate and hold at least weekly jobsite meetings with the Architect, Owner, Village and representatives of Contractors and suppliers as the Design-Builder or Owner may deem advisable, for the purpose of: (a) reviewing status of the Work, (b) the progress of the Work as compared to the most recent construction schedule, (c) responses to submittals and requests for information, (d)

proposed and pending Change Orders, (e) Applications for Payment, (f) and other items relevant to the Project. The Design-Builder shall prepare an agenda for each such meeting and deliver the agenda at least two business days in advance of the meeting and, after the meeting, shall prepare minutes of the meeting and deliver such minutes to the Owner with reasonable promptness after the meeting. Further, the Design-Builder shall send a representative, with full authority to act on behalf of and bind the Design-Builder, to the foregoing weekly and to such other meetings and conferences relating to any Work as may be requested from time to time by the Owner.

§ 3.1.5 The Design-Builder shall provide for coordination of the activities of the Design-Builder and of the Design-Builder Parties with the activities of Owner's and the Village's own forces and Owner's and the Village's separate contractors and consultants.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder Parties are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder and the Owner and the Village, who shall be expressly identified in the Design-Builder's agreements with the Design-Builder Parties as an expressed, recognized third party beneficiaries.

§ 3.1.6.1 Before engaging any Design-Builder Party not identified in Section 1.1.8. herein, the Design-Builder shall notify Owner in writing of the identity of such consultant and the portion of the services for which the Design-Builder proposes to retain such entity. The Design-Builder shall not retain a Design-Builder Party to whom Owner has made reasonable objection within 14 days after receipt of the information regarding such entity. All agreements between the Design-Builder and its Design-Builder Parties shall be subject to Owner's prior written approval. Owner and the Village shall enjoy the same benefits and rights as to the Design-Builder Parties as the Design-Builder enjoys with respect to its Design-Builder Parties and all of the Design-Builder's contracts with its Design-Builder Parties shall be in writing, signed by both parties and shall include expressly identify the Owner and the Village as third-party beneficiaries of such contract. Should the Owner terminate this Agreement, the applicable Design-Builder Party shall, upon the Owner's request, obtain assignment of those of the entity's agreement(s) with the Design-Builder elected by the Owner. Each of the Design-Builder's agreements with the Design-Builder Parties shall specifically provide that the Owner shall only be responsible to the entity for those obligations of the Design-Builder that accrue subsequent to the Owner's exercise of its right to take an assignment of such agreement. The Design-Builder shall provide to the Owner copies of all of the Design-Builder's agreements with the Design-Builder Parties. **§ 3.1.7** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary permits and approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

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

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

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.8.3 In no event shall any progress report constitute an adjustment to or modification of the Contract Time, a Milestone Date, or the Contract Sum, unless such adjustment or modification is approved by the Owner and authorized by Change Order. In addition, in no event shall any progress report or any other log, report, or schedule provided to the Owner by the Design-Builder take the place of any notice the Design-Builder is required to give to the Owner under the Design-Build Documents. If any progress report indicates any delays, the Design-Builder shall include a detailed explanation of the delay, indicate whether the delay impacts the critical path of the Work, and propose an action plan to correct the delay, including overtime and/or additional labor, if necessary.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project. The construction schedule shall be in time-scaled precedence format approved by the Owner with the critical path clearly indicated and shall indicate Float (as defined in Section 8.1.4 below) values. This schedule and all updates thereto, shall:

1. contain detail appropriate for the Project, including (i) the date of commencement of the Work, (ii) interim schedule milestone dates required by the Owner (each, a "Milestone Date"), (iii) the date of Substantial Completion, and (iv) the dates for completion of punch list work and the closeout requirements;
2. be related to the entire Project to the extent required by the Design-Build Documents;
3. provide for expeditious and practicable execution of the Work;
4. include allowances for periods of time required for the Owner's (and the Village's, as applicable) review and for approval of submissions by authorities having jurisdiction over the Project;
5. contain an apportionment of the Work by construction activity that allows their regular monitoring;
6. specify the time required for completion of each portion of the Work;
7. not exceed time limits current under the Design-Build Documents; and

8. be revised at appropriate intervals as required by the conditions of the Work and Project to accurately reflect progress achieved and any changes in the Design-Builder's planned activities.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. If as of a milestone date contained in the latest approved construction schedule, the progress of the critical path of the Work has not reached the level of completion required by the Design-Build Documents for reasons within the Design-Builder's control, the Owner may require the Design-Builder to take corrective measures necessary to expedite the progress of construction, including: (i) working additional shifts or overtime; (ii) supplying additional labor, equipment, and facilities; and (iii) other similar corrective measures. Such corrective measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Design-Builder shall not be entitled to an adjustment of the Contract Time or Contract Sum in connection with any corrective measures performed under this Section, unless – and then only to the extent – the corrective measures required by the Owner are necessitated by a wrongful act or neglect of the Owner or of a consultant or separate contractor employed by the Owner, or by an Excusable Delay. The Owner may exercise its rights under this paragraph as frequently as the Owner deems necessary to ensure that the Work complies with the construction schedule and the Design-Build Documents.

§ 3.1.9.3 The Owner may, at any time, whether or not the Design-Builder is behind schedule, accelerate the Work. If the Owner accelerates the Work and (i) the critical path of the Work is not behind schedule and (ii) the Design-Builder believes that acceleration will increase the cost of performance of the Work, the Design-Builder may submit a Change Order Request pursuant to Section 6.4.

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

§ 3.1.11 Design-Builder's Submittals

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

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

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

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

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

§ 3.1.11.6 The Design-Builder shall obtain Owner's written approval prior to substituting any materials or equipment for those specified or described in the Design-Build Documents. As conditions to approval, the Design-Builder's written request shall: (i) certify that the proposed substitute is equivalent to, or better than, the material or equipment specified in the Design-Build Documents and that the substitute shall perform the same function and achieve the same or better results as the material or equipment specified in the Design-Build Documents; (ii) provide an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change; and (iii) submit such other information as the Owner may request. No substitution of material or equipment shall change the Contract Sum or the Contract Time unless agreed to in writing by Owner. Owner shall have a reasonable time within which to evaluate a proposed substitute, and Owner may grant or withhold approval at its discretion. Owner may require the Design-Builder to furnish a performance guarantee or other surety with respect to any substitute.

§ 3.1.12 Warranty. In addition to all other warranties provided for in the Design-Build Documents or provided for by Applicable Laws and Requirements, the Design-Builder warrants to the Owner and the Village that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will be in accordance with the requirements of the Design-Build Documents. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranties given herein are not in derogation of such longer warranties as may be provided by the Design-Builder's Contractors, suppliers and the manufacturers of equipment and materials incorporated into the Project. Further, the Design-Builder's warranties will not be affected or limited by the terms of any manufacturer's warranty that has lesser terms or otherwise.

§ 3.1.12.2 The Design-Builder is responsible for ensuring that all warranties and guarantees required by the Design-Build Documents for materials, systems, equipment and work provided to and incorporated into the Work

shall be issued in the name of and for the benefit of Owner and the Village. Further, the Design-Builder hereby assigns to Owner and the Village, on a non-exclusive basis, all such warranties and guarantees. The Design-Builder shall perform the Work in such a manner so as to preserve any and all such warranties. Notwithstanding the foregoing, upon Owner's written notification to the Design-Builder of the Village's acceptance of all or a portion of the completed Work, all such warranties, approvals, and other rights of Owner relating to the applicable Work shall be assigned to the Village. Thereafter, the Village will administer and oversee any warranty work relative to such Work directly with the Design-Builder.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall obtain all permissions and licenses, and pay any royalties and license fees, required for the installation and initial operation of all materials and equipment that are either used in the Work or incorporated into the Project. Upon Substantial Completion of the Work, the Design-Builder shall grant, transfer, and assign to Owner (or the Design-Builder shall cause to be granted, transferred, and assigned to Owner) all permissions and licenses required for the installation and operation of the materials and equipment incorporated into the Project. Notwithstanding the foregoing, upon Owner's written notification to the Design-Builder of the Village's acceptance of all or a portion of the completed Work, all such permissions and licenses shall be assigned to the Village.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Owner, the Village, and the officers, directors, members, managers, consultants, contractors, agents, employees, successors and assigns of any of them (collectively, the "Indemnitees") from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Project Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Project Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner in writing. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, defend (subject to 3.1.14.4 below) and hold harmless the Indemnitees from and against any and all demands, fines, penalties, causes of action, liabilities, claims, damages, losses, costs and expenses, including but not limited to attorneys' fees and arbitration and court costs (collectively, "Indemnity Claims"), arising out of or resulting from performance of the Work, but only to the extent caused by the negligent, reckless or intentionally wrongful acts or omissions of the Design-Builder, any of the Design-Builder Parties or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. The parties hereby agree that no monetary limitation on the extent of indemnification is required for the Design-Builder's indemnifications in this Agreement to be enforceable. However, if, notwithstanding such agreement, a monetary limitation on the extent of indemnification is deemed necessary by a duly appointed arbitrator or court of competent jurisdiction to enforce the Design-Builder's indemnification obligations, the specifications for the Project shall be deemed to include a monetary limitation on the extent of the indemnification required by said provision equal to the greater of, on a per occurrence or per claim basis, as applicable: (a) the GMP or (b) the Dollar amount of the aggregate limit of all deductibles and self-insured retentions applicable to the Design-Builder's insurance policy or policies applicable to such Indemnity Claims, and the parties agree that this monetary limit bears a reasonable commercial relationship to the Contract. The parties intend that the indemnity provisions of the Design-Build Documents be construed to comply with and not violate Section 725.06 and 725.08, Florida Statutes, as applicable. To the greatest extent permitted by Applicable Laws and Requirements, the Design-Builder waives for itself and its insurers any and all claims that the indemnification obligations under the Contract violate Applicable Laws and Requirements.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Design-Builder Parties, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder's indemnity obligations shall also specifically include all fines, penalties, damages, liabilities, costs, expenses (including reasonable attorneys' and paralegals' fees and court costs), and punitive damages

(if any) arising out of, or in connection with, any (a) violation of or failure by the Design-Builder or its Design-Builder Parties or any person for whom any of them is responsible to comply with any Applicable Laws and Requirements, (b) means, methods, techniques, procedures or sequences of execution or performance of the Work, and (c) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required of the Design-Builder under the Contract, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder, the Design-Builder Parties, a subcontractor, a subconsultant, a supplier, or any person for whom any of them is responsible.

§ 3.1.14.4 To the fullest extent permitted by law, the duty of the Design-Builder to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by the Design-Builder of the tender of any Indemnity Claim from an Indemnitee which reasonably appears to be within Design-Builder's indemnification obligation. However, by proceeding to defend an Indemnity Claim, the Design-Builder shall not be deemed to have admitted to an obligation to provide indemnification and defense and the Design-Builder may provide a defense under a written reservation of rights. Such obligation to defend the Indemnitees is a separate and distinct obligation, fully severable from any other duty stated herein. The duty to defend shall apply regardless of any ultimate liability of the Design-Builder, Owner, or any of the Indemnitees. The defense provided to the Indemnitees by the Design-Builder shall be by well qualified, adequately insured and experienced legal counsel reasonably acceptable to the Owner. Notwithstanding the foregoing, the Design-Builder shall not have a duty to defend the Indemnitees against Indemnity Claims to the extent caused by the negligence of the Design-Builder Party in the rendering or failure to render professional services. The foregoing absence of the duty to defend, however, shall not preclude the Indemnitees from recovering their reasonable attorneys' fees as part of their damages to the extent such fees are incurred as a result of Indemnity Claims caused by the negligence of the Design-Builder Party in the rendering or failure to render professional services.

§ 3.1.15 Contingent Assignment of Agreements

- § 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Design-Builder Parties whose agreements are accepted for assignment; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement that accrue after the date of the assignment. The Design-Builder shall ensure that each such agreement shall specifically provide that the Owner shall only be responsible to the applicable Design-Builder Parties for those obligations of the Design-Builder that accrue subsequent to Owner's exercise of its right to take an assignment of such agreement..

§ 3.1.15.2 Intentionally deleted.

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

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

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

§ 4.1 General

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

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

§ 4.1.3 The Design-Builder shall, and shall cause the Design-Builder Parties to use reasonable diligence to, evaluate and satisfy themselves as to the condition and limitations under which the Work is to be performed, including (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) anticipated labor supply and costs, and (3) availability and cost of materials, tools and equipment.

§ 4.1.3 The Owner shall provide the Village an opportunity to participate in meetings with the Design-Builder prior to execution of the Design-Build Amendment and an opportunity to review reports or other information submitted by the Design-Builder to the Owner. The Village's participation therein or review thereof is not required in order for the Owner to provide written consents contemplated under this Article 4, however, the Village shall be provided such opportunities to participate or review if so desired.

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

«TBD »

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

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

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

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

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the Project site and become familiar with local conditions under which the Work is to be completed, correlated personal observations with requirements of the Design-Build Documents, and evaluated and satisfied itself as to the condition and limitations under which the Work is to be performed, including: (a) the location, condition, layout and nature of the Project site and surrounding areas, including conditions bearing upon ingress to and egress from the Project site, delivery, handling and storage of materials, disposal of waste, availability of water and electric power, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface conditions and materials to be encountered, and the character of equipment and facilities needed prior to and during the execution of the Work; (b) generally prevailing climatic conditions, (c) anticipated labor supply and costs, and (d) availability and cost of materials, tools and equipment.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement; provided, however, if the Owner and Design-Builder do not agree on a proposal, the Owner may reject the proposal, terminate the Project, or obtain bids from other contractors and proceed to construct the Project using a party or parties other than the Design-Builder.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. The Construction Documents shall fully indicate the requirements for construction of the Work and be sufficient to obtain all required necessary permits and approvals and the Design-Builder shall be responsible for obtaining all relevant permits and approvals for the Project.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's approval and to the Village for the Village's information. If the Owner or the Village discover any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.3 Upon Owner's approval of the Construction Documents, the Design-Builder shall submit the Construction Documents for review and approval by the permitting authorities. Any changes required by the permitting authorities to obtain approval of the Construction Documents and building permits for the Project shall be made by the Design-Builder without additional charge to Owner.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

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

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

§ 5.2.5 The Design-Builder shall locate prior to performing any Work all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, and pipes. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Design-Builder or any Contractor to comply with the requirements of this Section 5.2.5.

§ 5.2.6 Owner shall not be responsible for the accuracy or completeness of information and data shown or indicated in the Design-Build Documents with respect to existing underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems (collectively, "Underground Facilities") at or contiguous to the Project site. The Design-Builder shall have full responsibility for: (a) reviewing and checking all such information and data; (b) locating all Underground Facilities; (c) coordination of the Work with the owner of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work. If an Underground Facility is uncovered or revealed at or contiguous to the Project site which was not previously identified and accounted for by the Design-Builder, the Design-Builder shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency that threatens imminent damage to property or injury or death to person), identify the owner of such Underground Facility and give written notice to Owner and Village.

§ 5.2.7 The Design-Builder shall be responsible for laying out the site Work, shall protect and preserve reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. The 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.

§ 5.2.8 The Design-Builder shall be responsible for assuring that fill on the Project site shall consist of well to moderately-well graded soils consistent with the approved Construction Documents and acceptable to the civil engineer of record for the Project, consisting of sands, silts, non-plastic clays and gravel and shall be free from detrimental quantities of debris, muck, peat, roots, grass, leaves, humus, sewage and other organic material, clods, lumps, balls of clay, rocks, trees, stumps, branches, twigs, limbs, trash, refuse, development debris, non-plastic soils and frozen materials (collectively, "Unsuitable Materials") in accordance with the instructions of the civil engineer of record for the Project. The Design-Builder shall remove all Unsuitable Materials and deposit them in areas specified by Owner. The Design-Builder shall compact all fill areas within the Project site as necessary in order to comply with the structural requirements set forth in the approved Construction Documents. The Design-Builder shall abide by recommendations in the geotechnical report for the Project site provided by Owner or the civil engineer of record for the Project to the Design-Builder unless otherwise specified in the approved Construction Documents or instructed in writing by the civil engineer of record for the Project.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

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

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

§ 5.3.4 The Design-Builder shall comply with all Applicable Laws and Requirements pertaining to the employment of labor, hours of labor, occupational safety and health requirements, working conditions, worker's compensation, payment of wages, and payment of taxes, including unemployment, social security and other payroll taxes, including applicable contributions from such persons. The Design-Builder shall provide reasonable evidence to Owner upon Owner's request to substantiate the Design-Builder's compliance with this Section 5.3.4.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

§ 5.5.2 The Design-Builder shall comply with and give notices required by Applicable Laws and Requirements.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or other information provided to, or made available to, Design-Builder or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide a Change Order Request to the Owner in accordance with Section 6.4 before conditions are disturbed and in no event later than fifteen (15) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and could not have been discovered through a reasonably careful visual inspection of the Project site as of the date of this Agreement and they cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, Owner shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the Project site are not materially different from those indicated in the Design-Build Documents or could reasonably have been discovered and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Section 6.4.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, if the Owner desires to proceed with the Project, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Section 6.4.

§ 5.6 Allowances

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

reasonable objection. For the avoidance of doubt, allowances shall be stated in such detail as required by the Owner to show how or for what the allowance amounts are designated. Further, allowances shall be shown as separate line items in the schedule of values and shall not be included in other line items.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

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

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

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection. Notwithstanding the foregoing, the Owner shall have the right to approve the Project Manager and Superintendent. Once approved by Owner, neither the Project Manager nor the Superintendent may be changed without Owner's prior written consent unless required by termination of employment, death or disability. However, any successor Project Manager or Superintendent must be approved by Owner in writing. If, in the opinion of Owner, the Design-Builder's Project Manager, Superintendent, any other personnel of the Design-Builder or Contractors, or any laborers by whomever employed, are not qualified to supervise or perform work considered as first class quality for the area, or do not conduct themselves in a proper manner, or are interfering with the operations of any facility on or adjacent on the Project site, the Design-Builder shall cause such persons(s) to be replaced with qualified personnel immediately upon written notice from Owner, without any additional cost to Owner and without extension of the Contract Time. Neither Owner's rights herein nor Owner's exercise or failure to exercise such rights shall relieve the Design-Builder of the obligations to select, assign, and supervise competent and qualified personnel or otherwise make Owner responsible for original or replacement personnel.

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

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

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

§ 5.8 Documents and Submittals at the Project Site

The Design-Builder shall maintain at the Project site (a) one (1) record copy of the current set of the Construction Documents (“**Record Drawings**”), and (b) one (1) record copy of the Design-Build Documents, including without limitation, Specifications, Change Orders and other Modifications to the Design-Build Documents, addenda, requests for information, bulletins, approved Submittals and a log of such Submittals, permits, inspection reports, test results, daily reports, field notes, accident reports, schedules, contracts, subcontracts, purchase orders, and other written agreements with any parties relating to the Project (collectively, “**Record Documents**”), in good order. The Record Drawings shall be prepared and continuously updated during the prosecution of the Work but no less than once per month. The prints for Record Drawings will be a set of permit drawings. The Design-Builder shall maintain said set in good order and shall use a method acceptable to Owner to mark-up said set with "record information" in a legible manner to show: (a) field changes and selections made during construction, (b) deviations from the Construction Documents made during construction, (c) details in the Work not previously shown, (d) changes to existing conditions or existing conditions found to differ from those shown on any existing Construction Documents, and (e) such other information as either Owner or the Architect may reasonably request (collectively, “**Updated Information**”). The Design-Builder’s obligation to make Record Drawings and Record Documents, updated with current Project information, available for inspection by Owner, its consultants, and the Design-Builder Parties, shall be a condition precedent to Owner’s duty to process payment applications. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. If the Record Drawings are lost or destroyed, the Design-Builder must promptly recreate and replace the Record Drawings through the date of loss or destruction, at Design-Builder’s cost.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the Project site to areas permitted by Applicable Laws and Requirements and the Design-Build Documents, and shall not unreasonably encumber the Project site with materials or equipment. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 5.9.2 Without limitation of any other provision of the Design-Build Documents, the Design-Builder shall use commercially reasonable efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project site and (ii) the Project in the event of partial occupancy, as more specifically described in Section 9.9.

§ 5.9.3 Without prior approval of the Village, the Design-Builder shall not permit any workers to use any existing facilities at the Project site, including lavatories, toilets, entrances, and parking areas other than those designated by the Village.

§ 5.9.4 If any Work is to be performed on or around finished work, the Design-Builder shall provide appropriate protection for the finished work to protect it from any of the Work.

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

The Design-Builder shall provide the Owner, the Village, and their separate contractors and consultants or designees access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner

regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the Project site.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the Project site. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder may submit a Change Order Request in accordance with Section 6.4.

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

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

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

§ 5.14 Mutual Responsibility

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

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

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.1.4 The Design-Builder shall provide a copy of any Change Order Requests to the Village for review in the same manner as provided to the Owner hereunder; provided, however, the Owner shall be the party ultimately responsible for approving or rejecting such instruments. The Owner shall consult the Village on any Change Order Requests received by the Village and on any Change Directives prior to submittal to the Design-Builder.

§ 6.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 The Design-Builder shall submit with any request for a Change Order a calculation of the costs the Design-Builder estimates are associated with such Change Order Request, including unit costs, and such other information as reasonably requested by Owner. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and Contract Time. Except as permitted in Section 6.3, and Section 9.7.2, a change in the Contract Sum or Contract Time shall be accomplished only by a Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner or the Village has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Design-Build Documents or a change in any time period provided in the Design-Build Documents.

§ 6.2.3 Notwithstanding the foregoing, the Design-Builder acknowledges that Owner shall not enter into or approve the following Change Orders without the prior written approval by the Village: (i) Change Orders that result in a material deviation from the scope of the project as set forth in **Exhibit D- Owner's Criteria**; (ii) Change Orders that present a material risk to public safety; (iii) Change Orders that change the material functional elements of the Facility (e.g. access, layout and circulation); or (iv) Change Orders that are likely to materially increase capital maintenance and repairs for the Facility.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and promptly advise the Owner in writing of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

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

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective

immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.4 Design-Builder Initiated Change Order Request

§ 6.4.1 If the Design-Builder becomes aware of any circumstance that may change the scope of the Work, or of an act or failure to act by the Owner or Owner's other consultants, that in the Design-Builder's opinion justifies a change to the Contract Sum or Contract Time, or if the Design-Builder otherwise becomes aware of the need for or desirability of a change in the Work, then the Design-Builder must within ten (10) business days submit a written Notice of Change Order Request (a "**Change Order Request**") to Owner in a format acceptable to Owner and must specify in such Change Order Request the reasons for such proposed change and the anticipated time and cost impacts. The Design-Builder shall submit a written summary (the "**Change Order Summary**") which shall include a more detailed description of the changed Work, an estimated price for such changed Work and estimated adjustment to the Contract Time related to such changed Work, together with any substantiating data required by Sections 6.2, 6.4.2 and 6.4.3, or otherwise required by Owner, within ten (10) business days after delivery of the Change Order Request. The Design-Builder shall clearly label Change Order Requests and Change Order Summaries as such when submitting them to Owner. Any Change Order Request that is approved by Owner will be incorporated in a Change Order. If Owner determines that the Work in question is not a change in the scope of the Work and the Change Order Request is denied but the Design-Builder believes that it does have merit, the Design-Builder may submit a Claim in accordance with the procedures set forth herein. The time frames in this Section 6.4 shall control over those specified in Article 14. Further, notwithstanding anything herein to the contrary, the Design-Builder must comply with the provisions of this Section 6.4 as a condition to entitlement to any Claim for an increase in the Contract Time or Contract Sum.

§ 6.4.2 Requests for Additional Cost. If the Design-Builder intends to submit a Change Order Request for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Change Order Request. When not possible under the circumstances, prior notice is not required for requests relating to an emergency imminently endangering life or property arising under Section 10.4, but the Design-Builder shall give notice as soon as reasonably practicable. Owner may review and audit the Design-Builder's Project records, as well as the books and records of its Design-Builder Parties and subcontractors, to verify the accuracy of any Change Order Request by the Design-Builder. Notwithstanding anything in this Agreement or the other Design-Build Documents to the contrary, in no event shall the Design-Builder be entitled to any compensation or recovery from Owner for special, punitive, indirect, incidental, or consequential damages, including loss of bond capacity, loss of bidding opportunities, insolvency, lost opportunity costs, impact costs, lost profit, loss of productivity, inefficiency costs, termination expenses, home-office overhead, or claims preparation expenses, all of which are hereby expressly waived by the Design-Builder. The costs to the Design-Builder of preparing and negotiating Change Order Requests, Change Order Summaries, and Claims shall not be reimbursable under the Contract.

§ 6.4.3 Requests for Additional Time

§ 6.4.3.1 If the Design-Builder wishes to make a request for an increase in the Contract Time, notice as provided in Section 6.4.1 shall be given. The Design-Builder's Change Order Request shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Change Order Request is necessary. Further, with requests for additional time, the Design-Builder shall submit all of the following, without limitation of other requirements under the Contract: (a) the Design-Builder's Change Order Request and Change Order Summary per Section 6.4.1; (b) the approved, as planned construction schedule in accordance with Section 3.1.9; (c) identification and explanation of the basis for (i) the duration start and finish dates of each impacted activity, (ii) the successor and predecessor events affected in the construction schedule, and (iii) the duration of any lead/lags inserted into the construction schedule and the duration-related activity duration; and (d) a mark-up construction schedule indicating the causes responsible for changes between the as-planned and as-built schedule and establishing the required cause and effect relationships. In the case of an acceleration Change Order Request in connection with the exercise of Owner's rights to require the Design-Builder to accelerate performance of the Work for which the Design-Builder is entitled to an increase in the Contract Sum pursuant to Section 3.1.9.3, the Design-Builder also shall submit other documentation for typical acceleration consequences, including comparison of anticipated manpower, equipment and material utilization, increased levels of manpower/overtime, and duplicated sets of equipment or materials, indicating the acceleration that occurred. A detailed explanation of how the planned manpower/equipment levels could have achieved the planned schedule and a comparison of the levels actually consumed in performing the work must be included in the Change Order Request.

§ 6.4.3.2 If adverse weather conditions are the basis for a Change Order Request for additional time, such Change

Order Request shall be documented by data substantiating that weather conditions were abnormal for the period of time and had an adverse effect on the critical path of the scheduled construction. Only unusual or severe weather conditions for the time of year will be considered as a potential justification for a delay in the completion of the Work and the Design-Builder agrees that an extension of time will only be granted for actual days lost due to adverse weather conditions that are in excess of the normal days lost due to inclement for the given period, and then only if the excessive actual days lost due to adverse weather conditions negatively impact the critical path of the Work. No extension will be requested for days of adverse weather conditions occurring after the building or buildings are enclosed, unless the exterior site work remains on the critical path to construction completion.

§ 6.4.3.3 Change Order Requests for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Change Order Request, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the critical path progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Design-Builder shall provide such supporting documentation as Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Change Order Request.

§ 6.4.3.4 The Design-Builder shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work.

§ 6.5 Owner Initiated Change Order Request

Owner may issue a request, in writing, to the Design-Builder, describing a proposed change to the Work and requesting the Design-Builder submit an itemized proposal in a format acceptable to Owner within fifteen (15) business days after Owner issues the request. The Design-Builder's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and the Design-Builder's proposed methods to minimize costs, delay and disruption to the performance of the Work. If the Design-Builder fails to submit a written proposal or request additional time for submitting the proposal within the 15-business day time period, then Owner may send a subsequent written notice to the Design-Builder requesting the Design-Builder's proposal. If the Design-Builder fails to submit a written proposal or request for additional time for submitting the proposal within five business days after receipt of such subsequent written notice, it shall be presumed that the change described in Owner's request for a proposed change will not result in a modification to the Contract Sum or Contract Time and the change shall be performed by the Design-Builder without additional compensation. Owner's request for a proposed change does not authorize the Design-Builder to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change shall be performed, the Work shall be authorized according to the Change Order procedures set forth above.

§ 6.5 Design-Builder's Good Faith Review of Requests For Changes

The Design-Builder shall make a good faith determination of the validity of the nature and amount of changes requested by the Design-Builder Parties before passing through such requests to Owner. It is the Design-Builder's responsibility to check all such requests for correctness, completeness, detail and fairness before submitting them to Owner.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

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

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the

Project site. Upon receipt of a written request from the Design-Builder that substantiates the need to Owner's satisfaction, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the Project site of the Project, and a legal description of the Project site under the Owner's or Village's control.

§ 7.2.3 The Owner shall use commercially reasonable efforts to promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

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

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

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder; provided, however, nothing in this Agreement is intended or shall be construed to require Owner to determine the adequacy, accuracy, or sufficiency of the Design-Builder's or its Design-Builder Parties' designs, documents or services, and Owner's failure to give prompt written notice does not relieve the Design-Builder's obligations to cure any such fault or defect in the Work on non-conformity with the Design-Build Documents.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

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

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

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The

Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 7.4 Visits to the Project site by the Owner or the Village shall not be construed to create an obligation on the part of the Owner or the Village to make on-site inspections to check the quality or quantity of the Work. The Owner or the Village shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder or the Design-Builder Parties, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder, including but not limited to the construction means and methods, techniques, sequences or procedures of the Design-Builder or the Design-Builder Parties, or for the safety precautions and programs in connection with the Work.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, a Design-Builder Party or any other persons or entities performing portions of the Work for the Design-Builder.

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

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

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner, or within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.1.4 In performing any critical path method (CPM) analysis relating to the Work, float or slack time (“**Float**”) associated with one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as described in the approved schedule for the Work, including any revisions or updates to the schedule. The Project owns the Float, which means Float is not for the exclusive use of any of the parties and it serves whoever needs it first as long as it is used in good faith.

§ 8.2 Delays and Extensions of Time

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

§ 8.2.2 Requests for extension of time shall be made in accordance with applicable provisions of Section 6.4.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Design-Builder shall submit an updated schedule of values to Owner with each Application for Payment, subject to Owner’s review and written approval, to reflect all approved Change Orders which may have been issued by Owner during the period covered by the current Application for Payment. The original schedule of values and each update thereto shall (a) show any compensation for design services separately, (b) include the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment, the scheduled value of each portion of the Work, the balance required to finish each portion of the Work, the amount retained with respect to each portion of the Work, and such other information as Owner deems necessary, and (c) be supported by such data to substantiate its accuracy as Owner may require. The most recent schedule of values approved by Owner shall be used as a basis for reviewing the Design-Builder’s Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At the time established in the Design-Build Documents, including the Design-Build Amendment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work, together with all required supporting documentation and information. The application shall be notarized, if required, and supported by data substantiating the Design-Builder’s right to payment as the Owner may require, such as copies of requisitions from Design-Builder Parties and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

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

§ 9.3.1.3 As an express condition precedent to Owner’s obligation to make any progress payment to the Design-Builder, each Application for Payment shall be accompanied by the following, all in form and substance

satisfactory to Owner and in compliance with applicable statutes of the State where the Project is located:

- .1 A fully-completed and duly-executed and notarized Application for Payment using AIA Documents G702 and G703, or such other form as is approved by Owner, based on the then current approved Schedule of Values together with such detail and backup as Owner deems necessary, including but not limited to current cash flow projections;
- .2 A duly-executed and notarized unconditional waiver and release of lien and bond claims from the Design-Builder and every "Lienor" (as defined in Section 713.01(18), *Florida Statutes*) who has performed work or provided labor, services, equipment or materials to the Project, effective through the last date Owner has paid the Design-Builder;
- .3 A duly-executed and notarized waiver and release of lien and bond claims from the Design-Builder and every Lienor who has performed work or provided labor, services or materials to the Project, effective through the date of the Design-Builder's current Application for Payment to be paid (which may be conditioned upon receipt of payment of the amount specified in the partial release of lien and bond claims if allowed by Owner in its sole discretion);
- .4 Copies of the Design-Builder Parties' invoice, draw request or application for payment for which payment is requested;
- .5 [RESERVED.]
- .6 An updated, current construction schedule, monthly progress report, and accident reports for any accidents occurring during the current pay period;
- .7 All new Change Orders executed since the last progress payment, if any, and the Change Order Log, including a list of any Change Orders contemplated or under negotiation at the date of such payment request, if any;
- .8 An updated submittal log;
- .9 An updated log of all notices to owner, claims against bond and other bond-related notices received by Contractor;
- .10 All required evidence of insurance required by the Design-Build Documents to the extent not previously provided;
- .11 Delivery tickets and/or other documents establishing that all materials, equipment and other personal property not yet incorporated into the Project but for which payment is sought are then situated on the Project site and secured in a manner acceptable to Owner;
- .12 For the final draw, (a) all as-built drawings and an as-built survey for the Work, prepared in accordance with ALTA-ACSM standards by a properly licensed surveyor showing the location of all improvements constructed on the Project site and showing the location of all water, sewer, gas and electric lines and mains and all existing utility easements as may be more particularly described in the site plan set for the Project, (B) a written certification from a licensed geotechnical engineer that all controlled fills placed on the Project site has been properly placed in accordance with the Construction Documents and Applicable Laws and Requirements, if applicable, and (C) copies of all soil reports, compaction reports and tests performed by or obtained by the Design-Builder with respect to the Project site; and
- .13 [RESERVED.]

§ 9.3.1.4 Each Application for Payment shall constitute a certification and representation by the Design-Builder to Owner that: (i) the Work has progressed to the point indicated; (ii) the quality of the Work covered by the Application is in accordance with the Design-Build Documents; (iii) such Application for Payment represents a just estimate of cost reimbursable to the Design-Builder under the terms of the Design-Build Documents and the Design-Builder is entitled to payment in the amount requested; and (iv) such Application for Payment has not been front-end-loaded by the Design-Builder (including placing a value on a line item that is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the Owner in writing, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project site for such materials and equipment stored off the Project site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which payment has been previously issued by, and received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Design-Builder Parties, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work. The Design-Builder acknowledges and agrees that upon completion of all or a portion of the Work, Owner will convey such completed portions to the Village for perpetual ownership, operation, and maintenance.

§ 9.3.4 Provided that Owner has paid to the Design-Builder undisputed amounts due to the Design-Builder, the Design-Builder shall defend, indemnify and hold the Indemnitees harmless against any liens or claims of lien from the Work and shall pay any judgment or lien resulting from any such actions, lawsuits, or proceedings. If any lien or liens are claimed on the Village's property by any person as a result of the Work and provided that Owner has paid the undisputed sum due, the Design-Builder, without limitation of any other obligations, such as obligations of the surety under any applicable payment bonds, shall cause the lien or liens to be satisfied or transferred to other security in accordance with Applicable Laws and Requirements. If the Design-Builder fails to do so within seven days after receiving notice of such lien or claim of lien, Owner may take such action as it deems advisable to protect itself from such lien or claim of lien and the Design-Builder shall pay to Owner the amounts incurred by Owner, including reasonable attorneys' fees and paralegal fees, in taking such protective action. Notwithstanding the foregoing, Design-Builder agrees that the Village is the owner of the Project site and Owner is the owner of the Project, and that both the Village and the Owner are units of local government and not an "Owner" as defined in Section 713.01(24), *Florida Statutes*. Therefore, as against Owner or Village's property, there are no lien rights available to any person providing materials or services for improvements in connection with the project. Contractor shall notify any subcontractors, material suppliers or others claiming interest in the work of the existence of the Payment and Performance Bonds.

§ 9.4 Certificates for Payment

The Owner shall, within twenty (20) business days after receipt of the Design-Builder's Application for Payment and all required supporting information and documentation, issue to the Design-Builder written notification indicating the amount the Owner determines is properly due, and notifying the Design-Builder in writing of the Owner's reasons for withholding payment in whole or in part as provided in Section 9.5.1.

If a dispute between the Design-Builder and the Owner arises concerning an Application for Payment, the dispute must be resolved in accordance with the Design-Build Documents and Section 218.76, *Florida Statutes*.

§ 9.5 Decisions to Withhold Payment

§ 9.5.1 The Owner may withhold payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner disagrees with the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will issue payment for the amount that the Owner deems to be due and owing within the time for making payment hereunder. The Owner may also withhold payment or, because of subsequently discovered evidence, may recover from the Design-Builder or offset for payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

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

§ 9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld provided that all other conditions precedent to payment have been satisfied. No interest shall be payable to the Design-Builder for amounts withheld pursuant to Section 9.5.1 unless required pursuant to Chapter 218, *Florida Statutes*.

§ 9.5.3 If the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Design-Builder Parties, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered upon five days prior written notice to the Design-Builder. However, so long as an absolute and unconditional payment bond meeting the requirements of Section 255.05, *Florida Statutes*, is in full force and effect and has been properly recorded, Owner will not issue such joint checks to anyone with whom the Design-Builder has a bona fide dispute as to entitlement to such payment if the Design-Builder has notified Owner in writing of such dispute and requested Owner not to issue a joint check prior to Owner's issuance of such joint check. If Owner makes payments by joint check, such amount shall be credited against any payment due to the Design-Builder, Owner shall be relieved and released from the obligation to make such payment to the Design-Builder, and the Design-Builder shall reflect such payment on its next Application for Payment. Notwithstanding the foregoing, in no event shall Owner have, or be deemed to have, an obligation to pay or confirm payment to the Design-Builder Parties or any other person other than the Design-Builder, or to issue any joint checks or direct payments. Owner's reserved right to issue joint checks shall not be construed as imposing any obligation upon Owner to do so. Owner's exercise of its right to make payment by joint check to particular contractors or suppliers shall not be construed as imposing any obligation upon Owner to make such payments to other contractors or suppliers. Owner's exercise of its right to make payments by joint check to some or all contractors or suppliers during particular pay periods shall not be construed as imposing any obligation upon Owner to make such payments to such contractors or suppliers for other pay periods.

§ 9.6 Progress Payments

§ 9.6.1 The Owner shall make payment of undisputed amounts due in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Design-Build Party and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Design-Builder Party and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Design-Builder Party or other person or entity. The Design-Builder shall, by appropriate agreement with each Design-Builder Party and other person or entity providing services or work for the Design-Builder, require each Design-Builder Party and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Design-Builder Parties or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Design-Builder Party or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Design-Builder Parties or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the Design-Builder Parties to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A progress payment, final payment or partial or entire use or occupancy of the Project by the Owner or the Village shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Design-Builder Parties and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Design-Builder Parties or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not issue a payment of an undisputed amount due, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable documented costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.2 If Owner is entitled to reimbursement or payment from the Design-Builder pursuant to the Contract, such payment shall be made within fifteen (15) days after Owner's written demand (unless a different time for such payment is expressly provided for in the Contract). Notwithstanding anything in the Contract to the contrary, if the Design-Builder fails to timely make any payment due to Owner or if Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, Owner shall have the right to offset such amount against the Contract Sum and may elect either to: (a) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due the Contractor from Owner, or (b) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can lawfully occupy or utilize the Work for its intended use; provided, however, to the extent a temporary certificate of occupancy or its jurisdictional equivalent is applicable to the Project, Substantial Completion may not be deemed to have been achieved earlier than the date of issuance of such certificate. Further, in the case of a temporary certificate of occupancy, any conditions to the issuance of a final certificate of occupancy that are within the Design-Builder's scope of Work to complete are limited to "Punch List" (as hereinafter defined) items that Owner agrees can be included in the list items to be completed or corrected prior to final payment pursuant to Section 9.8.2 below. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8, which may occur in phases as determined by Owner.

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

§ 9.8.3 Upon receipt of the Design-Builder's Punch List, the Owner and the Village shall make an inspection to determine whether the Work or designated portion thereof is substantially complete (the "Substantial Completion Inspection"). If the Substantial Completion Inspection discloses any item, whether or not included on the Design-Builder's Punch List, which is not sufficiently complete in accordance with the Design-Build Documents so that the Village can lawfully occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for an additional Substantial Completion Inspection to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the Punch List accompanying the Certificate and an estimated cost to complete each item on the Punch List.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof as and if required by the Design-Build Amendment; provided, however, procedures for withholding and releasing retainage payments shall be in accordance with Florida law, including sections 218.735 and 255.078, Florida Statutes, as amended. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. Further, upon determining that the Work is substantially complete, the Owner is entitled to continue to retain an amount equal to one hundred-fifty percent (150%) of the estimated cost to complete the Punch List items until final completion of the Work and final payment therefor.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.9.4 Notwithstanding the foregoing, nothing in this Section 9.9 shall be construed as requiring Owner or the Design-Builder to consent to the Village's partial occupancy or use of any completed or partially completed portion of the Work.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 At least thirty (30) days after the date of Substantial Completion and upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Village and the Owner will promptly make such inspection. When the Village and the Owner find the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, issue final payment in accordance with the Contract. Warranties required by the Design-Build Documents shall commence on the date of final completion of the Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) a final Application for Payment, (2) a duly executed and notarized final payment affidavit affirming, amongst other things, that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (3) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (4) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (5) consent of surety, if any, to final payment, (6) Record Drawings and Record Documents in the form required by Section 5.8, (7) manufacturer's warranties, product data, and maintenance and

operations manuals, (8) final inspection reports, permits and temporary and final certificates of occupancy, (9) duly executed and notarized waiver and final release of lien and bond claims from the Design-Builder and the applicable Design-Builder Parties that have provided labor, services or materials, (10) a complete list of Contractors and suppliers on the Project, including addresses and telephone numbers, (11) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (12) such other information, documentation, and materials as Owner or the Village may reasonably require. If a Design-Build Party or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 audits performed by Owner, if permitted by the Contract, after final payment;
- .5 the Design-Builder's indemnifications made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, that survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Design-Builder as provided in Section 15.10.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

Design-Builder and its employees, agents, and subcontractors shall comply with any security and safety requirements and processes, if provided by FDEP, for work done at the Project site.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the Design-Builder, the Design-Builder Parties, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the Project site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Design-Builder Parties, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss caused by acts or omissions of the Owner, or anyone employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder or anyone for whose acts or omissions the Design-Builder may be responsible or liable. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

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

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder's written notice, if the Owner intends to have the Design-Builder proceed with the Work in the affected area, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional direct costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Village and the Owner (without waiving the provisions of Section 768.28, *Florida Statutes*) shall indemnify and hold harmless the Design-Builder, the Design-Builder Parties, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to

attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner and the Village shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the Project site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct site any Work that the Owner or the Village rejects as unsound or improper or in any way fail to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed, within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property or, otherwise, within seven days of receipt of notice from the Owner. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice to do so unless the Owner or the Village, as applicable, has previously given the Design-Builder a written acceptance of such condition. The Owner or the Village, as applicable, shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner or the Village, respectively, fail to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, such entity waives the rights to require correction by the Design-Builder and to make a claim for correction pursuant to this Section 11.2.2. If the Design-Builder fails to

commence correction of nonconforming Work within ten days after receipt of notice from the Owner or the Village and thereafter diligently prosecute such correction to completion, the Owner or the Village, as applicable, may correct it in accordance with Section 7.9.

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

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

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

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work. The time in which Owner and Village may enforce warranties under this Agreement is not limited by the two-year period for correction of Work and is limited only by Applicable Laws and Requirements restricting actions to enforce such rights.

§ 11.2.6 Notwithstanding anything in this Section 11.2, the Design-Builder acknowledges and agrees that upon completion of all or a portion of the Work, Owner will convey such completed portions to the Village for perpetual ownership, operation, and maintenance and that upon such final acceptance and acquisition by the Village that the Village shall have the right and obligation to pursue any available warranty rights of Village hereunder in its stead.

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, the Design-Builder Parties, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder, the Design-Builder Parties, and any other person or entity providing services or work for any of them.

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

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner and the Village a perpetual, irrevocable and non-exclusive license to reproduce and use the Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project. The license granted under this section permits the Owner and the Village to authorize its own current and future consultants and contractors to reproduce and use applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The

license granted to the Owner and the Village hereunder shall not be affected in any way by the suspension, termination or breach of this Agreement or any dispute between Owner and the Design-Builder (provided, however, nothing in this Section 12.3 shall affect any of the Design-Builder's other rights and remedies provided for in this Agreement).

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Design-Builder Parties that will allow the Design-Builder to satisfy its obligations under this Article 12 to grant to the Owner and the Village a perpetual, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.

§ 12.3.2 In addition to hard copies, the Design-Builder shall deliver to the Owner with each submittal to Owner or at such other times as Owner may request, in a medium approved by Owner in its sole discretion, a digital copy of: (a) the most recent Instruments of Service, including the Drawings and Specifications prepared by the Design-Builder and its Consultants and Contractors, and (b) upon completion of the Project, final, as-constructed Record Drawings.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner fails to make payments of amounts due to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any reasonable documented expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

§ 13.1.3 If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other reasonable documented expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Design-Builder, the Design-Builder Parties, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Intentionally deleted;
- .2 Intentionally deleted;
- .3 Because the Owner has not issued payment within the time required by the Contract and has not notified the Design-Builder of the reason for withholding payment as provided in Section 9.5.1; or

- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Design-Builder Parties, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, either: (a) repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100% of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or (b) issuance of an order of a court or public authority having jurisdiction requires all Work to be stopped, or an act of government, such as a declaration of national emergency requires all Work to be stopped, for 120 consecutive days.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner, as Design-Builder's sole monetary remedy, payment for Work executed, including reasonable documented costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Design-Builder Parties for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards Applicable Laws and Requirements
- .5 is unable to pay its debts as they mature, becomes insolvent, files for bankruptcy protection, is adjudged a bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of this insolvency; or
- .6 is otherwise guilty of breach of a provision of the Design-Build Documents and fails to cure such breach within the cure period specified in the Contract, if any.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder, or terminate the Design-Builder's right to proceed with the Work under the Design-Build Documents in whole or in part and may, subject to any prior rights of the surety:

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

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

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

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. Upon receipt of a written notice, the Design-Builder shall proceed with the orderly cessation of the Work to accomplish such suspension and take steps as well to protect and preserve the Work completed and permit the resumption of the Work if and when directed by Owner. In this regard, the Design-Builder shall cooperate with Owner in good faith and minimize the Cost of Work that accrues during the period of suspension.

§ 13.2.3.2 The Design-Builder shall promptly recommence the Work upon written notice from Owner directing Design-Builder to resume the Work. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include reasonable documented Costs of the Work reasonably incurred by the Design-Builder to suspend the Work, including costs for demobilization, remobilization, those general condition costs that will continue to accrue during the period of the suspension and costs required to protect the Work during the suspension. The Design-Builder shall cooperate with Owner in good faith to protect the Work during the period of any suspension and minimize the Cost of Work that accrues during the period of suspension. No adjustment shall be made to the extent

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

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause. Any termination by Owner for cause that is later determined not to be justified shall be deemed to have been a termination for convenience.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Design-Builder Parties, and purchase orders, and enter into no further Project agreements and purchase orders;
- .4 transfer title and deliver to Owner the Work in progress, specialized equipment necessary to perform the Work, Record Drawings and Record Documents; and
- .5 except for Work directed by Owner to be performed, incur no further costs or expenses.

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

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The Design-Builder acknowledges and agrees that Owner will convey such completed portions of the Work to the Village for perpetual ownership, operation, and maintenance, and that upon such final acceptance and acquisition by the Village that the Village shall have the right and obligation to pursue any Claims of Owner hereunder in its stead. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Denial in whole or part of a Change Order Request submitted in accordance with Section 6.4 shall be deemed the occurrence of the event giving rise to a Claim for any adjustment of the Contract Sum or Contract Time sought in the Change Order Request but denied in whole or in part.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the “initial decision” requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

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

§ 14.1.7 Claims for Consequential Damages

The parties waive Claims against each other for the following consequential damages arising out of or relating to this Contract:

- .1 damages incurred by the Owner or the Village for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work, and for any incidental, consequential, exemplary, special or punitive damages, regardless of how characterized and even if such party has been advised of the possibility of such damages.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents or for any third-party claims for which the party has an indemnification obligation under the Contract.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder’s response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

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

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

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

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

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

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

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

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

§ 14.3 Mediation

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

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 14.4 Waiver of Jury Trial

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THIS AGREEMENT OR THE DESIGN-BUILD DOCUMENTS, (B) THE PROJECT, (C) THE WORK, (D) ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR (E) ANY ACTION OF EITHER PARTY. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

§ 14.5 Attorneys' Fees and Costs

In any suit, action, or other proceeding, arising out of or in any manner relating to this Agreement, the Design-Build Documents or the Project, including: (a) the enforcement or interpretation of either party's rights or obligations under this Agreement or the Design-Build Documents, whether in contract, tort, or both, or (b) the declaration of any rights or obligations under this Agreement or the Design-Build Documents, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover from the losing party Attorneys' Fees. For purposes of this paragraph, "Attorneys' Fees" shall mean all reasonable fees and disbursements (including disbursements that would not otherwise be taxable

as costs in the proceeding) which are incurred by a party, including, without limitation, all legal assistants', paralegals', law clerks' and experts' fees and all fees incurred through all post award or judgment and appellate levels and in connection with arbitration, bankruptcy, and collection proceedings (post judgment and otherwise).

§ 14.6 Chapter 558, Florida Statutes, Opt-Out

THE PARTIES AGREE THAT THE PROVISIONS OF CHAPTER 558, *FLORIDA STATUTES*, SHALL NOT APPLY TO THIS AGREEMENT, ANY DESIGN-BUILD DOCUMENTS OR ANY DISPUTE RELATING TO THE PROJECT.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located without regard to its choice of law provisions.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, such assignment shall be void and that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding the foregoing, Owner may assign its rights, duties, and obligations under this Agreement to the Village. In such event, the Design-Builder shall execute all consents reasonably required to facilitate such assignment, plus any additional modifications as may be necessary to comply with the Applicable Laws and Requirements.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder or Design-Builder Parties to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Design-Builder or a Design-Builder Party to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder or Design-Builder Party, as applicable shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least fourteen (14) days prior to execution. The Design-Builder and Design-Builder Parties shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be provided in writing to the designated representative of the party noted on the first page of the Agreement (or such other person as a party may later designate in writing in accordance with the provisions of this Section 15.3) to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by Applicable Laws and Requirements. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that

the Owner and the Village may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where Applicable Laws and Requirements prohibit the Owner from delegating their cost to the Design-Builder.

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

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

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

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing. Owner will use its reasonable best efforts to cause the Village to promptly, where practicable, observe tests, inspections or approvals for which they are afforded the right to oversee pursuant to this Agreement.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work. The obligations under this Section 15.6 shall survive the termination of this Agreement.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.8.3 The invalidity of any provision of the Design-Build Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Design-Build Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision

legal and enforceable. In such case the Design-Build Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 15.8.4 The failure of a party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated. Each of the individuals executing this Agreement represent and warrant that he or she has been duly authorized by the respective party on whose behalf he or she is executing this Agreement to execute this Agreement on such party's behalf and that once executed by him or her, this Agreement shall be valid and binding upon such party. This Agreement has been negotiated by the parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one party than the other, including by virtue of one party having drafted some or all of this Agreement. The singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Section and Article references in this Agreement are to Articles and Sections of this Agreement unless expressly stated otherwise.

§ 15.9 Independent Contractor

The relationship of the Design-Builder to Owner shall be that of an independent contractor. Nothing herein shall be construed to make Design-Builder the agent, servant, or employee of Owner or create any partnership, joint venture, or other association.

§ 15.10 Survival

All of the Design-Builder's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Design-Build Documents, as well as all continuing obligations indicated in the Design-Build Documents, will survive final payment, completion, acceptance of the Work, conveyance to the Village, termination or completion of the Contract, and termination of the services of the Design Builder.

§ 15.11 E-Verify

The Design-Builder specifically warrants and agrees it: (i) shall not knowingly hire or continue to employ aliens not authorized to work in the United States; (ii) has and shall continue to verify the employment documentation specified in the Immigration Act; (iii) has and shall properly complete and retain the U.S. Citizenship and Immigration Service's Form I-9 for all its employees covered by the Immigration Act, and (iv) has complied with Section 448.095, *Florida Statutes*. Accordingly, the Design-Builder agrees to defend, indemnify and hold Owner and the Village free and harmless from and against any claims or charges asserted or filed against Owner and the Village and any judgments, fines, penalties and assessments entered against Owner and the Village arising from or as the result of the employment or engagement of any person inconsistent with the foregoing covenants or the laws of the United States.

Further, FDEP considers the employment by Design-Builder of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Design-Builder knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. Design-Builder shall include this provision in all contracts issued as a result of this Agreement.

§ 15.12 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 the completion of the Work directly from the suppliers to take advantage of Owner's tax exempt status.
- B. Within 10 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 the Owner and if the original contract contemplated sale of materials and installation by 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 the 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 and guarantees for all material and products as required under the Contract Documents. All warranties provided by Design-Builder as part of Contract shall apply to all Direct Purchase Materials, as though Design-Builder had purchased the Direct Purchase Materials.

§ 15.13 Scrutinized Companies

Design-Builder represents that in entering into this Contract, neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents 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, and in the event such status changes, Design-Builder shall immediately notify Owner.

§ 15.14 Public Entity Crimes

Pursuant to Section 287.133(3)(a), Florida Statutes: 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 Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

Design-Builder represents that in entering into this Agreement, the Design-Builder has not been placed on the convicted vendor list within the last thirty-six (36) months and, in the event that the Design-Builder is placed on the convicted vendor list, the Design-Builder shall immediately notify the Owner whereupon this Agreement may be terminated by the Owner.

§ 15.15 Public Records

The Design-Builder understands and agrees that all documents of any kind provided to the Owner in connection with this Contract 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.

Design-Builder acknowledges that the designated public records custodian for the Owner is Craig Wrathell ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Design-Builder shall:

- 1) keep and maintain public records required by the Owner to perform the service;
- 2) upon request by the Public Records Custodian, provide the Owner 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 the Design-Builder does not transfer the records to the Public Records Custodian of the Owner; and

- 4) upon completion of the contract, transfer to the Owner, 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 the Design-Builder, the 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 Owner in a format that is compatible with Microsoft Word or Adobe PDF formats.
- 5) maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. FDEP, the State of Florida, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. Design-Builder shall similarly require each of its subcontractors to maintain and allow access to such records for audit purposes.

IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT 2300 GLADES ROAD, SUITE 410W, BOCA RATON, FLORIDA 33431, (561) 571-0010, AND E-MAIL WRATHELLC@WHHASSOCIATES.COM.

§ 15.16 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 Owner.

§ 15.17 Compliance with Section 20.055, Florida Statutes

Design-Builder agrees to comply with Section 20.055(5), Florida Statutes, to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to such section and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

§ 15.18 FDEP Grant Requirements

The Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. LPA0307 ("FDEP Grant Agreement") with the Village, which requires that certain terms be incorporated into agreements funded thereby. These requirements are in addition to, and do not modify or reduce, any other requirement or obligation in this Agreement.

§ 15.18.1 Discriminatory Vendors

Pursuant to Section 287.134(3)(a), Florida Statutes: An entity or affiliate who has been placed on the discriminatory vendor list 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.

Design-Builder represents that in entering into this Agreement, the Design-Builder has not been placed on the discriminatory vendor list within the last 36 months and, in the event that the Design-Builder is placed on the discriminatory vendor list, the Design-Builder shall immediately notify the Owner whereupon this Agreement may be terminated by the Owner.

§ 15.18.2 Antitrust Violator Vendors

Pursuant to Section 287.137(3)(a), Florida Statutes: A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.

Design-Builder represents that in entering into this Agreement, the Design-Builder has not been placed on the antitrust violator vendor list within the last 36 months and, in the event that the Design-Builder is placed on the antitrust violator vendor list, the Design-Builder shall immediately notify the Owner whereupon this Agreement may be terminated by the Owner.

§ 15.18.3 Compliance with Chapter 274, F.S.

Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapter 274, F.S., and Chapter 69I-73, F.A.C. Design-Builder shall cooperate with Owner and Village in maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services.

§ 15.18.4 No Third Party Rights in FDEP Grant Agreement

Design-Builder is advised that the FDEP Grant Agreement does not create any third party rights, and no third parties shall rely upon any of the rights and obligations created under the FDEP Grant Agreement.

§ 15.19 Counterparts

This Agreement may be executed in counterparts, a complete set of such executed counterparts shall constitute the same Agreement, and the signature of any party to any counterpart shall be deemed as signature to, and may be appended to, another counterpart. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of any party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either party, any facsimile or PDF scanned document shall be re-executed by both parties in original form. No party to this Agreement may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, once executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« Not applicable. »

- .5 Other:

« Exhibit D- Owner’s Criteria, including Addendum No. 1 dated August 1, 2023
Exhibit E- Key Personnel
Exhibit F- Hourly Rates
Exhibit G- Schedule of Values- Assumptions & Design Services
Exhibit H – Project Schedule
»

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

OWNER (Signature)

« »« »

(Printed name and title)

DESIGN-BUILDER (Signature)

« »« »

(Printed name and title)

AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year 2023 (the “Agreement”) (In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

The development of a new wastewater treatment plant (“WWTP”) and associated buildings and related site work to replace the existing plant of the Village of Indiantown, Florida (the “Village”), as set forth in more detail in the Agreement

THE OWNER:

(Name, legal status and address)

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT »« a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, as amended »

« c/o District Manager

2300 Glades Road, Suite 410W

Boca Raton, Florida 33431

Telephone: (561) 571-0010

Email: gillyardd@whhassociates.com

THE DESIGN-BUILDER:

(Name, legal status and address)

« Florida Design Drilling, LLC »« a Florida limited liability company »

« 7733 Hooper Road

West Palm Beach, Florida 33411

Telephone: (561) 844-2967 »

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

TABLE OF ARTICLES

A.1 CONTRACT SUM

A.2 CONTRACT TIME

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A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

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

(Check the appropriate box.)

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

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

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

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

~~§ A.1.2 Stipulated Sum~~

~~§ A.1.2.1~~ The Stipulated Sum shall be ~~« »~~ (\$ ~~« »~~), subject to authorized adjustments as provided in the Design-Build Documents.

~~§ A.1.2.2~~ The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

N/A

~~§ A.1.2.3~~ Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

N/A

~~§ A.1.3 Cost of the Work Plus Design-Builder's Fee~~

~~§ A.1.3.1~~ The Cost of the Work is as defined in Article A.5, Cost of the Work.

~~§ A.1.3.2~~ The Design-Builder's Fee:

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

N/A

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

The Design-Builder's Fee is an amount equal to _____ percent (___%) of the Costs of the Work attributable to indirect costs (including profit, overhead, and general and administrative costs), as shown on **Exhibit A** of this Amendment-GMP Cost Breakdown and Allowances.

For all additive Change Orders relative to the Work, the Owner shall pay, in addition to all costs of any such changes, ___ percent (___%) of the additional Costs of the Work incurred for that Change Order attributable to profit and general and administrative costs. There shall be no reduction in the Design-Builder's Fee for deductive scope changes.

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed ~~« »~~ (\$ ~~« »~~) (the "Guaranteed Maximum Price" or "GMP"), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. The Guaranteed Maximum Price includes all of the Design-Builder's costs to perform the Work as shown on **Exhibit A** of this Amendment-GMP Cost Breakdown and Allowances, including i) the Design-Builder's Fee, ii) general conditions, iii) direct costs, and iv) indirect costs (including profit, overhead, and other general and administrative expenses), in accordance with Article A.5 herein. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

“GMP Savings” means the difference, as of the date of final completion of the Work, between (i) the Guaranteed Maximum Price (as it may be adjusted in accordance with the terms of the Design-Build Documents, including by reducing it by the amount of any unspent contingency and allowance amounts) and (ii) the total aggregate sum of the Cost of the Work plus the Design-Builder’s Fee. GMP Savings shall be for the sole benefit of the Owner and the Design-Builder shall not be entitled to any additional compensation on account of any GMP Savings.

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder’s Fee, and other items that comprise the Guaranteed Maximum Price. *(Provide information below or reference an attachment.)*

Refer to **Exhibit A** to this Amendment- GMP Cost Breakdown and Allowances

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

The prices indicated for the alternates on the schedule of values are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such alternate prices apply.

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

N/A

Such unit prices are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.4.3.6 The Design-Builder’s contingency shall be available to cover expenses which are reimbursable as Costs of the Work (except as provided below), including unforeseen costs that result from (a) errors by the Design-Builder in estimating time or money, (b) additional costs incurred as a result of the default by Contractors or items omitted by the Design-Builder in the formulation of the GMP, (c) time extensions to the extent not provided for by the Agreement, (d) costs to the extent the sum of the contracted costs exceed the sum of the contract costs in the GMP, and (e) casualty losses and related expenses, not compensated by insurance or otherwise, and sustained by the Design-Builder in connection with the Work. Reimbursement from the contingency shall not be made for any losses or expenses for which the Design-Builder would have been indemnified or compensated by bonds or insurance, but for the failure of the Design-Builder to procure and maintain bonds or insurance in accordance with the requirements of the Agreement or the failure of the Design-Builder to comply with the requirements of any sureties or insurance carriers providing coverage for the Project. The Design-Builder shall submit to the Owner monthly written notice of contingency use, provided that expenditures of more than Five Thousand Dollars (\$5,000) from the contingency for any one item or group of related items shall require the Owner’s prior written approval, such approval not to be unreasonably withheld. No sums may be charged to the contingency for: (i) costs which arise out of the Design-Builder’s gross negligence, intentional misconduct, a material breach of the Agreement, disputes with employees of the Design-Builder or the Design-Builder Parties or subcontractor or subconsultant working on the Project or with any union representing such employees, (ii) costs not otherwise subject to inclusion in a Cost of the Work category of the GMP, (iii) costs to the extent arising from delays by the Design-Builder or delays caused by those for whom the Design-Builder is responsible, including overtime costs, or (iv) liquidated damages. The Design-Builder is not entitled to payment of sums which are otherwise properly chargeable to the contingency to the extent (i) such sums are reasonably chargeable

to the Design-Builder Parties or other responsible person or entity, (ii) the Design-Builder failed to notify the Owner or its insurance carrier, if applicable, of the event which results in the claim to the contingency resulting in coverage disclaimer, or (iii) such sums exceed the available contingency set forth in the GMP. The Design-Builder shall reconcile the contingency monthly. All unspent contingency shall accrue to the benefit of the Owner. Upon final completion of the Work and before final payment, there shall be executed and/or issued a deductive Change Order that reduces the GMP by the amount of the unspent contingency

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment and all required supporting information and documentation submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

N/A

§ A.1.5.1.3 The Design-Builder shall prepare a monthly draft Application for Payment to be reviewed and discussed with the Owner and the Village at a meeting to be held no later than the « 25th » day of each month. The Design-Builder shall revise the draft Application for Payment, if necessary, resulting from discussions held during such meeting. Provided that an Application for Payment and all required supporting documentation and information is received, the Owner shall make payment of the undisputed amount to the Design-Builder not later than twenty (20) business days after receipt. *(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

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

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

~~§ A.1.5.2 Progress Payments—Stipulated Sum~~

~~§ A.1.5.2.1~~ Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

~~§ A.1.5.2.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~1~~ Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (~~« »~~ %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- ~~2~~ Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by THE OWNER, suitably stored off the site at a location agreed upon in writing), less retainage of ~~« »~~ percent (~~« »~~ %);
- ~~3~~ Subtract the aggregate of previous payments made by the Owner; and
- ~~4~~ Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

~~§ A.1.5.2.3~~ The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- ~~1~~ Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- ~~2~~ Add, if final completion of the Work is thereafter materially delayed through no fault of the Design Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

~~§ A.1.5.2.4~~ Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

N/A

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1~~ Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

~~§ A.1.5.3.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~1~~ Take the Cost of the Work as described in Article A.5 of this Amendment;
- ~~2~~ Add the Design Builder's Fee, less retainage of ~~« »~~ percent (~~« »~~ %). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~3~~ Subtract retainage of ~~« »~~ percent (~~« »~~ %) from that portion of the Work that the Design Builder self-performs;
- ~~4~~ Subtract the aggregate of previous payments made by the Owner;
- ~~5~~ Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~6~~ Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

~~§ A.1.5.3.3~~ The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.

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

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

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of five percent (5%);
- .3 Add the Design-Builder's Fee, less retainage of five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Design-Builder Parties and (2) the percentage of retainage held on agreements with the Design-Builder Parties; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4.4 Reduction or limitation of retainage, if any, shall be as follows:

The Owner shall have the option but not the obligation to reduce the retainage requirements of the Contract or release any portion of retainage prior to the date such retainage would otherwise be due under the Contract.

Any reduction or release of retainage, or portion thereof shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy the Owner has under the Design-Build Documents, at law, or in equity.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than twenty (20) business days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's auditors, either approve a final

payment, or notify the Design-Builder in writing of the reasons for withholding the payment as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

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

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

Refer to **Exhibit H** to the Contract– Project Schedule

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

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

The Design-Builder acknowledges that the Owner will suffer damages if the Design-Builder does not achieve substantial completion of the entire Work before the expiration of the Contract Time (the “**Substantial Completion Deadline**”). The specific damages for such delays are difficult to determine at this time, but the parties agree that the liquidated amount specified below in this Section A.2.2 represent reasonable estimates of the damages the Owner will incur for each day of delay beyond the Substantial Completion Deadline and bear a reasonable relationship to the Owner’s risk of loss due to the Design-Builder’s failure to meet the Substantial Completion Deadline. Accordingly, as liquidated damages, and not as a penalty, the Design-Builder shall pay to the Owner One Thousand Dollars (\$1,000) for each day that Substantial Completion of the entire Work is delayed beyond the Substantial Completion Deadline. The Owner may deduct liquidated damages prescribed in this Section from any unpaid amounts then or thereafter due the Design-Builder under this Agreement and any liquidated damages not so deducted shall be payable to the Owner by the Design-Builder upon demand by the Owner. It is further mutually understood and agreed that, while the liquidated damages specified in this Section A.2.2 are the Owner’s sole monetary remedy for the Design-Builder’s failure to achieve Substantial Completion of the entire Work by the Substantial Completion Deadline, the Owner’s assessment of liquidated damages for delays is intended to compensate the Owner solely for the Design-Builder’s failure to timely complete the entire Work by the Substantial Completion Deadline and shall not release the Design-Builder from liability from any other breach of Contract requirements. If the liquidated damages set forth herein are determined by a court or arbitrator(s) of competent jurisdiction to be unenforceable, the Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of the Design-Builder’s failure to timely achieve Substantial Completion of the entire Work. The Owner’s right to liquidated damages hereunder is self-executing and no prior notice or Claim by the Owner is required as a condition precedent to the Owner’s right to offset liquidated damages from amounts otherwise due the Design-Builder or to otherwise pursue recovery of liquidated damages. If the Design-Builder disputes any liquidated damages to which the Owner asserts it is entitled, the Design-Builder may make a Claim in accordance with the terms of the Contract.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

[REDACTED]

§ A.3.1.2 The Specifications:

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

[REDACTED]

§ A.3.1.3 The Drawings:

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

[REDACTED]

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Other identifying information:

N/A

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

Refer to **Exhibit A** to this Amendment- GMP Cost Breakdown and Allowances

.2 Contingencies

Refer to **Exhibit A** to this Amendment- GMP Cost Breakdown and Allowances

§ A.3.1.6 Design-Builder's assumptions and clarifications:

<< >>

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

<< >>

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

<< >>

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

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

Refer to **Exhibit E** to the Contract- Key Personnel

.2 Project Manager

Refer to **Exhibit E** to the Contract - Key Personnel

.3 Others

Refer to **Exhibit E** to the Contract - Key Personnel

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

<< >>

ARTICLE A.5 COST OF THE WORK

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

The term “Costs” shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work, less all discounts and rebates that shall be taken by the Design-Builder, subject to Section A.5.3 below, and salvages. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Section A.5.1. In no event shall there be duplication of costs (i.e. charging the same item of the Cost of the Work in two separate categories) of Costs of the Work.

§ A.5.1.1 Labor Costs

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

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

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Refer to **Exhibit G to the Contract**- Schedule of Values- Assumptions & Design Services

Refer to **Exhibit A** to this Amendment- GMP Cost Breakdown and Allowances

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

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to any Design-Builder Party or supplier, with the Owner’s prior approval.

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

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

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

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ A.5.1.4.2 Reasonable rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not

exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ **A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

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

§ **A.5.1.5 Miscellaneous Costs**

§ **A.5.1.5.1** Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

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

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

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

§ **A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents.

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

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

§ **A.5.1.5.8** With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ **A.5.1.5.9** With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ **A.5.1.5.10** That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ **A.5.1.6 Other Costs and Emergencies**

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

§ **A.5.1.6.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property so long as such costs were not due to the Design-Builder, Design-Builder Party, or any subcontractor's negligence or intentional acts or omissions.

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

§ A.5.1.7 Related Party Transactions

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

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

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

The Cost of the Work shall not include the items listed below and the Design-Builder shall not be separately or otherwise reimbursed for such costs:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs incurred prior to the Owner's approval when such approval is required by the Contract.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that any and all such discounts, rebates, refunds, and other similar considerations can be secured. If such discounts are available and the Design-Builder cannot obtain them, the Design-Builder shall make the Owner aware of such discounts and other considerations and advise the Owner how to obtain them. In addition, the Design-Builder shall endeavor to combine material and equipment requirements and take such other reasonable measures to purchase material and equipment at the best possible prices. The Design-Builder shall make such provisions and take such actions to secure discounts, rebates and refunds to the fullest extent reasonable.

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

§ A.5.4 Other Agreements

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

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee and shall not provide for retainage of less than five percent (5%) without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

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

§ A.5.4.4 If the Design-Builder desires to perform, with its own forces or through an affiliate, portions of the Work customarily performed by Subcontractors (the "**Self-Performed Work**"), the Design-Builder shall notify the Owner in writing. At the request of the Owner, the Design-Builder or its affiliate, as the case may be, must submit a bid for the Self-Performed Work, and the Contractor shall obtain no less than two (2) bids for such Work from potential Contractors that are acceptable to the Owner. With respect to any bid for Self-Performed Work, neither the Design-Builder nor its affiliates shall allocate any costs, fees or overhead in connection with any Self-Performed Work to the "General Conditions Costs" line item(s) in the schedule of values or use the Work allocable to such General Conditions Costs to support the Self-Performed Work in any way that differs from that which applies to all other bidders. The Design-Builder shall be permitted to perform the Self-Performed Work with its own forces or through an affiliate only if (i) the Owner consents thereto in writing after full disclosure in writing by the Design-Builder to the Owner of such request and the affiliation or relationship of any affiliate to the Design-Builder, which consent may be withheld at the Owner's sole discretion, and (ii) the Owner approves in writing any contract, purchase order, agreement or other arrangement between the Design-Builder and any affiliate proposed for such Work. Any Self-Performed Work by the Design-Builder's own forces or through an affiliate shall be identified as a separate line item on the Guaranteed Maximum Price and/or schedule of values.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of seven (7) years after final payment, or for such longer period as may be required by Applicable Laws and Requirements.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

§ A.6 Counterparts

This Agreement may be executed in counterparts, a complete set of such executed counterparts shall constitute the same Agreement, and the signature of any party to any counterpart shall be deemed as signature to, and may be appended to, another counterpart. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of any party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either party, any facsimile or PDF scanned document shall be re-executed by both parties in original form. No party to this Agreement may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Article. This Amendment to the Agreement entered into as of the day and year first written above.

THE OWNER *(Signature)*

« »« »

(Printed name and title)

DESIGN-BUILDER *(Signature)*

« »« »

(Printed name and title)

**FORM OF
EXHIBIT A TO DESIGN BUILD AMENDMENT
CONTRACTOR'S GMP COST BREAKDOWN AND ALLOWANCES**

1.A.	Contractor's Fixed General Conditions	\$ -
1.B.	Non-Fixed General Conditions	\$ -
	Direct Contractor Costs:	
2	DIV 2 - Site Work	\$ -
3	DIV 3 - Concrete	\$ -
4	DIV 4 - Masonry	\$ -
5	DIV 5 - Metals	\$ -
6	DIV 6 - Wood	\$ -
7	DIV 7 - Thermal/Moisture Protection	\$ -
8	DIV 8 - Openings	\$ -
9	DIV 9 - Finishes	\$ -
10	DIV 10 - Specialties	\$ -
11	DIV 11 - Equipment	\$ -
12	DIV 12 - Furnishings	\$ -
13	DIV 13 - Special Construction	\$ -
14	DIV 14 - Conveying Systems	\$ -
15	DIV 15 - Mechanical	\$ -
16	DIV 16 - Electrical	\$ -
17	Total of Lines 1.B. - 16	\$ -
18	Contingency (Line 17 x X%)	\$ -
19	Lines 1.A.+17+18	\$ -
21	Allowance #1	\$ -
22	Allowance #2	\$ -
23	Allowance #3	\$ -
24	Lines 21+22+23	\$ -
25	GMP Subtotal: (Lines 19 + 24)	\$ -
26	Markup (Markup Amount x X%)	\$ -
27	GMP Subtotal with Markup (Lines 25 + 26)	\$ -
28	Insurance	\$ -
29	GMP Subtotal with Insurance (Lines 27 +28)	\$ -
30	Bond Costs	\$ -
31	GMP Total (Lines 29 + 30)	\$ -

Exhibit E - Key Personnel

Terra Lago Wastewater Treatment Plant Design-Build				
Individual	Title	Company	Mobile	Email
Jeffrey Holst	Senior Vice President	Florida Design Drilling LLC	561-818-3228	jeff@fldrilling.com
Fernanda Sousa	Project Engineer	Florida Design Drilling LLC	561-621-0783	fernanda@fldrilling.com
Brian Sellers	Superintendent	Florida Design Drilling LLC	561-719-1529	brian@fldrilling.com
Selwyn Woodley	Superintendent	Florida Design Drilling LLC	561-309-6250	selwyn@fldrilling.com
Jason Degaglia, Sr.	Superintendent	Florida Design Drilling LLC	561-315-6620	jasond@fldrilling.com
David Holtz, P.E.	Senior Vice President	Holtz Consulting Engineers	561-339-5800	david.holtz@holtzconsulting.com
Curtis Robinson, P.E.	Vice President	Holtz Consulting Engineers	772-834-5322	curtis.robinson@holtzconsulting.com
Stephen Fowler, P.E.	Vice President	Holtz Consulting Engineers	727-643-4558	stephen.fowler@holtzconsulting.com
Ben Fecko, P.E.	Project Manager	Holtz Consulting Engineers	772-485-7766	ben.fecko@holtzconsulting.com
Linwood Lee	Construction Manager	Holtz Consulting Engineers	772-359-1973	linwood.lee@holtzconsulting.com

Exhibit F - Hourly Rates

Terra Lago Wastewater Treatment Plant Design-Build		
Individual	Title	Rate (\$/HR)
Jeffrey Holst	Senior Vice President	\$ 240.00
Fernanda Sousa	Project Engineer	\$ 120.00
Selwyn Woodley	Site Superindendent	\$ 120.00
Brian Sellers	Site Superindendent	\$ 120.00
Jason Degaglia, Sr.	Site Superindendent	\$ 120.00
Jeanine Alfieri	Administrative Assistant	\$ 90.00
David Holtz, P.E.	Senior Vice President	\$ 240.00
Curtis Robinson, P.E.	Vice President	\$ 220.00
Stephen Fowler, P.E.	Vice President	\$ 220.00
Ben Fecko, P.E.	Project Manager	\$ 200.00
Linwood Lee	Construction Manager	\$ 180.00
	Skilled Labor	\$ 60.00
	Unskilled Labor	\$ 45.00

Exhibit G Design Services

	Senior Project Manager		Project Engineer		Site Superintendent		Administrative Assistant		Holtz Consulting Cost	Payment & Performance Security		Subtotal Cost	D-B Fee	Total Cost
Rate		\$240		\$120		\$120		\$90		3%			10%	
Item	QTY (HRS)	Subtotal	QTY (HRS)	Subtotal	QTY (HRS)	Subtotal	QTY (HRS)	Subtotal	LS	LS		EXT	LS	
1. Underground Utility Location Services	8	\$1,920	8	\$960		\$0	1	\$90	\$ 13,090.00	\$ 481.80		\$16,541.80	\$1,654.18	\$18,195.98
2. Geotechnical Exploration Services	8	\$1,920	8	\$960		\$0	1	\$90	\$ 32,700.00	\$ 1,070.10		\$36,740.10	\$3,674.01	\$40,414.11
3. Engineering Design Services	320	\$76,800	320	\$38,400		\$0	64	\$5,760	\$ 771,320.00	\$ 26,768.40		\$919,048.40	\$91,904.84	\$1,010,953.24
4. Permitting Services	16	\$3,840	16	\$1,920		\$0	3	\$270	\$ 35,540.00	\$ 1,247.10		\$42,817.10	\$4,281.71	\$47,098.81
Totals	352	\$84,480.00	352	\$42,240.00	0	\$0.00	69	\$6,210.00	\$852,650.00	\$29,567.40		\$1,015,147.40	\$101,514.74	\$1,116,662.14



HOLTZ CONSULTING ENGINEERS, INC

November 20, 2023

Mr. Jeff Holst
Senior Vice President
Florida Design Drilling LLC
7733 Hooper Road
West Palm Beach, FL 33411

**Subject: Village of Indiantown Wastewater Treatment Plant Design-Build
Design and Permitting of WWTP Improvements**

Dear Mr. Holst,

Holtz Consulting Engineers, Inc. (HCE) is pleased to submit to Florida Design Drilling a proposal for design and permitting of the proposed improvements at the Village of Indiantown Wastewater Treatment Plant (WWTP). The proposed improvements to the WWTP are summarized in the draft Basis of Design Report (BODR) prepared for the [Terra Lago Community Development District \(“Owner”\) and Village](#) and are based on increasing the capacity of the plant from the current 0.75 MGD annual average daily flow (aadf) to a total of 1.2 MGD, aadf, while also meeting the requirements of the St. Lucie River and Estuary Best Management Action Plan (BMAP) and providing EPA Class I reliability. Class I Reliability is required prior to modifying the Village’s reuse system to be able to provide Part III Reuse to residential customers. The proposed WWTP components will be designed to be expandable to 1.8 MGD. The proposed work will also include the demolition or rehabilitation of certain onsite existing structures and the replacement of other equipment as required (i.e., existing reuse system equipment and components and influent lift station).

This proposal includes the design and permitting services tasks for the expansion and does not include assistance with vendor, supplier, or subcontractor selection and procurement (mini-bid) or engineering services during construction, which will be provided at a later date. This project will include the following general tasks:

- Task 1 – Underground Utility Location Services.
- Task 2 – Geotechnical Exploration Services.
- Task 3 – Engineering Design Services.
- Task 4 – Permitting Services.

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4877-9648-6805.2



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SCOPE OF SERVICES

The scope of services for each task is outlined below.

Task 1 – Underground Utility Location Services

HCE will contract with an underground utility location company, Dig Safe First, LLC., to conduct vacuum-excavated test holes and/or perform hand digging to locate existing utilities in the vicinity of the WWTP expansion work.

- HCE will coordinate with locator staff to ensure they are fully knowledgeable of the locations that the proposed construction will occur and where existing utility locations are important for the design documents.
- HCE will work with [Owner and](#) Village staff and review record drawings to assist in locating the approximate location of pertinent existing buried utilities. Approximate location information will be provided to the locator who will then utilize equipment to specifically locate the buried utilities.
- Task includes exposing the top of the pertinent underground lines using soft dig (pothole, vacuum excavation, etc.) methods. The elevation, location, diameter, and type of material will be determined via the utility soft digs. Twenty (20) potholes are assumed.
- It is estimated that this Task will take three (3) full days of on-site work to physically locate pertinent utilities.
- A drawing will be developed that provides the horizontal location, depth, diameter, piping material and pipe fill of the pertinent utilities for use in the final design-build documents. Photos of all utility locates will also be taken.

Task 2 – Geotechnical Exploration Services

HCE will contract with Andersen Andre Consulting Engineering, Inc. to perform geotechnical testing and evaluation. This task will include performing a geotechnical study with subsurface explorations to obtain subsurface soil information necessary for the proper design and construction of the WWTP improvements. The work includes:

- Nine (9) Standard Penetration Test (SPT) borings in accordance with ASTM D1586 to depths of approximately 100 feet below the existing ground surface for use with the treatment process tank design.
- One (1) SPT boring to a depth of approximately 20 feet below the existing ground surface for the proposed operations building design.
- Ten (10) hand auger borings in accordance with ASTM D1452 to depths of approximately 5-7 feet below the existing ground surface (or 1-2 feet into the ambient groundwater table, whichever comes first) for the paved area design.

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- Two (2) 6-ft deep soil hydraulic conductivity (exfiltration) tests per the SFWMD ERPIM, Volume IV for the drainage and stormwater.

A geotechnical report summarizing the results of the borings and testing will be prepared. The report will include the location and depth of the borings, visual classification of the recovered samples and recommendations to guide site preparation procedures and for the design of the foundations of the proposed improvements.

Task 3 – Engineering Design Services

HCE shall develop the plans and specifications depicting the work required to upgrade the plant from the current 0.75 MGD, aadf DAVCO contact stabilization unit to the proposed 1.20 MGD, aadf plant with a new influent pump station, pre-engineered WWTP (with a 4-stage BNR process complete with screens, flow equalization, process tanks, clarifiers, recycle pumps and digester), reuse system rehabilitation, yard piping improvements, a new administration building, electrical improvements and sitework. HCE will retain C&W Engineering to provide electrical and instrumentation engineering services related to the WWTP expansion and Wekiva to provide structural engineering service. The design of the improvements will include the following facilities:

- Influent Lift Station - The WWTP Influent Lift Station will be replaced, including a wet well sized for the estimated 20-year wastewater flows as estimated by the Village of Indiantown Wastewater and Reclaimed Water Master Plan. The initial design will consider pumping rates required for the 5–10-year estimate flows, with the ability to add pumping capacity for the 1.8 MGD 20-year flow projection.
- Four Stage Biological Nutrient Removal (BNR) WWTP - The proposed improvements to the WWTP will increase the annual average daily flow by 0.45 MGD to a total of 1.2 MGD, aadf, while also providing Class I reliability for operation of the plant. A new pre-engineered 4-stage BNR WWTP rated at 1.2 MGD with two (2) parallel treatment trains will be provided. The following components are anticipated to be included as part of a pre-engineered package WWTP provided by a reputable supplier of similar package WWTPs:
 - Influent screens
 - Tanks for treatment
 - Influent flow equalization.
 - Process tanks, including pre-anoxic, aeration, post-anoxic, and re-aeration basins.
 - Secondary clarifiers.
 - Recycle pumps related to the BNR process.
 - Aerobic digester.
 - Pumps, mixers, and process piping

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- Stainless steel floor diffuser grid systems
- Hoists and sockets
- Secondary clarifier equipment
- Controls, VFD's and metering for the WWTP
- Blowers and associated stainless steel air piping

The field erected treatment plant would include multiple treatment trains, providing Class I reliability as required for public-access reuse of reclaimed water. The site will be developed considering expansion of the plant to 1.8 MGD with construction of a parallel WWTP process train.

- Administration Building – the proposed improvements include a new administration building at the WWTP. The new building will include bathrooms, locker rooms, laundry facility, workspace with two desks, a room for file storage, a breakroom, electrical room for the plant panels and VFD's, and SCADA room with a computer. Architectural, structural, and MEP design subconsultants will be utilized for the building design. Approximately building dimensions are 24 feet by 72 feet.
- Reuse System – the existing reuse system at the plant was permitted to allow reuse water to be delivered to industrial customers. The system has been out of service for the past few years and will require rehabilitation prior to return to service. The Village intends to modify the reuse system to be able to provide Part II Reuse to residential customers; however, as the current WWTP facilities do not have Class I reliability, the WWTP improvements will be required for this modification.

A review of the existing system components will be provided, including mechanical, structural, electrical systems, and a summary of the work anticipated to be required to restore the system to full-time reliable service will be made. In addition to the summary of required improvements, it is anticipated that an allowance will be established for additional work required to address issues with pumps, valves, controls and other reclaimed water production system components that are discovered while bringing this system back online.

Wet weather reclaimed water storage and reject water storage will be required for the reuse system modification. Wet weather reclaimed water storage is anticipated to be provided in offsite storage ponds to be built by developers at user sites. The volume of wet weather storage required for the project will be coordinated with the [Owner and Village](#) and reuse site developers. Reclaimed water storage will also be provided in the onsite and offsite Rapid Infiltration Basins (RIBs) and possibly the repurposed DAVCO tank after the new plant is online. Reject water storage is anticipated to be provided with the use of a lined pond with a submersible pump station for the return of reject water to the plant.

- Demolition, Site Improvements and Yard Piping – existing abandoned equipment and tankage on the site will be demolished as required to facilitate the construction of the WWTP improvements. Existing buildings, sludge drying beds, and unused equipment and piping and tanks will be



removed from the site.

Site improvements will include a grading plan along with paving plans for driveway access and parking for the proposed building and equipment. The access plans will also include driveways and parking. The stormwater design will be in accordance with SFWMD, FDEP, and Village requirements.

Yard piping improvements drawings will be prepared depicting new piping and valves on the plant site. New piping will include connection existing plant influent pipes to the new influent LS and new discharge piping to the proposed pre-engineered WWTPs. New piping improvements will include connection of the new pre-engineered WWTPs to the rehabilitated reclaimed water production system, connection and return from the reject water storage system, and connections to the reuse water storage RIBs and repurposed DAVCO tank. Water service piping will be provided where needed throughout the plant. A sewer service and grinder-type pump station from the new administration building will also be provided.

- **Electrical & Instrumentation** – The electrical work will consist of electrical engineering to serve the proposed influent lift station, pre-engineered WWTPs, administration building, reuse and reject water systems, and other onsite equipment. The design will include a new FPL service feed for the plant, service disconnect, switchgear, Automatic Transfer Switch, and power panels to energize treatment equipment. The design will include FPL coordination, power distribution, standby generation, electrical load calculations, building and site lighting, conduit, and wire design. The electrical design will include electrical load calculations for future expansion to buildout capacity, including raceways sizing, stub-outs and equipment spacing.

Instrumentation for the project will be provided for the influent lift station and other new equipment including pump stations for reject and reuse storage and the generator. Existing controls at the reuse system would be modified as necessary and it is anticipated that the controls for the WWTP will be provided by the package plant manufacturer. The controls for each of these systems would be connected to the central monitoring computer in the administration building. No SCADA programming is included as part of this agreement, but HCE will prepare a written control strategy for programming implementation during the construction phase of this project.

For the design of the facilities described above, the following subtasks will be performed under this Task:

1. Kick-off Meeting – One (1) kickoff meeting will be held at the site and will include HCE personnel, FDD, major subconsultants and pertinent [Owner and](#) Village staff. The kickoff meeting agenda will include introductions and contact information, specific project design requirements, design documentation format, communication protocols, project schedule, coordination of the differing aspects of the work, administrative procedures, and a site visit. [The kickoff meeting will include a preliminary evaluation of the project, including possible alternative approaches to design and](#)



construction of the project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues. After the kickoff meeting, the Owner will be provided a written report summarizing the evaluation of the project, which shall include, among other things, (a) a preliminary construction cost estimate, (b) the allocation of program functions, and (c) a preliminary schedule with design milestones, dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner.

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2. Site visits – It is expected that a minimum of 4 site visits will be required during the design phase of the project. These will include site visits with our subconsultants to ensure proper coordination, to verify conditions and dimensions of existing facilities and piping, to discuss operational and maintenance concerns with Owner and Village staff, to verify the location and dimensions of the proposed work and ensure it is not in conflict with existing components, to verify the most practical routing for proposed piping and conduits, and other related purposes.
3. Progress Meetings – In addition to frequent routine communications, HCE will hold weekly/monthly progress meetings with FDD and our subconsultants and pertinent Owner and Village staff to check progress, discuss issues and questions, coordinate the work, ensure schedule compliance, and discuss any other important matter affecting the design phase of the project.
4. Develop Draft Design-Build Documents (“Preliminary Design”)– Upon written consent to proceed to the development of the Preliminary Design, the design-build team dDraft design-build documents which will include P&ID and PFD drawings, updated hydraulic profile, site, mechanical, architectural, structural, and some electrical drawings. The specifications will be updated to reflect draft completion. An updated construction cost estimate for the proposed work will also be developed and provided. This task also includes a meeting with the Owner to discuss the draft documents, review of Owner comments on the documents and modifying the documents accordingly. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria and shall include the following: confirmation of the allocations of program functions, site plans, build plans, sections and elevations, structural system, selections of major building systems, and outline specifications or sufficient drawing notes describing construction materials
5. Develop Intermediate Design-Build Documents – Intermediate design-build documents will include all P&ID and PFD drawings, hydraulic profile, site, mechanical, architectural, structural, and electrical drawings. The specifications will be updated to reflect intermediate completion. An updated construction cost estimate of the proposed WWTP expansion will also be developed to reflect the intermediate documents and will be submitted to the Owner. This task also includes a meeting with the Owner to discuss the intermediate documents, review of Owner comments on the



HOLTZ CONSULTING ENGINEERS, INC

documents and modifying the documents accordingly.

6. Develop Final Design-Build Documents – Upon Owner's written consent to proceed, the Final design-build documents will be prepared and submitted to Owner for review and acceptance. The Final design-build documents shall include all final drawings and specifications, the proposed date the Design-Builder shall achieve Substantial Completion, an enumeration of any qualifications and exclusions, if applicable, a list of the Design-Builder's key personnel, Contractors and suppliers, and the date on which the Design-Builder's Proposal expires. This task also includes development of a final construction cost estimate based on the final documents. It is not anticipated that the Owner will review the final documents; however, HCE will obtain Owner concurrence that the documents are ready for construction.

Task 4 – Permitting Services

The Engineer shall perform the following tasks to procure the WWTP Expansion permit from the Florida Department of Environmental Protection:

- Attend one (1) preliminary application meeting with FDEP.
- Develop the required Preliminary Engineering Report (PER) for the permit application in accordance with the FDEP Preliminary Design Report Guidelines for Wastewater Treatment Plant Permitting Preparation. We will use the final Basis of Design Report as the base documents and add select design drawings and other required information.
- Complete the applications for a major permit revision to construct the WWTP replacement, FDEP Forms 62-620.910(1) Form 1 and 62-620.910 (2) Form 2A.
- Respond to up to three Requests for Information (RFIs) from FDEP.

The Engineer shall perform the following tasks to procure an Environmental Resource Permit (ERP) from the FDEP:

- Coordinate with the regulatory agencies to verify whether the permit will be processed through FDEP.
- Submit for ERP for surface water management system modifications at the wastewater treatment plant site.
- Respond to requests for additional information (RAIs) from each of the permitting agencies. Permit fees will be paid by others.
- It is assumed that all improvements will be constructed on Village property, public rights-of-way, or existing utility easements, and no wetland or additional environmental permitting through other agencies will be required.

607 SW St. Lucie Crescent, Suite 103 • Stuart, FL 34994

Office: 772.919.4905 • Fax: 772.919.4909

4877-9648-6805.2



The permit applications will be submitted at the time the intermediate design-build documents are completed and Owner comments are addressed. Permit fees will be paid by others.

Assumptions and Clarifications

- This design scope of work and compensation is based on the use of design calculations and documents from the selected pre-engineered WWTP supplier for the proposed four-stage BNR “package plant”, such as the WWTP proposals provided by DAVCO or Florida Aquastore. It is assumed that one pre-engineered WWTP system supplier will be selected after the BODR is completed and before detailed design of the project is underway. The package WWTP supplier will provide integration of all structural and mechanical items provided for a fully functioning system and will provide signed-and-sealed calculations and design documents for Engineer’s review and use in developing and permitting the overall project design. It is assumed that the selected package WWTP provider will include all required tanks, piping and equipment for two WWTP process trains, including the influent screens and flow equalization system, treatment process tanks, secondary clarifiers and the digester tank and associated equipment. Should the selected WWTP design provided by the selected pre-engineered WWTP system supplier not include all of the above components, requiring additional design and coordination efforts by HCE, then additional engineering fees would be required.
- It is assumed that no Village of Indiantown site plan or growth management department approvals will be required for the plant expansion project.
- Detailed negotiations with equipment and the pre-engineered WWTP suppliers and manufacturers is not included and will be provided in a future separate authorization.
- Construction phase services are not included. These services will be provided in a future separate authorization.

COMPENSATION

Compensation for the work shall be a lump sum amount of **852,650**. A summary of the lump sum compensation by task is provided below.

Task	Compensation by Task
Task 1: Underground Utility Locates	\$13,090
Task 2: Geotechnical Exploration Services	\$32,700
Task 3: Engineering Design Services	\$771,320
Task 4: Permitting Services	\$35,540
TOTAL	\$852,650

We appreciate the opportunity to assist Florida Design Drilling with the Design-Build WWTP Expansion Project.



HOLTZ CONSULTING ENGINEERS, INC

Sincerely,

HOLTZ CONSULTING ENGINEERS, INC.

Curtis Robinson, P.E.
Vice President

607 SW St. Lucie Crescent, Suite 103 • Stuart, FL 34994
Office: 772.919.4905 • Fax: 772.919.4909

4877-9648-6805.2

Attachment A - Village of Indiantown Wastewater Treatment Plant Improvements

		Principal	Senior Project Manager	Project Engineer (PE)	Project Engineer (EI)	Senior Designer	Construction Manager/Inspector	Administrative Support	Subconsultant	Item Cost (Note Subconsultant fee is marked up 10%)	Task Cost	
Task	Rate	\$240	\$200	\$160	\$140	\$160	\$180	\$100	-			
Task	Item									Fees		
1. Underground Utility Location Services	HCE to Stake ~20 Potholes			4	8					\$1,760.00		
	HCE On-Site Observations (3 Days)			4	24					\$4,000.00		
	HCE Review & QA/QC Pothole Drawings		2	2	4					\$1,280.00	\$13,090.00	
	Utility Locate Subconsultant (Dig Safe First)								\$5,500.00	\$6,050.00		
2. Geotechnical Exploration Services	Coordinate work with Geotechnical Engineer			2	4			2		\$1,080.00		
	HCE On-Site Coordination/Assistance			2	8					\$1,440.00		
	HCE Review and QA/QC of Deliverable		2	2	4					\$1,280.00	\$32,700.00	
	Subconsultant Fee (AACE)								\$26,265.00	\$28,900.00		
3. Engineering Design Services	DB Draft General Sheets	2	2	8	8	24				\$7,120.00		
	DB Draft Site Plan	2	2	12	24	24				\$10,000.00		
	DB Draft Demolition Plan		2	2	8	16				\$4,400.00		
	DB Draft Civil Plans (Paving, Grading, Drainage, Yard Piping and Details)	4	12	40	80	200				\$52,960.00		
	DB Draft Structural and Architectural - Incorporate Drawings and Specifications		4	4	8	8				\$3,840.00		
	DB Draft Mechanical Drawings (LS, WWTP, Reuse)	4	32	60	120	200				\$65,760.00		
	DB Draft MEP - Incorporate Drawings and Specifications		4	4	8	8				\$3,840.00		
	DB Draft Electrical and Controls - Incorporate Drawings and Specifications		4	4	8	8				\$3,840.00		
	DB Draft P&I		2	4	8	16				\$4,720.00		
	DB Draft Specifications	8	20	40	80			60		\$29,520.00		
	DB Draft Cost Estimate	2	4	4	8	8				\$4,320.00		
	DB Draft QA/QC	12	20							\$6,880.00		
	DB Draft Meeting with Indiantown to Review Comments	2	4	4	8					\$3,040.00		
	DB Intermediate General Sheets	2	2	4	8	12				\$4,560.00		
	DB Intermediate Site Plan	2	2	4	8	12				\$4,560.00		
	DB Intermediate Demolition Plan		2	2	8	16				\$4,400.00		
	DB Intermediate Civil Plans (Paving, Grading, Drainage, Yard Piping and Details)	4	12	24	48	160				\$39,520.00		
	DB Intermediate Structural and Architectural - Incorporate Drawings and Specifications		4	4	4	8				\$3,280.00		
	DB Intermediate Mechanical Drawings (LS, WWTP, Reuse)	4	24	24	48	160				\$41,920.00		
	DB Intermediate MEP - Incorporate Drawings and Specifications		4	4	6	8				\$3,560.00		
	DB Intermediate Electrical and Controls - Incorporate Drawings and Specifications		4	4	6	8				\$3,560.00		
	DB Intermediate P&I		2	4	8	16				\$4,720.00		
	Constructability Review	8	12				40			\$11,520.00		
	DB Intermediate Specifications	4	12	24	80			40		\$22,400.00		
DB Intermediate Cost Estimate	2	4	4	12	12				\$5,520.00			
DB Intermediate QA/QC	12	20							\$6,880.00			
DB Intermediate Meeting with Indiantown to Review Comments	2	4	4	8					\$3,040.00			
DB Final General Sheets	2	2	8	8	12				\$5,200.00			
DB Final Site Plan	2	2	8	8	12				\$5,200.00	\$771,320.00		

	DB Final Demolition Plan		2	2	8	8					\$3,120.00
	DB Final Civil Plans (Paving, Grading, Drainage, Yard Piping and Details)	4	8	16	32	100					\$25,600.00
	DB Final Structural and Architectural - Incorporate Drawings and Specifications		2	2	4	4					\$1,920.00
	DB Final Mechanical Drawings (LS, WWTP, Reuse)	4	12	12	32	100					\$25,760.00
	DB Final MEP - Incorporate Drawings and Specifications		2	2	4	4					\$1,920.00
	DB Final Electrical and Controls - Incorporate Drawings and Specifications		2	4	8	16					\$4,720.00
	DB Final P&I		2	4	8	16					\$4,720.00
	DB Final QA/QC	8	16								\$5,120.00
	DB Final Specifications	2	4	4	8	8		24			\$6,720.00
	DB Final Cost Estimate	2	2	4	8	12					\$4,560.00
	DB Final P&I		2	4	8	16					\$4,720.00
	DB Final QA/QC	8	16								\$5,120.00
	HCE QA/QC of MEP/I&C Deliverable	2	8	8	16	4					\$6,240.00
	MEP and Instrumentation and Control Design Subconsultant (C&W)								\$175,000.00		\$192,500.00
	Coordinate work with Structural/Architectural Subconsultant	2	4	8	12	20		8			\$8,240.00
	HCE QA/QC of Structural/Architectural Deliverables	2	4	4	8	4					\$3,680.00
	Structural and Architectural Design Subconsultant (Wekiva)								\$87,800.00		\$96,580.00

4. Permitting Services	FDEP Prelim Application Meeting and Preparation	4	4	8						\$3,040.00		\$35,540.00
	Develop Preliminary Engineering Report (PER)	4	4	8	24	8				\$7,680.00		
	Structural Permitting Assistance (Wekiva)								\$4,300.00	\$4,730.00		
	MEP Permitting Assistance (C&W)								\$1,500.00	\$1,650.00		
	Complete Application, Review with Indiantown and Submit	2	2	4	4					\$2,080.00		
	Respond to RFIs (3 anticipated)	4	4	8	8			8		\$4,960.00		
	Environmental Resource Permit Modification	4	8	12	18	2				\$7,320.00		
	Pre-application coordination regarding ERP Permit Modification		2	4						\$1,040.00		
ERP RFI Response	2	4	4	8					\$3,040.00			

Sub
 134 342 446 898 1270 40 142 \$300,365.00
 HCE
 \$552,285.00

Total Engineering Fee \$852,650.00

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

4A

Terra Lago Community Development District
OFFICE OF THE DISTRICT MANAGER
2300 Glades Road, Suite 410W•Boca Raton, Florida 33431
Phone: (561) 571-0010•Toll-free: (877) 276-0889•Fax: (561) 571-0013

December 11, 2023

Via U.S. Mail

Haley Ward, Inc.
Attn: Melissa Corbett, P.E.
10975 S.E. Federal Highway
Hobe Sound, Florida 33455

Re: Terra Lago Community Development District
Notice of Termination of Agreement for Professional Engineering Services

Dear Ms. Corbett:

Pursuant to Article 23 of that certain *Interim Engineering Services Agreement* dated November 14, 2022, and Section 30 of that certain *Agreement for Professional Engineering Services*, awarded on August 14, 2023, in response to that certain *Request for Qualifications for Engineering Services*, and in accordance with the decision made by the Board of Supervisors of the Terra Lago Community Development District (“District”), please accept this notice of termination of services being provided by Haley Ward, Inc. and all divisions thereof, including the Milcor Group, Inc., to the District, effective immediately.

Should you have any questions, please contact me at (561) 571-0010 or cerbonec@whhassociates.com.

Sincerely,

Cindy Cerbone
District Manager

cc: Ryan J. Dugan, District Counsel

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

4B

RESOLUTION 2024-01

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT APPOINTING AND FIXING THE COMPENSATION OF THE INTERIM DISTRICT ENGINEER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Terra Lago Community Development District (the “District”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within the Village of Indiantown, Florida; and

WHEREAS, pursuant to Section 190.011, *Florida Statutes*, the District’s Board of Supervisors (the “Board”) may contract for the services of consultants to perform planning, engineering, legal or other appropriate services of a professional nature; and

WHEREAS, the Board desires to appoint an Interim District Engineer and to provide compensation for their services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. _____, is appointed as Interim District Engineer and shall be compensated for their services in such capacity in the manner prescribed in the agreement incorporated herein by reference as **Exhibit A**.

SECTION 2. This authorization shall be continuing in nature until revoked by the District.

SECTION 3. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 11th day of December, 2023.

ATTEST:

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Interim District Engineer Fee Agreement

Exhibit A
Interim District Engineer Fee Agreement

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

4C

INTERIM ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 202__, by and between:

Terra Lago Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the Village of Indiantown, Florida, with a mailing address of 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

_____, a _____ providing professional engineering services, with a mailing address of _____ (“**Engineer**” and, together with the District, “**Parties**”).

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, *Florida Statutes*, as amended (“**Act**”); and

WHEREAS, pursuant to the Act, the District was established for the purpose of planning, finance, constructing acquiring, and/or maintaining certain infrastructure improvements and services within the District; and

WHEREAS, the District intends to employ the Engineer on an interim basis to perform engineering, surveying, planning, landscape architecture, construction administration, environmental management, and permitting, financial and economic studies, as defined by a separate work authorization; and

WHEREAS, the Engineer shall serve as District’s professional representative in each service or project to which this Agreement applies and will give consultation and advice to the District during performance of his services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the acts and deeds to be performed by the Parties and the payments by the District to the Engineer of the sums of money herein specified, it is mutually covenanted and agreed as follows:

Article 1. Scope of Services

- A. The Engineer will provide general engineering services, including:
 - 1. Preparation of any necessary reports and attendance at meetings of the District’s Board of Supervisors.

2. Assistance in meeting with necessary parties involving bond issues, special reports, feasibility studies, or other tasks.
3. Any other items requested by the Board of Supervisors.

Article 2. Method of Authorization. Each service or project shall be authorized in writing by the District. The written authorization shall be incorporated in a Work Authorization, which shall include the scope of work, compensation, project schedule, and special provisions or conditions specific to the service or project being authorized. Authorization of services or projects under this Agreement shall be at the sole option of the District.

Article 3. Compensation. It is understood and agreed that the payment of compensation for services under this Agreement shall be stipulated in each Work Authorization. One of the following methods shall be utilized:

A. Lump Sum Amount - The Parties shall mutually agree to a lump sum amount for the services to be rendered payable monthly in direct proportion to the work accomplished.

B. Hourly Personnel Rates - For services or projects where the scope of services is not clearly defined, or recurring services or other projects where the District desires the use of the hourly compensation rates outlined in **Exhibit A**.

Article 4. Reimbursable Expenses. Reimbursable expenses consist of actual expenditures made by the Engineer, its employees, or its consultants in the interest of the project for the incidental expenses as listed as follows:

A. Expenses of transportation and living when traveling in connection with a project, for long distance phone calls and telegrams, and fees paid for securing approval of authorities having jurisdiction over the project. All expenditures shall be made in accordance with Chapter 112, *Florida Statutes*, and with the District's travel policy.

B. Expense of reproduction, postage, and handling of drawings and specifications.

Article 5. Term of Agreement. It is understood and agreed that this Agreement is for interim engineering services. It is further understood and agreed that the term of this Agreement will be from the time of execution of this Agreement by the Parties until such time as the District notifies the Engineer that it has entered into a subsequent agreement for engineering services.

Article 6. Special Consultants. When authorized in writing by the District, additional special consulting services may be utilized by the Engineer and paid for on a cost basis.

Article 7. Books and Records. The Engineer shall maintain comprehensive books and records relating to any services performed under this Agreement, which shall be retained by the Engineer for a period of at least four (4) years from and after completion of any services hereunder. The District, or its authorized representative, shall have the right to audit such books and records at all reasonable times upon prior notice to the Engineer.

Article 8. Ownership of Documents.

A. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by the Engineer pursuant to this Agreement (“**Work Product**”) shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

B. The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for the Engineer in the District’s sole discretion, to retain possession for a longer period of time. Upon early termination of the Engineer’s services hereunder, the Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. The Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District’s prior express written consent. The Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the project.

C. The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. The Engineer hereby assigns to the District any and all rights the Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

Article 9. Accounting Records. Records of the Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times.

Article 10. Reuse of Documents. All documents including drawings and specifications furnished by the Engineer pursuant to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by the District or others on extensions of the work for which they were provided or on any other project. Any reuse without specific written consent by the Engineer will be at the District's sole risk and without liability or legal exposure to the Engineer.

Article 11. Estimate of Cost. Since the Engineer has no control over the cost of labor, materials, or equipment or over a contractor's(s') methods of determining prices, or over competitive bidding or market conditions, his opinions of probable cost provided as a service hereunder are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the Engineer cannot and does not guarantee that proposals, bids, or the construction costs will not vary from opinions of probable cost prepared by him. If the District wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitation established by the District will be considered additional services and justify additional fees.

Article 12. Insurance. Subject to the provisions of this Article, the Engineer shall maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers' Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$1,000,000/\$2,000,000
Property Damage (including Contractual)	\$1,000,000/\$2,000,000
Automobile Liability	Combined Single Limit \$1,000,000
Bodily Injury / Property Damage	
Professional Liability for Errors and Omissions	\$1,000,000

If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, the Engineer shall, without interruption, and at the District's option, maintain the insurance for at least three (3) years after the one-year anniversary of this Agreement.

The District, its officers, supervisors, agents, staff, and representatives shall be named as additional insured parties, except with respect to the Worker's Compensation Insurance and the Professional Liability for Errors and Omissions Insurance both for which only proof of

insurance shall be provided. The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Section. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.

If the Engineer fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Engineer shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

Article 13. Contingent Fee. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Article 14. Compliance with Governmental Regulations. In performing its obligations under this Agreement, the Engineer and each of its agents, servants, employees or anyone directly or indirectly employed by the Engineer, shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public or governmental authority having appropriate jurisdiction. If the Engineer fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation of an alleged violation, made by any local, State or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Engineer or any of its agents, servants, or employees, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

Article 15. Compliance with Professional Standards. In performing its obligations under this Agreement, the Engineer and each of its agents, servants, employees or anyone directly or indirectly employed by Engineer, shall maintain the highest standard of care, skill, diligence and professional competency for such work and/or services. Any designs, drawings, reports or specifications prepared or furnished by the Engineer that contain errors, conflicts or omissions will be promptly corrected by Engineer at no cost to the District.

Article 16. Audit. The Engineer agrees that the District or any of its duly authorized representatives shall, until the expiration of four (4) years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to this Agreement. The Engineer agrees that payment made under this Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three (3) years after completion of all work under this Agreement.

Article 17. Indemnification. The Engineer agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the District harmless of and from any and all liabilities, claims, causes of action, demands, suits, or losses arising from the negligent acts, errors or omissions of the Engineer, Engineer's agents or employees, in the performance of professional services under this Agreement. Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of the District's sovereign immunity pursuant to section 768.28, *Florida Statutes*.

Article 18. Public Records. The Engineer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, the Engineer 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, the Engineer 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 this Agreement term and following this Agreement term if the Engineer does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of this Agreement, transfer to the District, at no cost, all public records in the Engineer'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 the Engineer, the Engineer 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. The Engineer acknowledges that the designated Public Records Custodian for the District is **Craig Wrathell**.

IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 2300 GLADES ROAD, SUITE

**410W, BOCA RATON, FLORIDA 33431, (561) 571-0010, AND E-MAIL
WRATHELLC@WHHASSOCIATES.COM.**

Article 19. Notices. All notices, requests, consents, and other communications hereunder (“**Notices**”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

A. If to the District: Terra Lago
Community Development District
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431
Attn: District Manager

With a copy to: Kutak Rock, LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: District Counsel

B. If to the Engineer: _____

Attn: _____

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the Parties may deliver Notice on behalf of the Parties. Any party or other person to whom Notices are to be sent or copied may notify the other Parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addressees set forth herein.

Article 20. Controlling Law. The Parties agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue shall be in Martin County, Florida.

Article 21. Assignment. Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Engineer from employing such

independent professional associates and consultants as the Engineer deems appropriate, pursuant to Article 6 herein.

Article 22. Termination. The District and the Engineer may terminate this Agreement without cause upon notice. At such time as the Engineer receives notification by the District to terminate this Agreement, the Engineer shall not perform any further services unless directed to do so by the Board of Supervisors. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential or other damages of any kind (including, but not limited to, lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

Article 23. Recovery of Costs and Fees. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the substantially prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees, paralegal fees and expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

Article 24. Agreement. This Agreement reflects the negotiated agreement of the parties, each represented by competent legal counsel. Accordingly, this Agreement shall be construed as if both parties jointly prepared it, and no presumption against one party or the other shall govern the interpretation of any of the provisions of this Agreement.

Article 25. Independent Contractor. The District and Engineer agree and acknowledge that Engineer shall serve as an independent contractor of the District. Neither Engineer nor employees of Engineer, if any, are employees of the District under the meaning or application of any federal or state unemployment, insurance laws, or any other potentially applicable laws. Engineer agrees to assume all liabilities or obligations by any one or more of such laws with respect to employees of Engineer, if any, in the performance of this Agreement. Engineer shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and Engineer shall have no authority to represent as agent, employee, or in any other capacity the District unless set forth differently herein or authorized by vote of the Board.

Article 26. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

Article 27. E-Verify Requirements. The Engineer agrees that it shall bear the responsibility for verifying the employment status of all persons it employs or subcontracts in the performance of this Agreement and agrees to otherwise comply with all applicable federal

and Florida law, including but not limited to the Immigration Reform and Control Act of 1986, as amended, and Section 448.095, Florida Statutes.

Article 28. Compliance with Section 20.055, Florida Statutes. The Engineer agrees to comply with Section 20.055(5), *Florida Statutes*, to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant such section and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Article 29. Acceptance. Acceptance of this Agreement is indicated by the signature of the authorized representative of the District and the Engineer in the spaces provided below.

IN WITNESS WHEREOF, the Parties hereto have caused these present to be executed the day and year first above written.

ATTEST:

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Chair/Vice Chair, Board of Supervisors

[NAME OF ENGINEERING FIRM]

Witness

By: _____
Its: _____

Exhibit A
RATE SCHEDULE

_____, 202__

Terra Lago Community Development District
Village of Indiantown, Florida

Subject: **Work Authorization Number [__]
Terra Lago Community Development District**

Dear Chairman, Board of Supervisors:

[ENGINEER] is pleased to submit this work authorization to provide engineering services for the Terra Lago Community Development District (“**District**”). We will provide these services pursuant to our current agreement dated _____, 202__ (“**Interim Engineering Agreement**”) as follows:

I. Scope of Work

The District will engage the services of [ENGINEER] as Engineer to prepare any necessary reports and attend and participate in meetings of the District’s Board of Supervisors as requested by the District.

II. Fees

The District will compensate [ENGINEER] pursuant to the hourly rate schedule contained in the Interim Engineering Agreement in accordance with the terms of the Interim Engineering Agreement. The District will reimburse [ENGINEER], all direct costs which include items such as printing, drawings, travel, deliveries, et cetera, pursuant to the Interim Engineering Agreement.

This proposal, together with the Interim Engineering Agreement, represents the entire understanding between the District and [ENGINEER] with regard to the referenced work authorization. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Upon receipt, we will promptly schedule our services.

Thank you for considering [ENGINEER]. We look forward to working with you.

Sincerely,
[ENGINEER]

Name: _____
Authorized Representative

APPROVED AND ACCEPTED
By: _____ Chair, Village of Indiantown Community Development District

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

6A

Treasure Coast Newspapers

PART OF THE USA TODAY NETWORK

Stuart News

1801 U.S. 1, Vero Beach, FL 32960

AFFIDAVIT OF PUBLICATION

TERRA LAGO CD
2300 GLADES RD # 410W

BOCA RATON, FL 33431-8556

STATE OF WISCONSIN
COUNTY OF BROWN

Before the undersigned authority personally appeared, said legal clerk, who on oath says that he/she is a legal clerk of the Stuart News, a daily newspaper published at Stuart in Martin County, Florida: that the attached copy of advertisement was published in the Stuart News in the following issues below. Affiant further says that the said Stuart News is a newspaper published in Stuart in said Martin County, Florida, and that said newspaper has heretofore been continuously published in said Martin County, Florida, daily and distributed in Martin County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid or promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. The Stuart News has been entered as Periodical Matter at the Post Offices in Stuart, Martin County, Florida and has been for a period of one year next preceding the first publication of the attached copy of advertisement.

Issue(s) dated before where the dates are noted or by publication on the newspaper's website, if authorized, on :

05/09/2023

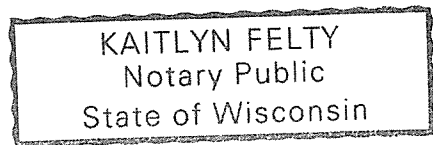


Subscribed and sworn to before on May 9, 2023:


Notary, State of WI, County of Brown

317127

My commission expires



Publication Cost: \$135.09
Ad No: 0005695057
Customer No: 2360642
PO #:

of Affidavits 1

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT REQUEST FOR PROPOSALS FOR ANNUAL AUDIT SERVICES

The Terra Lago Community Development District hereby requests proposals for annual financial auditing services. The proposal must provide for the auditing of the District's financial records for the fiscal year ending September 30, 2023, with an additional annual renewals, subject to mutual agreement by both parties. The District is a local unit of special-purpose government created under Chapter 190, *Florida Statutes*, for the purpose of financing, constructing, and maintaining public infrastructure. The District is located in the Village of Indiantown, Florida, and has an annual operating budget of approximately \$84,348. The final contract will require that, among other things, the audit for the fiscal year ending September 30, 2023, be completed no later than April 15, 2024.

The auditing entity submitting a proposal must be duly licensed under Chapter 473, *Florida Statutes*, and be qualified to conduct audits in accordance with "Government Auditing Standards," as adopted by the Florida Board of Accountancy. Audits shall be conducted in accordance with Florida Law and particularly Section 218.39, *Florida Statutes*, and the rules of the Florida Auditor General.

Proposal packages, which include evaluation criteria and instructions to proposers, are available from the District Manager at the address and telephone number listed below.

Proposers must provide one (1) unbound hardcopy and one (1) electronic copy of their proposal to the District Manager, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431, (561) 571-0010 in an envelope marked on the outside "Auditing Services, Terra Lago Community Development District." Proposals must be received by 12:00 p.m., on May 17, 2023 at the office of the District Manager. Please direct all questions regarding this Notice to the District Manager.

District Manager

Pub: May 9, 2023
TCN5695057

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

6B

**TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS FOR ANNUAL AUDIT SERVICES**

The Terra Lago Community Development District hereby requests proposals for annual financial auditing services. The proposal must provide for the auditing of the District's financial records for the fiscal year ending September 30, 2023, with an additional annual renewals, subject to mutual agreement by both parties. The District is a local unit of special-purpose government created under Chapter 190, *Florida Statutes*, for the purpose of financing, constructing, and maintaining public infrastructure. The District is located in the Village of Indiantown, Florida, and has an annual operating budget of approximately \$84,348. The final contract will require that, among other things, the audit for the fiscal year ending September 30, 2023, be completed no later than April 15, 2024.

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District Manager

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT

REQUEST FOR PROPOSALS

District Auditing Services for Fiscal Year 2023

Village of Indiantown, Florida

INSTRUCTIONS TO PROPOSERS

SECTION 1. DUE DATE. Sealed proposals must be received no later than **May 24, 2023**, at 12:00 p.m., at the offices of the District Manager, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431, (561) 571-0010. Proposals will be publicly opened at that time.

SECTION 2. 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.

SECTION 3. QUALIFICATIONS OF PROPOSER. The contract, if awarded, will only be awarded to a responsible Proposer who is qualified by experience and licensing 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 to complete the work to the satisfaction of the District.

SECTION 4. SUBMISSION OF ONLY ONE PROPOSAL. Proposers shall be disqualified and their proposals rejected if the District has reason to believe that collusion may exist among the 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.

SECTION 5. SUBMISSION OF PROPOSAL. Submit eight (8) copies of the Proposal Documents, and other requested attachments at the time and place indicated herein, which shall be enclosed in an opaque sealed envelope, marked with the title "Auditing Services – Terra Lago Community Development District" on the face of it.

SECTION 6. MODIFICATION AND WITHDRAWAL. Proposals may be modified or withdrawn by an appropriate document duly executed and delivered to the place where proposals are to be submitted at any time prior to the time and date the proposals are due. No proposal may be withdrawn after opening for a period of ninety (90) days.

SECTION 7. PROPOSAL DOCUMENTS. The proposal documents shall consist of the notice announcing the request for proposals, these instructions, the Evaluation Criteria

Sheet and a proposal with all required documentation pursuant to Section 12 of these instructions (the "Proposal Documents").

SECTION 8. PROPOSAL. In making its proposal, each Proposer represents that it has read and understands the Proposal Documents and that the proposal is made in accordance therewith.

SECTION 9. BASIS OF AWARD/RIGHT TO REJECT. The District reserves the right to reject any and all proposals, make modifications to the work, and waive any informalities or irregularities in proposals as it is deemed in the best interests of the District.

SECTION 10. CONTRACT AWARD. Within fourteen (14) days of receipt of the Notice of Award from the District, the Proposer shall enter into and execute a Contract (engagement letter) with the District.

SECTION 11. LIMITATION OF LIABILITY. Nothing herein shall be construed as or constitute a waiver of the District's limited waiver of liability contained in Section 768.28, *Florida Statutes*, or any other statute or law.

SECTION 12. MISCELLANEOUS. All proposals shall include the following information in addition to any other requirements of the proposal documents.

- A. List the position or title of all personnel to perform work on the District audit. Include resumes for each person listed; list years of experience in present position for each party listed and years of related experience.
- B. Describe proposed staffing levels, including resumes with applicable certifications.
- C. Three references from projects of similar size and scope. The Proposer should include information relating to the work it conducted for each reference as well as a name, address and phone number of a contact person.
- D. The lump sum cost of the provision of the services under the proposal for the District's first audit for which there are no special assessment bonds, plus the lump sum cost of two (2) annual renewals, which renewals shall include services related to the District's anticipated issuance of special assessment bonds.

SECTION 13. PROTESTS. In accordance with the District's Rules of Procedure, any protest regarding the Proposal Documents, must be filed in writing, at the offices of the District Manager, within seventy-two (72) calendar hours (excluding Saturday, Sunday, and state holidays) after the receipt of the Proposal Documents. 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 (including Saturday, Sunday, and state holidays) after the initial notice of protest was filed. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object or protest with respect to the aforesaid Proposal Documents.

SECTION 14. EVALUATION OF PROPOSALS. The criteria to be used in the evaluation of proposals are presented in the Evaluation Criteria Sheet, contained within the Proposal Documents.

**TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT
AUDITOR SELECTION
EVALUATION CRITERIA**

1. Ability of Personnel. (20 Points)

(E.g., geographic location of the firm's headquarters or permanent office in relation to the project; capabilities and experience of key personnel; present ability to manage this project; evaluation of existing work load; proposed staffing levels, etc.)

2. Proposer's Experience. (20 Points)

(E.g. past record and experience of the Proposer in similar projects; volume of work previously performed by the firm; past performance for other or current Community Development District(s) in other contracts; character, integrity, reputation of Proposer, etc.)

3. Understanding of Scope of Work. (20 Points)

Extent to which the proposal demonstrates an understanding of the District's needs for the services requested.

4. Ability to Furnish the Required Services. (20 Points)

Extent to which the proposal demonstrates the adequacy of Proposer's financial resources and stability as a business entity necessary to complete the services required.

5. Price. (20 Points)***

Points will be awarded based upon the lowest total proposal for rendering the services and the reasonableness of the proposal. Please include pricing for each bond issuance.

Total (100 Points)

***Alternatively, the Board may choose to evaluate firms without considering price, in which case the remaining categories would be assigned 25 points each.

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

6C1

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
PROPOSAL FOR AUDIT SERVICES**

PROPOSED BY:

Berger, Toombs, Elam, Gaines & Frank
CERTIFIED PUBLIC ACCOUNTANTS, PL

600 Citrus Avenue, Suite 200
Fort Pierce, Florida 34950

(772) 461-6120

CONTACT PERSON:

J. W. Gaines, CPA, Director

DATE OF PROPOSAL:

May 17, 2023

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Berger, Toombs, Elam, Gaines & Frank

Certified Public Accountants PL

600 Citrus Avenue
Suite 200
Fort Pierce, Florida 34950

772/461-6120 // 461-1155
FAX: 772/468-9278

May 17, 2023

Terra Lago Community Development District
Wrathell Hunt & Associates
2300 Glades Road, Suite 410W
Boca Raton, FL 33431

Dear District Manager:

Thank you very much for the opportunity to present our professional credentials to provide audit services for Terra Lago Community Development District.

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL has assembled a team of governmental and nonprofit specialists second to none to serve our clients. Our firm has the necessary qualifications and experience to serve as the independent auditors for Terra Lago Community Development District. We will provide you with top quality, responsive service.

Experience

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL is a recognized leader in providing services to governmental and nonprofit agencies throughout Florida. We have been the independent auditors for a number of local governmental agencies and through our experience in performing their audits, we have been able to increase our audit efficiency and; therefore, reduce costs. We have continually passed this cost savings on to our clients and will continue to do so in the future. As a result of our experience and expertise, we have developed an effective and efficient audit approach designed to meet or exceed the performance specifications in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, and the standards for financial and compliance audits. We will conduct the audit in accordance with auditing standards generally accepted in the United States of America; "Government Auditing Standards" issued by the Comptroller General of the United States; the provisions of the Single Audit Act, Subpart F of Title 2 US Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, with minimal disruption to your operations. Our firm has frequent technical updates to keep our personnel informed and up-to-date on all changes that are occurring within the industry.

Fort Pierce / Stuart

Member AICPA

- 1 -
Member AICPA Division for CPA Firms
Private Companies practice Section

Member FICPA

Terra Lago Community Development District
May 17, 2023

Our firm is a member of the Government Audit Quality Center, an organization dedicated to improving government audit quality. We also utilize the audit program software of a nationally recognized CPA firm to assure us that we are up to date with all auditing standards and to assist us maintain maximum audit efficiencies.

To facilitate your evaluation of our qualifications and experience, we have arranged this proposal to include a resume of our firm, including our available staff, our extensive prior governmental and nonprofit auditing experience and clients to be contacted.

You need a firm that will provide an efficient, cost-effective, high-quality audit within critical time constraints. You need a firm with the prerequisite governmental and nonprofit experience to perform your audit according to stringent legal and regulatory requirements, a firm that understands the complex nature of community development districts and their unique compliance requirements. You need a firm with recognized governmental and nonprofit specialists within the finance and governmental communities. And, certainly, you need a firm that will provide you with valuable feedback to enhance your current and future operations. Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL is that firm. J. W. Gaines is the person authorized to make representations for the firm.

Thank you again for the opportunity to submit this proposal to Terra Lago Community Development District.

Very truly yours,



Berger, Toombs, Elam, Gaines & Frank
Certified Public Accountants PL
Fort Pierce, Florida

PROFILE OF THE PROPOSER

Description and History of Audit Firm

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL is a Treasure Coast public accounting firm, which qualifies as a small business firm, as established by the Small Business Administration (13 CFR 121.38), with offices in Fort Pierce and Stuart. We are a member of the Florida Institute of Certified Public Accountants and the American Institute of Certified Public Accountants. The firm was formed from the merger of Edwards, Berger, Harris & Company (originated in 1972) and McAlpin, Curtis & Associates (originated in 1949). J. W. Gaines and Associates (originated in 1979) merged with the firm in 2004. Our tremendous growth rate experienced over the last 69 years is directly attributable to the firm's unrelenting dedication to providing the highest quality, responsive professional services attainable to its clients.

We are a member of the Private Companies Practice Section (PCPS) of the American Institute of Certified Public Accountants (AICPA) to assure we meet the highest standards. Membership in this practice section requires that our firm meet more stringent standards than standard AICPA membership. These rigorous requirements include the requirement of a triennial peer review of our firm's auditing and accounting practice and annual Continuing Professional Education (CPE) for all accounting staff (whether CPA or non-CPA). For standard AICPA membership, only a quality review is required and only CPAs must meet CPE requirements.

We are also a member of the Government Audit Quality Center ("the Center") of the American Institute of Certified Public Accountants to assure the quality of our government audits. Membership in the Center, which is voluntary, requires our firm to comply with additional standards to promote the quality of government audits.

We have been extensively involved in serving local government entities with professional accounting, auditing and consulting services throughout the entire 69 year history of our firm. Our substantial experience over the years makes us uniquely qualified to provide accounting, auditing, and consulting services to these clients. We are a recognized leader in providing services to governmental and nonprofit agencies on the Treasure Coast and in Central and South Florida, with extensive experience in auditing community development districts and water control districts. We were the independent auditors of the City of Fort Pierce for over 37 years and currently, we are the independent auditors for St. Lucie County since 2002, and for 34 of the 38 years that the county has been audited by CPA firms. Additionally, we have performed audits of the City of Stuart, the City of Vero Beach, Indian River County and Martin County. We also presently audit over 75 Community Development Districts throughout Florida.

Our firm was founded on the belief that we are better able to respond to our clients needs through education, experience, independence, quality control, and personal service. Our firm's commitment to quality is reflected in our endeavor of professional excellence via continuing education, the use of the latest computer technology, professional membership in PCPS and peer review.

We believe our approach to audit engagements, intelligence and innovation teamed with sound professional judgment enables us to explore new concepts while remaining sensitive to the fundamental need for practical solutions. We take pride in giving you the assurance that the personal assistance you receive comes from years of advanced training, technical experience and financial acumen.

Professional Staff Resources

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL has a total of 27 professional and administrative staff (including 12 professional staff with extensive experience servicing government entities). The work will be performed out of our Fort Pierce office with a proposed staff of one senior accountant and one or two staff accountants supervised by an audit manager and audit partner. With the exception of the directors of the firm's offices, the professional staff is not specifically assigned to any of our individual offices. The professional and administrative staff resources available to you through Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL are as follows:

	<u>Total</u>
Partners/Directors (CPA's)	5
Principals (CPA)	1
Managers (CPA)	1
Senior/Supervisor Accountants (2 CPA's)	3
Staff Accountants (1 CPA)	7
Computer Specialist	1
Paraprofessional	6
Administrative	<u>4</u>
Total – all personnel	28

Following is a brief description of each employee classification:

Staff Accountant – Staff accountants work directly under the constant supervision of the auditor-in-charge and, are responsible for the various testing of documents, account analysis and any other duties as his/her supervisor believes appropriate. Minimum qualification for a staff accountant is graduation from an accredited university or college with a degree in accounting or equivalent.

Senior Accountant – A senior accountant must possess all the qualifications of the staff accountant, in addition to being able to draft the necessary reports and financial statements, and supervise other staff accountants when necessary.

Managers – A manager must possess the qualifications of the senior accountant, plus be able to work without extensive supervision from the auditor-in-charge. The manager should be able to draft audit reports from start to finish and to supervise the audit team, if necessary.

Principal – A principal is a partner/director in training. He has been a manager for several years and possesses the technical skills to act as the auditor-in-charge. A principal has no financial interest in the firm.

Partner/Director – The director has extensive governmental auditing experience and acts as the auditor-in-charge. Directors have a financial interest in the firm.

Professional Staff Resources (Continued)

Independence – Independence of the public accounting firm, with respect to the audit client, is the foundation from which the public gains its trust in the opinion issued by the public accounting firm at the end of the audit process. This independence must be in appearance as well as in fact. The public must perceive that the accounting firm is independent of the audit entity to ensure that nothing would compromise the opinion issued by the public accounting firm. **Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL** is independent of Terra Lago Community Development District, including its elected officials and related parties, at the date of this proposal, as defined by the following rules, regulations, and standards:

AuSection 220 – Statements on Auditing Standards issued by the American Institute of Certified Public Accountants;

ET Sections 101 and 102 – Code of Professional Conduct of the American Institute of Certified Public Accountants;

Chapter 21A-1, Florida Administrative Code;

Section 473.315, Florida Statutes; and,

Government Auditing Standards, issued by the Comptroller General of the United States.

On an annual basis, all members of the firm are required to confirm, in writing, that they have no personal or financial relationships or holding that would impair their independence with regard to the firm's clients.

Independence is a hallmark of our profession. We encourage our staff to use professional judgment in situations where our independence could be impaired or the perception of a conflict of interest might exist. In the governmental sector, public perception is as important as professional standards. Therefore, the utmost care must be exercised by independent auditors in the performance of their duties.

Ability to Furnish the Required Services

As previously noted in the Profile of the Proposer section of this document, our firm has been in existence for over 69 years. We have provided audit services to some clients for over 30 years continually. Our firm is insured against physical loss through commercial insurance and we also carry liability insurance. The majority of our audit documentation is stored electronically, both on our office network and on each employee laptop or computer assigned to each specific job. Our office computer network is backed up on tape, so in the event of a total equipment loss, we can restore all data as soon as replacement equipment is acquired. In addition, our field laptop computers carry the same data and can be used in the event of emergency with virtually no delay in completing the required services.

ADDITIONAL SERVICES PROVIDED

Arbitrage Rebate Services

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL also provides arbitrage rebate compliance and related services to governmental issuers. The Tax Reform Act of 1986 requires issuers of most tax-exempt obligations to pay (i.e., “rebate”) to the United States government any arbitrage profits. Arbitrage profits are earnings on the investment of bond proceeds and certain other monies in excess of what would have been earned had such monies been invested at a yield equal to the yield on the bonds.

Federal tax law requires that interim rebate calculations and payments are due at the end of every fifth bond year. Final payment is required upon redemption of the bonds. More frequent calculations may be deemed advisable by an issuer’s auditor, trustee or bond counsel or to assure that accurate and current records are available. These more frequent requirements are usually contained in the Arbitrage or Rebate Certificate with respect to the bonds.

Our firm performs a comprehensive rebate analysis and includes the following:

- Verifying that the issue is subject to rebate;
- Calculating the bond yield;
- Identifying, and separately accounting for, all “Gross Proceeds” (as that term is defined in the Code) of the bond issue, including those requiring analysis due to “transferred proceeds” and/or “commingled funds” circumstances;
- Determining what general and/or elective options are available to Gross proceeds of the issue;
- Calculating the issue’s excess investment earning (rebate liability), if any;
- Delivering appropriate documentation to support all calculations;
- Providing an executive summary identifying the methodology employed, major assumptions, conclusions, and any other recommendations for changes in recordkeeping and investment policies;
- Assisting as necessary in the event of an Internal Revenue Service inquiry; and,
- Consulting with issue staff, as necessary, regarding arbitrage related matters.

GOVERNMENTAL AUDITING EXPERIENCE

Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL has been practicing public accounting in Florida for 69 years. Our success over the years has been the result of a strong commitment to providing personalized quality service to our clients.

The current members of our firm have performed audits of over 900 community development districts, and over 1,800 audits of municipalities, counties and other governmental entities such as the City of Fort Pierce and St. Lucie County.

Our firm provides a variety of accounting, auditing, tax litigation support, and consulting services. Some of the professional accounting, auditing and management consulting services that are provided by our firm are listed below:

- Performance of annual financial and compliance audits, including Single Audits of state and federal financial assistance programs, under the provisions of the Single Audit Act, Subpart F of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), with minimal disruptions to your operations;
- Performance of special compliance audits to ascertain compliance with the applicable local, state and federal laws and regulations;
- Issuance of comfort letters and consent letters in conjunction with the issuance of tax-exempt debt obligations, including compiling financial data and interim period financial statement reviews;
- Calculation of estimated and actual federal arbitrage rebates;
- Assistance in compiling historical financial data for first-time and supplemental submissions for GFOA Certificate of Achievement for Excellence in Financial Reporting;
- Preparation of indirect cost allocation systems in accordance with Federal and State regulatory requirements;
- Providing human resource and employee benefit consulting;
- Performance of automation feasibility studies and disaster recovery plans;
- Performance feasibility studies concerning major fixed asset acquisitions and utility plant expansion plans (including electric, water, pollution control, and sanitation utilities); and
- Assistance in litigation, including testimony in civil and criminal court.
- Assist clients who utilize QuickBooks software with their software needs. Our Certified QuickBooks Advisor has undergone extensive training through QuickBooks and has passed several exams to attain this Certification.

Continuing Professional Education

All members of the governmental audit staff of our firm, and audit team members assigned to this engagement, are in compliance with the Continuing Professional Education (CPE) requirements set forth in Government Auditing Standards issued by the Comptroller General of the United States. In addition, our firm is in compliance with the applicable provisions of the Florida Statutes that require CPA's to have met certain CPE requirements prior to proposing on governmental audit engagements.

GOVERNMENTAL AUDITING EXPERIENCE (CONTINUED)

The audit team has extensive experience in performing governmental audits and is exposed to intensive and continuing concentration on these types of audits. Due to the total number of governmental audits our team performs, each member of our governmental staff must understand and be able to perform several types of governmental audits. It is our objective to provide each professional employee fifty hours or more of comprehensive continuing professional education each year. This is accomplished through attending seminars throughout Florida and is reinforced through in-house training.

Our firm has made a steadfast commitment to professional education. Our active attendance and participation in continuing professional education is a major part of our objective to obtain the most recent knowledge on issues which are of importance to our clients. We are growing on the reputation for work that our firm is providing today.

Quality Control Program

Quality control requires continuing commitment to professional excellence. **Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, PL** is formally dedicated to that commitment.

To ensure maintaining the standards of working excellence required by our firm, we joined the Private Companies Practice Section (PCPS) of the American Institute of Certified Public Accountants (AICPA). To be a participating member firm of this practice section, a firm must obtain an independent Peer Review of its quality control policies and procedures to ascertain the firm's compliance with existing auditing standards on the applicable engagements.

The scope of the Peer Review is comprehensive in that it specifically reviews the following quality control policies and procedures of the participating firm:

- Professional, economic, and administrative independence;
- Assignment of professional personnel to engagements;
- Consultation on technical matters;
- Supervision of engagement personnel;
- Hiring and employment of personnel;
- Professional development;
- Advancement;
- Acceptance and continuation of clients; and,
- Inspection and review system.

We believe that our commitment to the program is rewarding not only to our firm, but primarily to our clients.

The external independent Peer Review of the elements of our quality control policies and procedures performed by an independent certified public accountant, approved by the PCPS of the AICPA, provides you with the assurance that we continue to conform to standards of the profession in the conduct of our accounting and auditing practice.

GOVERNMENTAL AUDITING EXPERIENCE (CONTINUED)

Our firm is also a member of Governmental Audit Quality Center (GAQC), a voluntary membership center for CPA firms that perform governmental audits. This center promotes the quality of governmental audits.

Our firm has completed successive Peer Reviews. These reviews included a representative sample of our firm's local governmental auditing engagements. As a result of these reviews, our firm obtained an unqualified opinion on our quality control program and work procedures. On page 31 is a copy of our most recent Peer Review report. It should be noted that we received a pass rating.

Our firm has never had any disciplinary actions by state regulatory bodies or professional organizations.

As our firm performs approximately one hundred audits each year that are reviewed by federal, state or local entities, we are constantly dealing with questions from these entities about our audits. We are pleased to say that any questions that have been raised were minor issues and were easily resolved without re-issuing any reports.

Certificate of Achievement for Excellence in Financial Reporting (CAFR)

We are proud and honored to have been involved with the City of Fort Pierce and the Fort Pierce Utilities Authority when they received their first Certificates of Achievement for Excellence in Financial Reporting for the fiscal years ended September 30, 1988 and 1994, respectively. We were also instrumental in the City of Stuart receiving the award, in our first year of performing their audit, for the year ended September 30, 1999.

We also assisted St. Lucie County, Florida for the year ended September 30, 2003, in preparing their first Comprehensive Annual Financial Report, and St. Lucie County has received their Certificate of Achievement for Excellence in Financial Reporting every year since.

As continued commitment to insuring that we are providing the highest level of experience, we have had at least one employee of our firm serve on the GFOA – Special Review Committee since the mid-1980s. This committee is made up of selective Certified Public Accountants throughout the United States who have demonstrated their high level of knowledge and expertise in governmental accounting. Each committee member attends a special review meeting at the Annual GFOA Conference. At this meeting, the committee reports on the Certificate of Achievement Program's most recent results, future goals, and common reporting deficiencies.

We feel that our previous experience in assisting the City of Fort Pierce, the Fort Pierce Utilities Authority and St. Lucie County obtain their first CAFRs, and the City of Stuart in continuing to receive a CAFR and our firm's continued involvement with the GFOA, and the CAFR review committee make us a valued asset for any client in the field of governmental financial reporting.

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

References

Terracina Community Development
District
Jeff Walker, Special District Services
(561) 630-4922

Gateway Community Development
District
Stephen Bloom, Severn Trent Management
(954) 753-5841

The Reserve Community Development District

Darrin Mossing, Governmental Management
Services LLC
(407) 841-5524

Port of the Islands Community Development
District
Cal Teague, Premier District Management

(239) 690-7100 ext 101

In addition to the above, we have the following additional governmental audit experience:

Community Development Districts

Aberdeen Community Development
District

Beacon Lakes Community
Development District

Alta Lakes Community Development
District

Beaumont Community Development
District

Amelia Concourse Community
Development District

Bella Collina Community Development
District

Amelia Walk Community
Development District

Bonnet Creek Community
Development District

Aqua One Community Development
District

Buckeye Park Community
Development District

Arborwood Community Development
District

Candler Hills East Community
Development District

Arlington Ridge Community
Development District

Cedar Hammock Community
Development District

Bartram Springs Community
Development District

Central Lake Community
Development District

Baytree Community Development
District

Channing Park Community
Development District

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Cheval West Community Development District	Evergreen Community Development District
Coconut Cay Community Development District	Forest Brooke Community Development District
Colonial Country Club Community Development District	Gateway Services Community Development District
Connerton West Community Development District	Gramercy Farms Community Development District
Copperstone Community Development District	Greenway Improvement District
Creekside @ Twin Creeks Community Development District	Greyhawk Landing Community Development District
Deer Run Community Development District	Griffin Lakes Community Development District
Dowden West Community Development District	Habitat Community Development District
DP1 Community Development District	Harbor Bay Community Development District
Eagle Point Community Development District	Harbourage at Braden River Community Development District
East Nassau Stewardship District	Harmony Community Development District
Eastlake Oaks Community Development District	Harmony West Community Development District
Easton Park Community Development District	Harrison Ranch Community Development District
Estancia @ Wiregrass Community Development District	Hawkstone Community Development District

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Heritage Harbor Community Development District	Madeira Community Development District
Heritage Isles Community Development District	Marhsall Creek Community Development District
Heritage Lake Park Community Development District	Meadow Pointe IV Community Development District
Heritage Landing Community Development District	Meadow View at Twin Creek Community Development District
Heritage Palms Community Development District	Mediterra North Community Development District
Heron Isles Community Development District	Midtown Miami Community Development District
Heron Isles Community Development District	Mira Lago West Community Development District
Highland Meadows II Community Development District	Montecito Community Development District
Julington Creek Community Development District	Narcoossee Community Development District
Laguna Lakes Community Development District	Naturewalk Community Development District
Lake Bernadette Community Development District	New Port Tampa Bay Community Development District
Lakeside Plantation Community Development District	Overoaks Community Development District
Landings at Miami Community Development District	Panther Trace II Community Development District
Legends Bay Community Development District	Paseo Community Development District
Lexington Oaks Community Development District	Pine Ridge Plantation Community Development District
Live Oak No. 2 Community Development District	Piney Z Community Development District

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Poinciana Community Development District	Sampson Creek Community Development District
Poinciana West Community Development District	San Simeon Community Development District
Port of the Islands Community Development District	Six Mile Creek Community Development District
Portofino Isles Community Development District	South Village Community Development District
Quarry Community Development District	Southern Hills Plantation I Community Development District
Renaissance Commons Community Development District	Southern Hills Plantation III Community Development District
Reserve Community Development District	South Fork Community Development District
Reserve #2 Community Development District	St. John's Forest Community Development District
River Glen Community Development District	Stoneybrook South Community Development District
River Hall Community Development District	Stoneybrook South at ChampionsGate Community Development District
River Place on the St. Lucie Community Development District	Stoneybrook West Community Development District
Rivers Edge Community Development District	Tern Bay Community Development District
Riverwood Community Development District	Terracina Community Development District
Riverwood Estates Community Development District	Tison's Landing Community Development District
Rolling Hills Community Development District	TPOST Community Development District
Rolling Oaks Community Development District	

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Triple Creek Community
Development District

Vizcaya in Kendall
Development District

TSR Community Development
District

Waterset North Community
Development District

Turnbull Creek Community
Development District

Westside Community Development
District

Twin Creeks North Community
Development District

WildBlue Community Development
District

Urban Orlando Community
Development District

Willow Creek Community
Development District

Verano #2 Community
Development District

Willow Hammock Community
Development District

Viera East Community
Development District

Winston Trails Community
Development District

VillaMar Community
Development District

Zephyr Ridge Community
Development District

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Other Governmental Organizations

City of Westlake	Office of the Medical Examiner, District 19
Florida Inland Navigation District	Rupert J. Smith Law Library of St. Lucie County
Fort Pierce Farms Water Control District	St. Lucie Education Foundation
Indian River Regional Crime Laboratory, District 19, Florida	Seminole Improvement District
Viera Stewardship District	Troup Indiantown Water Control District

Current or Recent Single Audits.

St. Lucie County, Florida
Early Learning Coalition, Inc.
Treasure Coast Food Bank, Inc.

Members of our audit team have acquired extensive experience from performing or participating in over 1,800 audits of governments, independent special taxing districts, school boards, and other agencies that receive public money and utilize fund accounting.

Much of our firm's auditing experience is with compliance auditing, which is required for publicly financed agencies. In this type of audit, we do a financial examination and also confirm compliance with various statutory and regulatory guidelines.

Following is a summary of our other experience, including Auditor General experience, as it pertains to other governmental and fund accounting audits.

Counties

(Includes elected constitutional officers, utilities and dependent taxing districts)

Indian River
Martin
Okeechobee
Palm Beach

Municipalities

City of Port St. Lucie
City of Vero Beach
Town of Orchid

GOVERNMENTAL AUDIT EXPERIENCE (CONTINUED)

Special Districts

Bannon Lakes Community Development District
Boggy Creek Community Development District
Capron Trail Community Development District
Celebration Pointe Community Development District
Coquina Water Control District
Diamond Hill Community Development District
Dovera Community Development District
Durbin Crossing Community Development District
Golden Lakes Community Development District
Lakewood Ranch Community Development District
Martin Soil and Water Conservation District
Meadow Pointe III Community Development District
Myrtle Creek Community Development District
St. Lucie County – Fort Pierce Fire District
The Crossings at Fleming Island
St. Lucie West Services District
Indian River County Mosquito Control District
St. John's Water Control District
Westchase and Westchase East Community Development Districts
Pier Park Community Development District
Verandahs Community Development District
Magnolia Park Community Development District

Schools and Colleges

Federal Student Aid Programs – Indian River Community College
Indian River Community College
Okeechobee County District School Board
St. Lucie County District School Board

State and County Agencies

Central Florida Foreign-Trade Zone, Inc. (a nonprofit organization affiliated with the St. Lucie County Board of County Commissioners)
Florida School for Boys at Okeechobee
Indian River Community College Crime Laboratory
Indian River Correctional Institution

FEE SCHEDULE

We propose the fee for our audit services described below to be \$3,115 for the year ended September 30, 2023, with annual renewals if agreed upon by both parties. Our fee for the year ended September 30, 2023 with bond issuances will be \$3,725. The fee is contingent upon the financial records and accounting systems of Terra Lago Community Development District being "audit ready" and the financial activity for the District is not materially increased. If we discover that additional preparation work or subsidiary schedules are needed, we will consult with your authorized representative. We can assist with this additional work at our standard rates should you desire.

SCOPE OF WORK TO BE PERFORMED

If selected as the District's auditors, we will perform a financial and compliance audit in accordance with Section 11.45, Florida Statutes, in order to express an opinion on an annual basis on the financial statements of Terra Lago Community Development District as of September 30, 2023. The audits will be performed to the extent necessary to express an opinion on the fairness in all material respects with which the financial statements present the financial position, results of operations and changes in financial position in conformity with generally accepted accounting principles and to determine whether, for selected transactions, operations are properly conducted in accordance with legal and regulatory requirements. Reportable conditions that are also material weaknesses shall be identified as such in the Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters. Other (non-reportable) conditions discovered during the course of the audit will be reported in a separate letter to management, which will be referred to in the Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters.

Our audit will be performed in accordance with standards for financial and compliance audits contained in *Government Auditing Standards*, as well as in compliance with rules and regulations of audits of special districts as set forth by the State Auditor General in Chapter 10.550, Local Governmental Entity Audits, and other relevant federal, state and county orders, statutes, ordinances, charter, resolutions, bond covenants, Administrative Code and procedures, or rules and regulations which may pertain to the work required in the engagement.

The primary purpose of our audit will be to express an opinion on the financial statements discussed above. It should be noted that such audits are subject to the inherent risk that errors or irregularities may not be detected. However, if conditions are discovered which lead to the belief that material errors, defalcations or other irregularities may exist or if other circumstances are encountered that require extended services, we will promptly notify the appropriate individual.

Commitment to Quality Service

Personnel Qualifications and Experience

J. W. Gaines, CPA, CITP

Director – 41 years

Education

- ◆ Stetson University, B.B.A. – Accounting

Registrations

- ◆ Certified Public Accountant – State of Florida, State Board of Accountancy
- ◆ Certified Information Technology Professional (CITP) – American Institute of Certified Public Accountants

Professional Affiliations/Community Service

- ◆ Member of the American and Florida Institutes of Certified Public Accountants
- ◆ Affiliate member Government Finance Officers Association
- ◆ Past President, Vice President-Campaign Chairman, Vice President and Board Member of United Way of St. Lucie County, 1989 - 1994
- ◆ Past President, President Elect, Secretary and Treasurer of the Treasure Coast Chapter of the Florida Institute of Certified Public Accountants, 1988 - 1991
- ◆ Past President of Ft. Pierce Kiwanis Club, 1994 - 95, Member/Board Member since 1982
- ◆ Past President, Vice President and Treasurer of St. Lucie County Chapter of the American Cancer Society, 1980 -1986
- ◆ Member of the St. Lucie County Chamber of Commerce, Member Board of Directors, Treasurer, September 2002 - 2006, Chairman Elect 2007, Chairman 2008, Past Chairman 2009
- ◆ Member Lawnwood Regional Medical Center Board of Trustees, 2000 – Present, Chairman 2013 - Present
- ◆ Member of St. Lucie County Citizens Budget Committee, 2001 – 2002
- ◆ Member of Ft. Pierce Citizens Budget Advisory Committee, 2010 – 2011
- ◆ Member of Ft. Pierce Civil Service Appeals Board, 2013 - Present

Professional Experience

- ◆ Miles Grant Development/Country Club – Stuart, Florida, July 1975 – October 1976
- ◆ State Auditor General's Office – Public Accounts Auditor – November 1976 through September 1979
- ◆ Director - Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants PL, responsible for numerous government and nonprofit audits.
- ◆ Over 40 years experience in all phases of public accounting and auditing experience, with a concentration in financial and compliance audits. Mr. Gaines has been involved in all phases of the audits listed on the preceding pages.

Commitment to Quality Service

Personnel Qualifications and Experience

J. W. Gaines, CPA, CITP (Continued)

Director

Continuing Professional Education

- ◆ Has participated in numerous continuing professional education courses provided by nationally recognized sponsors over the last two years to keep abreast of the latest developments in accounting and auditing such as:
 - Governmental Accounting Report and Audit Update
 - Analytical Procedures, FICPA
 - Annual Update for Accountants and Auditors
 - Single Audit Sampling and Other Considerations

Commitment to Quality Service

Personnel Qualifications and Experience

David S. McGuire, CPA, CITP

Accounting and Audit Principal – 18 years

Accounting and Audit Manager – 4 years

Staff Accountant – 11 years

Education

- ◆ University of Central Florida, B.A. – Accounting
- ◆ Barry University – Master of Professional Accountancy

Registrations

- ◆ Certified Public Accountant – State of Florida, State Board of Accountancy
- ◆ Certified Information Technology Professional (CITP) – American Institute of Certified Public Accountants
- ◆ Certified Not-For-Profit Core Concepts 2018

Professional Affiliations/Community Service

- ◆ Member of the American and Florida Institutes of Certified Public Accountants
- ◆ Associate Member, Florida Government Finance Office Associates
- ◆ Assistant Coach – St. Lucie County Youth Football Organization (1994 – 2005)
- ◆ Assistant Coach – Greater Port St. Lucie Football League, Inc. (2006 – 2010)
- ◆ Board Member – Greater Port St. Lucie Football League, Inc. (2011 – 2017)
- ◆ Treasurer, AIDS Research and Treatment Center of the Treasure Coast, Inc. (2000 – 2003)
- ◆ Board Member/Treasurer, North Treasure Coast Chapter, American Red Cross (2004 – 2010)
- ◆ Member/Board Member of Port St. Lucie Kiwanis (1994 – 2001)
- ◆ President (2014/15) of Sunrise Kiwanis of Fort Pierce (2004 – 2017)
- ◆ St. Lucie District School Board Superintendent Search Committee (2013 – present)
- ◆ Board Member – Phrozen Pharoes (2019-2021)

Professional Experience

- ◆ Twenty-eight years public accounting experience with an emphasis on nonprofit and governmental organizations.
- ◆ Audit Manager in-charge on a variety of audit and review engagements within several industries, including the following government and nonprofit organizations:
 - St. Lucie County, Florida
 - 19th Circuit Office of Medical Examiner
 - Troup Indiantown Water Control District
 - Exchange Club Center for the Prevention of Child Abuse, Inc.
 - Healthy Kids of St. Lucie County
 - Mustard Seed Ministries of Ft. Pierce, Inc.
 - Reaching Our Community Kids, Inc.
 - Reaching Our Community Kids - South
 - St. Lucie County Education Foundation, Inc.
 - Treasure Coast Food Bank, Inc.
 - North Springs Improvement District
- ◆ Four years of service in the United States Air Force in computer operations, with a top secret (SCI/SBI) security clearance.

Commitment to Quality Service

Personnel Qualifications and Experience

David S. McGuire, CPA, CITP (Continued)

Accounting and Audit Principal

Continuing Professional Education

- ◆ Mr. McGuire has attended numerous continuing professional education courses and seminars taught by nationally recognized sponsors in the accounting auditing and single audit compliance areas. He has attended courses over the last two years in those areas as follows:

Not-for-Profit Auditing Financial Results and Compliance Requirements

Update: Government Accounting Reporting and Auditing

Annual Update for Accountants and Auditors

Commitment to Quality Service

Personnel Qualifications and Experience

David F. Haughton, CPA

Accounting and Audit Manager – 30 years

Education

- ◆ Stetson University, B.B.A. – Accounting

Registrations

- ◆ Certified Public Accountant – State of Florida, State Board of Accountancy

Professional Affiliations/Community Service

- ◆ Member of the American and Florida Institutes of Certified Public Accountants
- ◆ Former Member of Florida Institute of Certified Public Accountants Committee on State and Local Government
- ◆ Affiliate Member Government Finance Officers Association (GFOA) for over 10 years
- ◆ Affiliate Member Florida Government Finance Officers Association (FGFOA) for over 10 years
- ◆ Technical Review – 1997 FICPA Course on State and Local Governments in Florida
- ◆ Board of Directors – Kiwanis of Ft. Pierce, Treasurer – 1994-1999; Vice President – 1999-2001

Professional Experience

- ◆ Twenty-seven years public accounting experience with an emphasis on governmental and nonprofit organizations.
- ◆ State Auditor General's Office – West Palm Beach, Staff Auditor, June 1985 to September 1985
- ◆ Accounting and Audit Manager of Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants PL, responsible for audit and accounting services including governmental and not-for-profit audits.
- ◆ Over 20 years of public accounting and governmental experience, specializing in governmental and nonprofit organizations with concentration in special districts, including Community Development Districts which provide services including water and sewer utilities. Governmental and non-profit entities served include the following:

Counties:

St. Lucie County

Municipalities:

City of Fort Pierce

City of Stuart

Commitment to Quality Service

Personnel Qualifications and Experience

David F. Haughton, CPA (Continued)

Accounting and Audit Manager

Professional Experience (Continued)

Special Districts:

Bluewaters Community Development District
Country Club of Mount Dora Community Development District
Fiddler's Creek Community Development District #1 and #2
Indigo Community Development District
North Springs Improvement District
Renaissance Commons Community Development District
St. Lucie West Services District
Stoneybrook Community Development District
Summerville Community Development District
Terracina Community Development District
Thousand Oaks Community Development District
Tree Island Estates Community Development District
Valencia Acres Community Development District

Non-Profits:

The Dunbar Center, Inc.
Hibiscus Children's Foundation, Inc.
Hope Rural School, Inc.
Maritime and Yachting Museum of Florida, Inc.
Tykes and Teens, Inc.
United Way of Martin County, Inc.
Workforce Development Board of the Treasure Coast, Inc.

- ◆ While with the Auditor General's Office he was on the staff for the state audits of the Martin County School District and Okeechobee County School District.
- ◆ During 1997 he performed a technical review of the Florida Institute of Certified Public Accountants state CPE course on Audits of State and Local Governments in Florida. His comments were well received by the author and were utilized in future updates to the course.

Continuing Professional Education

- ◆ During the past several years, he has participated in numerous professional development training programs sponsored by the AICPA and FICPA, including state conferences on special districts and governmental auditing in Florida. He averages in excess of 100 hours bi-annually of advanced training which exceeds the 80 hours required in accordance with the continuing professional education requirements of the Florida State Board of accountancy and the AICPA Private Companies Practice Section. He has over 75 hours of governmental CPE credit within the past two years.

Commitment to Quality Service

Personnel Qualifications and Experience

Matthew Gonano, CPA

Senior Staff Accountant – 10 years

Education

- ◆ University of North Florida, B.B.A. – Accounting
- ◆ University of Alicante, Spain – International Business
- ◆ Florida Atlantic University – Masters of Accounting

Professional Affiliations/Community Service

- ◆ American Institute of Certified Public Accountants
- ◆ Florida Institute of Certified Public Accountants

Professional Experience

- ◆ Senior Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.
- ◆ Performed audits of nonprofit and governmental organizations in accordance with Governmental Accounting Auditing Standards (GAAS)
- ◆ Performed Single Audits of nonprofit organizations in accordance with OMB Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations.

Continuing Professional Education

- ◆ Mr. Gonano has participated in numerous continuing professional education courses.

Commitment to Quality Service

Personnel Qualifications and Experience

Paul Daly

Staff Accountant – 9 years

Education

- ◆ Florida Atlantic University, B.S. – Accounting

Professional Experience

- ◆ Staff Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Working to attain the requirements to take the Certified Public Accounting (CPA) exam.

Commitment to Quality Service

Personnel Qualifications and Experience

Melissa Marlin, CPA

Senior Staff Accountant – 9 years

Education

- ◆ Indian River State College, A.A. – Accounting
- ◆ Florida Atlantic University, B.B.A. – Accounting

Professional Experience

- ◆ Staff accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Mrs. Marlin participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.

Commitment to Quality Service

Personnel Qualifications and Experience

Bryan Snyder

Staff Accountant – 8 years

Education

- ◆ Florida Atlantic University, B.B.A. – Accounting

Professional Experience

- ◆ Accountant beginning his professional auditing career with Berger, Toombs, Elam, Gaines, & Frank.
- ◆ Mr. Snyder is gaining experience auditing governmental & nonprofit entities.

Continuing Professional Education

- ◆ Mr. Snyder participates in numerous continuing education courses and plans on working to acquire his CPA certificate.
- ◆ Mr. Snyder is currently studying to pass the CPA exam.

Commitment to Quality Service

Personnel Qualifications and Experience

Maritza Stonebraker, CPA

Senior Accountant – 7 years

Education

- ◆ Indian River State College, B.S. – Accounting

Professional Experience

- ◆ Staff Accountant beginning her professional auditing career with Berger, Toombs, Elam, Gaines, & Frank.

Continuing Professional Education

- ◆ Mrs. Stonebraker participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.

Commitment to Quality Service

Personnel Qualifications and Experience

Jonathan Herman, CPA

Senior Staff Accountant – 9 years

Education

- ◆ University of Central Florida, B.S. – Accounting
- ◆ Florida Atlantic University, MACC

Professional Experience

- ◆ Accounting graduate with nine years experience with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Mr. Herman participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.

Commitment to Quality Service

Personnel Qualifications and Experience

Sean Stanton, CPA

Staff Accountant – 5 years

Education

- ◆ University of South Florida, B.S. – Accounting
- ◆ Florida Atlantic University, M.B.A. – Accounting

Professional Experience

- ◆ Staff accountant with Berger, Toombs, Elam, Gaines, & Frank auditing governmental and non-profit entities.

Continuing Professional Education

- ◆ Mr. Stanton participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.

Commitment to Quality Service

Personnel Qualifications and Experience
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Tifanee Terrell

Staff Accountant – 2 years

Education

- ◆ Florida Atlantic University, M.A.C.C. – Accounting

Professional Experience

- ◆ Staff Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Ms. Terrell participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.
- ◆ Ms. Terrell is currently studying to pass the CPA exam.

Commitment to Quality Service

Personnel Qualifications and Experience

Dylan Dixon

Staff Accountant – 1 year

Education

- ◆ Indian River State College, A.A. – Accounting

Professional Experience

- ◆ Staff Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Mr. Dixon is currently pursuing a bachelor's degree in Accounting.
- ◆ Mr. Dixon participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.
- ◆ Mr. Dixon is currently working towards completing an additional 30 hours of education to qualify to sit for CPA exam.

Commitment to Quality Service

Personnel Qualifications and Experience

Brennen Moore

Staff Accountant

Education

- ◆ Indian River State College, A.A. – Accounting

Professional Experience

- ◆ Staff Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Mr. Moore is currently enrolled at Indian River State College and will complete his bachelor's degree in spring of 2023.
- ◆ Mr. Moore participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.
- ◆ Mr. Moore is currently working towards completing an additional 30 hours of education to qualify to sit for CPA exam.

Commitment to Quality Service

Personnel Qualifications and Experience

Jordan Wood
Staff Accountant

Education

- ◆ Indian River State College, A.A. – Accounting

Professional Experience

- ◆ Staff Accountant with Berger, Toombs, Elam, Gaines, & Frank providing professional services to nonprofit and governmental entities.

Continuing Professional Education

- ◆ Ms. Wood is currently enrolled at Indian River State College to complete her bachelor's degree.
- ◆ Ms. Wood participates in numerous continuing professional education courses provided by nationally recognized sponsors to keep abreast of the latest developments.
- ◆ Ms. Wood is currently working towards completing an additional 30 hours of education to qualify to sit for CPA exam.



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Report on the Firm's System of Quality Control

To the Partners of November 30, 2022
Berger, Toombs, Elam, Gaines & Frank, CPAs, PL
and the Peer Review Committee of the Florida Institute of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Berger, Toombs, Elam, Gaines & Frank, CPAs, PL (the firm), in effect for the year ended May 31, 2022. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control, and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including a compliance audit under the Single Audit Act.

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Berger, Toombs, Elam, Gaines & Frank, CPAs, PL, in effect for the year ended May 31, 2022, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)*, or *fail*. Berger, Toombs, Elam, Gaines & Frank, CPAs, PLC, has received a peer review rating of *pass*.

Bodine Perry

Bodine Perry

(BERGER_REPORT22)



**TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS**

District Auditing Services for Fiscal Year 2023
Village of Indiantown, Florida

INSTRUCTIONS TO PROPOSERS

SECTION 1. DUE DATE. Sealed proposals must be received no later than May 24, 2023, at 12:00 p.m., at the offices of the District Manager, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431, (561) 571-0010. Proposals will be publicly opened at that time.

SECTION 2. 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.

SECTION 3. QUALIFICATIONS OF PROPOSER. The contract, if awarded, will only be awarded to a responsible Proposer who is qualified by experience and licensing 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 to complete the work to the satisfaction of the District.

SECTION 4. SUBMISSION OF ONLY ONE PROPOSAL. Proposers shall be disqualified and their proposals rejected if the District has reason to believe that collusion may exist among the 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.

SECTION 5. SUBMISSION OF PROPOSAL. Submit eight (8) copies of the Proposal Documents, and other requested attachments at the time and place indicated herein, which shall be enclosed in an opaque sealed envelope, marked with the title "Auditing Services – Terra Lago Community Development District" on the face of it.

SECTION 6. MODIFICATION AND WITHDRAWAL. Proposals may be modified or withdrawn by an appropriate document duly executed and delivered to the place where proposals are to be submitted at any time prior to the time and date the proposals are due. No proposal may be withdrawn after opening for a period of ninety (90) days.

SECTION 7. PROPOSAL DOCUMENTS. The proposal documents shall consist of the notice announcing the request for proposals, these instructions, the Evaluation Criteria Sheet and a proposal with all required documentation pursuant to Section 12 of these instructions (the "Proposal Documents").

SECTION 8. PROPOSAL. In making its proposal, each Proposer represents that it has read and understands the Proposal Documents and that the proposal is made in accordance therewith.

SECTION 9. BASIS OF AWARD/RIGHT TO REJECT. The District reserves the right to reject any and all proposals, make modifications to the work, and waive any informalities or irregularities in proposals as it is deemed in the best interests of the District.

SECTION 10. CONTRACT AWARD. Within fourteen (14) days of receipt of the Notice of Award from the District, the Proposer shall enter into and execute a Contract (engagement letter) with the District.

SECTION 11. LIMITATION OF LIABILITY. Nothing herein shall be construed as or constitute a waiver of the District's limited waiver of liability contained in Section 768.28, Florida Statutes, or any other statute or law.

SECTION 12. MISCELLANEOUS. All proposals shall include the following information in addition to any other requirements of the proposal documents.

- A. List the position or title of all personnel to perform work on the District audit. Include resumes for each person listed; list years of experience in present position for each party listed and years of related experience.
- B. Describe proposed staffing levels, including resumes with applicable certifications.
- C. Three references from projects of similar size and scope. The Proposer should include information relating to the work it conducted for each reference as well as a name, address and phone number of a contact person.
- D. The lump sum cost of the provision of the services under the proposal for the District's first audit for which there are no special assessment bonds, plus the lump sum cost of two (2) annual renewals, which renewals shall include services related to the District's anticipated issuance of special assessment bonds.

SECTION 13. PROTESTS. In accordance with the District's Rules of Procedure, any protest regarding the Proposal Documents, must be filed in writing, at the offices of the District Manager, within seventy-two (72) calendar hours (excluding Saturday, Sunday, and state holidays) after the receipt of the Proposal Documents. 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 (including Saturday, Sunday, and state holidays) after the initial notice of protest was filed. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object or protest with respect to the aforesaid Proposal Documents.

SECTION 14. EVALUATION OF PROPOSALS. The criteria to be used in the evaluation of proposals are presented in the Evaluation Criteria Sheet, contained within the Proposal Documents.

**TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT
AUDITOR SELECTION
EVALUATION CRITERIA**

1. Ability of Personnel. (20 Points)

(E.g., geographic location of the firm's headquarters or permanent office in relation to the project; capabilities and experience of key personnel; present ability to manage this project; evaluation of existing work load; proposed staffing levels, etc.)

2. Proposer's Experience. (20 Points)

(E.g. past record and experience of the Proposer in similar projects; volume of work previously performed by the firm; past performance for other or current Community Development District(s) in other contracts; character, integrity, reputation of Proposer, etc.)

3. Understanding of Scope of Work. (20 Points)

Extent to which the proposal demonstrates an understanding of the District's needs for the services requested.

4. Ability to Furnish the Required Services. (20 Points)

Extent to which the proposal demonstrates the adequacy of Proposer's financial resources and stability as a business entity necessary to complete the services required.

5. Price. (20 Points)***

Points will be awarded based upon the lowest total proposal for rendering the services and the reasonableness of the proposal. Please include pricing for each bond issuance.

Total (100 Points)

***Alternatively, the Board may choose to evaluate firms without considering price, in which case the remaining categories would be assigned 25 points each.

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

6C11



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

Proposal to Provide Financial Auditing Services:

TERRA LAGO

Community Development District

Proposal Due: May 15, 2023
12:00PM

Submitted to:

Terra Lago
Community Development District
c/o District Manager
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431

Submitted by:

Antonio J. Grau, Partner
Grau & Associates
951 Yamato Road, Suite 280
Boca Raton, Florida 33431

Tel (561) 994-9299
(800) 229-4728

Fax (561) 994-5823

tgrau@graucpa.com

www.graucpa.com



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Grau & Associates

CERTIFIED PUBLIC ACCOUNTANTS

May 15, 2023

Terra Lago Community Development District
c/o District Manager
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431

Re: Request for Proposal for Professional Auditing Services for the fiscal year ended September 30, 2023, with an option for additional annual renewals.

Grau & Associates (Grau) welcomes the opportunity to respond to the Terra Lago Community Development District's (the "District") Request for Proposal (RFP), and we look forward to working with you on your audit. We are an energetic and robust team of knowledgeable professionals and are a recognized leader of providing services to Community Development Districts. As one of Florida's few firms to primarily focus on government, we are especially equipped to provide you an effective and efficient audit.

Special district audits are at the core of our practice: **we have a total of 360 clients, 329 or 91% of which are special districts.** We know the specifics of the professional services and work products needed to meet your RFP requirements like no other firm. With this level of experience, we are able to increase efficiency, to provide immediate and continued savings, and to minimize disturbances to client operations.

Why Grau & Associates:

Knowledgeable Audit Team

Grau is proud that the personnel we assign to your audit are some of the most seasoned auditors in the field. Our staff performs governmental engagements year round. When not working on your audit, your team is refining their audit approach for next year's audit. Our engagement partners have decades of experience and take a hands-on approach to our assignments, which all ensures a smoother process for you.

Servicing your Individual Needs

Our clients enjoy personalized service designed to satisfy their unique needs and requirements. Throughout the process of our audit, you will find that we welcome working with you to resolve any issues as swiftly and easily as possible. In addition, due to Grau's very low turnover rate for our industry, you also won't have to worry about retraining your auditors from year to year.

Developing Relationships

We strive to foster mutually beneficial relationships with our clients. We stay in touch year round, updating, collaborating and assisting you in implementing new legislation, rules and standards that affect your organization. We are also available as a sounding board and assist with technical questions.

Maintaining an Impeccable Reputation

We have never been involved in any litigation, proceeding or received any disciplinary action. Additionally, we have never been charged with, or convicted of, a public entity crime of any sort. We are financially stable and have never been involved in any bankruptcy proceedings.

Complying With Standards

Our audit will follow the Auditing Standards of the AICPA, Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States, and the Rules of the Auditor General of the State of Florida, and any other applicable federal, state and local regulations. We will deliver our reports in accordance with your requirements.

This proposal is a firm and irrevocable offer for 90 days. We certify this proposal is made without previous understanding, agreement or connection either with any previous firms or corporations offering a proposal for the same items. We also certify our proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action, and was prepared in good faith. Only the person(s), company or parties interested in the project as principals are named in the proposal. Grau has no existing or potential conflicts and anticipates no conflicts during the engagement. Our Federal I.D. number is 20-2067322.

We would be happy to answer any questions or to provide any additional information. We are genuinely excited about the prospect of serving you and establishing a long-term relationship. Please do not hesitate to call or email either of our Partners, Antonio J. Grau, CPA (tgrau@graucpa.com) or Racquel McIntosh, CPA (rmcintosh@graucpa.com) at 561.994.9299. We thank you for considering our firm's qualifications and experience.

Very truly yours,
Grau & Associates



Antonio J. Grau

Firm Qualifications



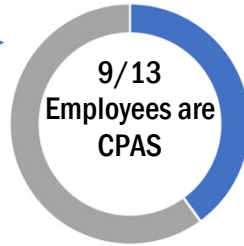
Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

Grau's Focus and Experience

Our Team



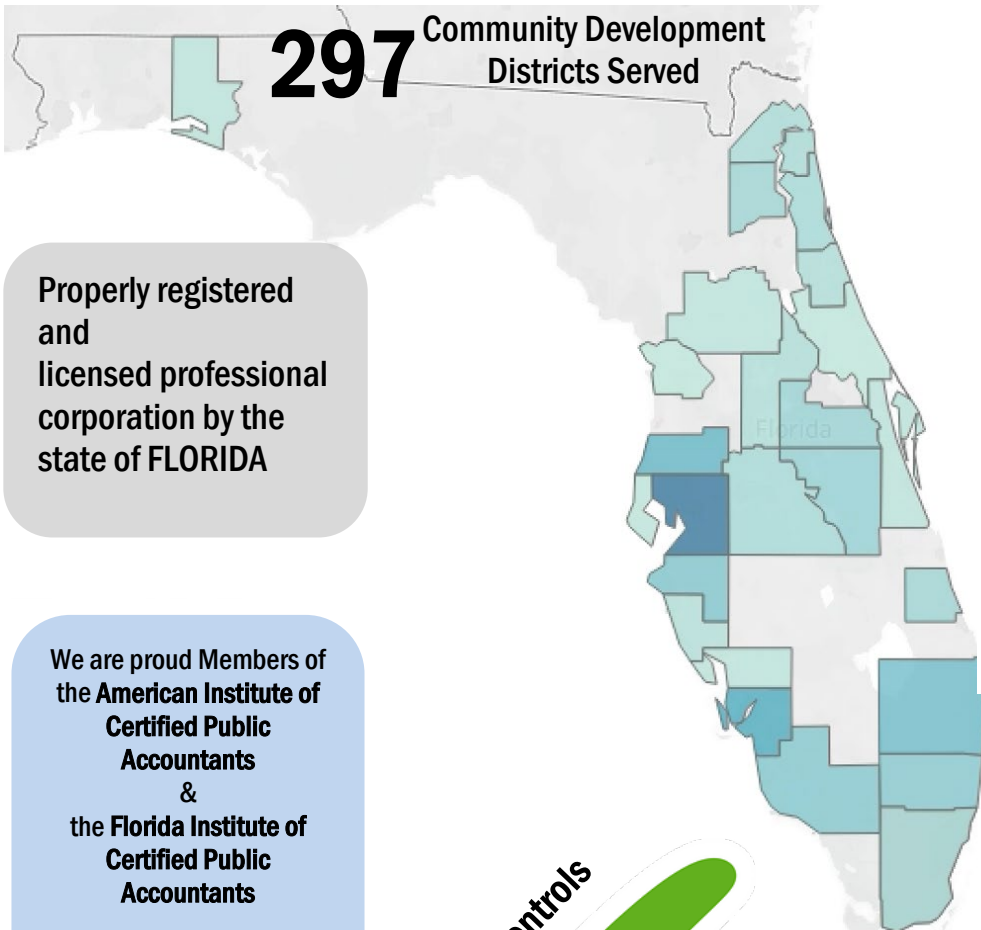
3 Partners
10 Professional Staff
2 Administrative Professionals



2005

Year founded

Services Provided



Properly registered and licensed professional corporation by the state of FLORIDA

We are proud Members of the **American Institute of Certified Public Accountants** & the **Florida Institute of Certified Public Accountants**

Quality Controls

- ⇒ External quality review program: consistently receives a pass
- ⇒ Internal: ongoing monitoring to maintain quality



AICPA | FICPA | GFOA | FASD | FGFOA

See next page for report and certificate



FICPA Peer Review Program
Administered in Florida
by The Florida Institute of CPAs



Peer Review
Program

AICPA Peer Review Program
Administered in Florida
by the Florida Institute of CPAs

February 20, 2020

Antonio Grau
Grau & Associates
951 Yamato Rd Ste 280
Boca Raton, FL 33431-1809

Dear Antonio Grau:

It is my pleasure to notify you that on February 20, 2020, the Florida Peer Review Committee accepted the report on the most recent System Review of your firm. The due date for your next review is December 31, 2022. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the report had a peer review rating of pass. The Committee asked me to convey its congratulations to the firm.

Thank you for your cooperation.

Sincerely,
FICPA Peer Review Committee

Peer Review Team
FICPA Peer Review Committee
paul@ficpa.org
800-342-3197 ext. 251

Florida Institute of CPAs

cc: Daniel Hevia, Racquel McIntosh

Firm Number: 900004390114

Review Number: 571202

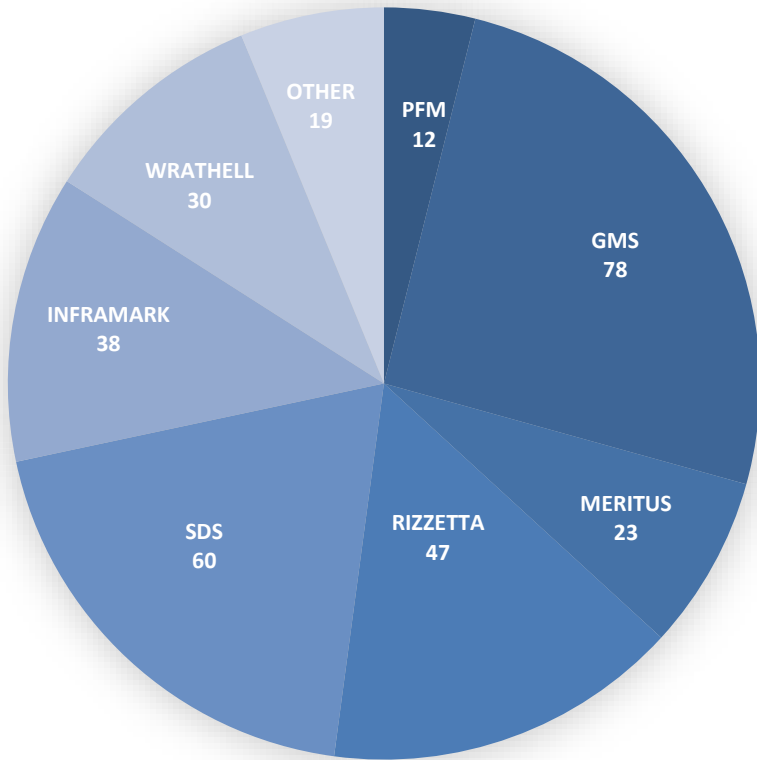
3800 Esplanade Way, Suite 210 | Tallahassee, FL 32311 | 800.342.3197, in Florida | 850.224.2727 | Fax: 850.222.8190 | www.ficpa.org

Firm & Staff Experience



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

GRAU AND ASSOCIATES COMMUNITY DEVELOPMENT DISTRICT EXPERIENCE BY MANAGEMENT COMPANY



Profile Briefs:

Antonio J GRAU, CPA (Partner)

*Years Performing Audits: 35+
CPE (last 2 years): Government Accounting, Auditing: 40 hours; Accounting, Auditing and Other: 53 hours
Professional Memberships: AICPA, FICPA, FGFOA, GFOA*

Racquel McIntosh, CPA (Partner)

*Years Performing Audits: 18+
CPE (last 2 years): Government Accounting, Auditing: 61 hours; Accounting, Auditing and Other: 30 hours
Professional Memberships: AICPA, FICPA, FGFOA, FASD*

“Here at Grau & Associates, staying up to date with the current technological landscape is one of our top priorities. Not only does it provide a more positive experience for our clients, but it also allows us to perform a more effective and efficient audit. With the every changing technology available and utilized by our clients, we are constantly innovating our audit process.”

Tony Grau

“Quality audits and exceptional client service are at the heart of every decision we make. Our clients trust us to deliver a quality audit, adhering to high standards and assisting them with improvements for their organization.”

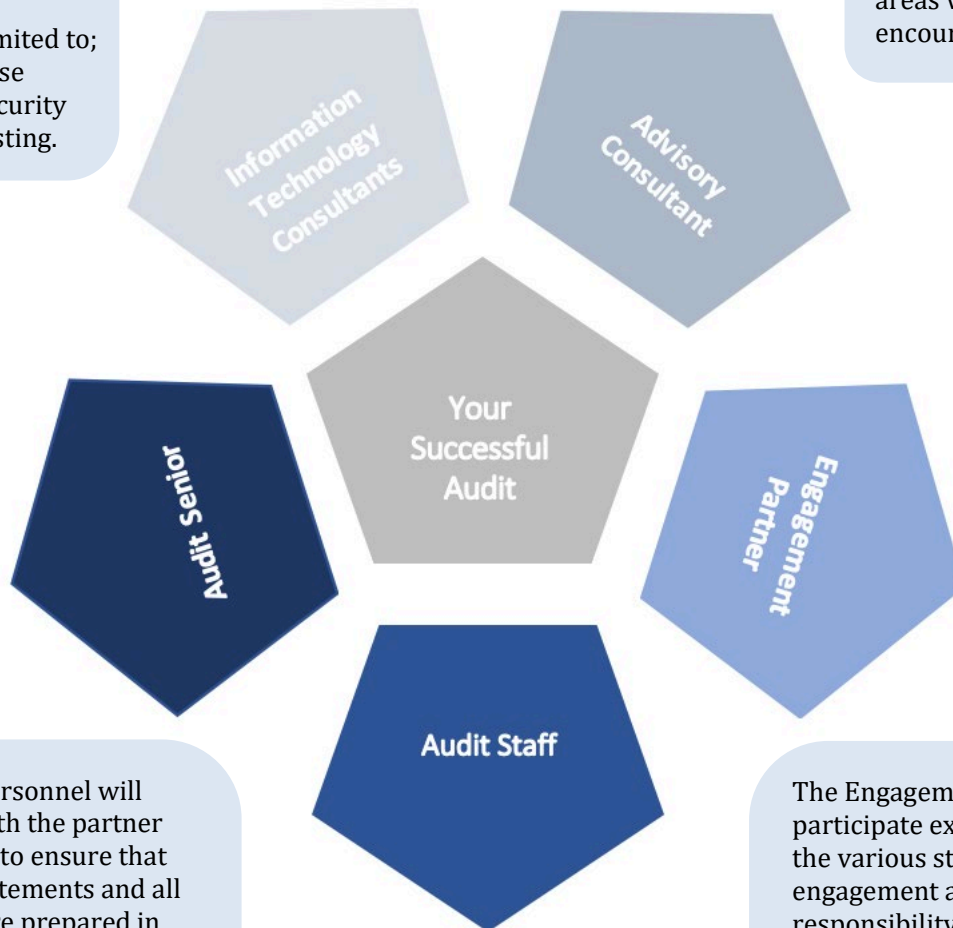
Racquel McIntosh

YOUR ENGAGEMENT TEAM

Grau's client-specific engagement team is meticulously organized in order to meet the unique needs of each client. Constant communication within our solution team allows for continuity of staff and audit team.

Grau contracts with an outside group of IT management consultants to assist with matters including, but not limited to; network and database security, internet security and vulnerability testing.

An advisory consultant will be available as a sounding board to advise in those areas where problems are encountered.



The assigned personnel will work closely with the partner and the District to ensure that the financial statements and all other reports are prepared in accordance with professional standards and firm policy. Responsibilities will include planning the audit; communicating with the client and the partners the progress of the audit; and determining that financial statements and all reports issued by the firm are accurate, complete and are prepared in accordance with professional standards and firm policy.

The Engagement Partner will participate extensively during the various stages of the engagement and has direct responsibility for engagement policy, direction, supervision, quality control, security, confidentiality of information of the engagement and communication with client personnel. The engagement partner will also be involved directing the development of the overall audit approach and plan; performing an overriding review of work papers and ascertain client satisfaction.



Antonio 'Tony' J. Grau, CPA Partner

Contact: tgrau@graucpa.com | (561) 939-6672

Experience

For over 30 years, Tony has been providing audit, accounting and consulting services to the firm's governmental, non-profit, employee benefit, overhead and arbitrage clients. He provides guidance to clients regarding complex accounting issues, internal controls and operations.

As a member of the Government Finance Officers Association Special Review Committee, Tony participated in the review process for awarding the GFOA Certificate of Achievement in Financial Reporting. Tony was also the review team leader for the Quality Review of the Office of Management Audits of School Board of Miami-Dade County. Tony received the AICPA advanced level certificate for governmental single audits.

Education

University of South Florida (1983)
Bachelor of Arts
Business Administration

Clients Served (partial list)

(>300) Various Special Districts, including:

Bayside Improvement Community Development District	St. Lucie West Services District
Dunes Community Development District	Ave Maria Stewardship Community District
Fishhawk Community Development District (I, II, IV)	Rivers Edge II Community Development District
Grand Bay at Doral Community Development District	Bartram Park Community Development District
Heritage Harbor North Community Development District	Bay Laurel Center Community Development District
Boca Raton Airport Authority	
Greater Naples Fire Rescue District	
Key Largo Wastewater Treatment District	
Lake Worth Drainage District	
South Indian River Water Control	

Professional Associations/Memberships

American Institute of Certified Public Accountants Florida Government Finance Officers Association
Florida Institute of Certified Public Accountants Government Finance Officers Association Member
City of Boca Raton Financial Advisory Board Member

Professional Education (over the last two years)

<u>Course</u>	<u>Hours</u>
Government Accounting and Auditing	40
Accounting, Auditing and Other	53
Total Hours	93 (includes of 4 hours of Ethics CPE)



Racquel C. McIntosh, CPA

Partner

Contact : rmcintosh@graucpa.com | (561) 939-666

Experience

Racquel has been providing government audit, accounting and advisory services to our clients for over 14 years. She serves as the firm’s quality control partner; in this capacity she closely monitors engagement quality ensuring standards are followed and maintained throughout the audit.

Racquel develops in-house training seminars on current government auditing, accounting, and legislative topics and also provides seminars for various government organizations. In addition, she assists clients with implementing new accounting software, legislation, and standards.

Education

- Florida Atlantic University (2004)
Master of Accounting
- Florida Atlantic University (2003)
Bachelor of Arts:
Finance, Accounting

Clients Served (partial list)

(>300) Various Special Districts, including:
 Carlton Lakes Community Development District
 Golden Lakes Community Development District
 Rivercrest Community Development District
 South Fork III Community Development District
 TPOST Community Development District

Westchase Community Development District
 Monterra Community Development District
 Palm Coast Park Community Development District
 Long Leaf Community Development District
 Watergrass Community Development District

East Central Regional Wastewater Treatment Facilities
 Indian Trail Improvement District
 Pinellas Park Water Management District
 Ranger Drainage District
 South Trail Fire Protection and Rescue Service District

Professional Associations/ Memberships

- American Institute of Certified Public Accountants
- Florida Institute of Certified Public Accountants
- FICPA State & Local Government Committee
- FGFOA Palm Beach Chapter

Professional Education (over the last two years)

<u>Course</u>	<u>Hours</u>
Government Accounting and Auditing	61
Accounting, Auditing and Other	30
Total Hours	<u>91</u> (includes of 4 hours of Ethics CPE)

References



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

We have included three references of government engagements that require compliance with laws and regulations, follow fund accounting, and have financing requirements, which we believe are similar to the District.

Dunes Community Development District

Scope of Work	Financial audit
Engagement Partner	Antonio J. Grau
Dates	Annually since 1998
Client Contact	Darrin Mossing, Finance Director 475 W. Town Place, Suite 114 St. Augustine, Florida 32092 904-940-5850

Two Creeks Community Development District

Scope of Work	Financial audit
Engagement Partner	Antonio J. Grau
Dates	Annually since 2007
Client Contact	William Rizzetta, President 3434 Colwell Avenue, Suite 200 Tampa, Florida 33614 813-933-5571

Journey's End Community Development District

Scope of Work	Financial audit
Engagement Partner	Antonio J. Grau
Dates	Annually since 2004
Client Contact	Todd Wodraska, Vice President 2501 A Burns Road Palm Beach Gardens, Florida 33410 561-630-4922

Specific Audit Approach



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

AUDIT APPROACH

Grau's Understanding of Work Product / Scope of Services:

We recognize the District is an important entity and we are confident our firm is eminently qualified to meet the challenges of this engagement and deliver quality audit services. ***You would be a valued client of our firm and we pledge to commit all firm resources to provide the level and quality of services (as described below) which not only meet the requirements set forth in the RFP but will exceed those expectations.*** Grau & Associates fully understands the scope of professional services and work products requested. Our audit will follow the Auditing Standards of the AICPA, *Generally Accepted Government Auditing Standards*, issued by the Comptroller General of the United States, and the Rules of the Auditor General of the State of Florida and any other applicable Federal, State or Local regulations. **We will deliver our reports in accordance with your requirements.**

Proposed segmentation of the engagement

Our approach to the audit engagement is a risk-based approach which integrates the best of traditional auditing techniques and a total systems concept to enable the team to conduct a more efficient and effective audit. The audit will be conducted in three phases, which are as follows:



Phase I - Preliminary Planning

A thorough understanding of your organization, service objectives and operating environment is essential for the development of an audit plan and for an efficient, cost-effective audit. During this phase, we will meet with appropriate personnel to obtain and document our understanding of your operations and service objectives and, at the same time, give you the opportunity to express your expectations with respect to the services that we will provide. Our work effort will be coordinated so that there will be minimal disruption to your staff.

During this phase we will perform the following activities:

- » Review the regulatory, statutory and compliance requirements. This will include a review of applicable federal and state statutes, resolutions, bond documents, contracts, and other agreements;
- » Read minutes of meetings;
- » Review major sources of information such as budgets, organization charts, procedures, manuals, financial systems, and management information systems;
- » Obtain an understanding of fraud detection and prevention systems;
- » Obtain and document an understanding of internal control, including knowledge about the design of relevant policies, procedures, and records, and whether they have been placed in operation;
- » Assess risk and determine what controls we are to rely upon and what tests we are going to perform and perform test of controls;
- » Develop audit programs to incorporate the consideration of financial statement assertions, specific audit objectives, and appropriate audit procedures to achieve the specified objectives;
- » Discuss and resolve any accounting, auditing and reporting matters which have been identified.

Phase II – Execution of Audit Plan

The audit team will complete a major portion of transaction testing and audit requirements during this phase. The procedures performed during this period will enable us to identify any matter that may impact the completion of our work or require the attention of management. Tasks to be performed in Phase II include, but are not limited to the following:

- » Apply analytical procedures to further assist in the determination of the nature, timing, and extent of auditing procedures used to obtain evidential matter for specific account balances or classes of transactions;
- » Perform tests of account balances and transactions through sampling, vouching, confirmation and other analytical procedures; and
- » Perform tests of compliance.

Phase III - Completion and Delivery

In this phase of the audit, we will complete the tasks related to year-end balances and financial reporting. All reports will be reviewed with management before issuance, and the partners will be available to meet and discuss our report and address any questions. Tasks to be performed in Phase III include, but are not limited to the following:

- » Perform final analytical procedures;
- » Review information and make inquiries for subsequent events; and
- » Meeting with Management to discuss preparation of draft financial statements and any potential findings or recommendations.

You should expect more from your accounting firm than a signature in your annual financial report. Our concept of truly responsive professional service emphasizes taking an active interest in the issues of concern to our clients and serving as an effective resource in dealing with those issues. In following this approach, we not only audit financial information with hindsight but also consider the foresight you apply in managing operations.

Application of this approach in developing our management letter is particularly important given the increasing financial pressures and public scrutiny facing today's public officials. We will prepare the management letter at the completion of our final procedures.

In preparing this management letter, we will initially review any draft comments or recommendations with management. In addition, we will take necessary steps to ensure that matters are communicated to those charged with governance.

In addition to communicating any recommendations, we will also communicate the following, if any:

- » Significant audit adjustments;
- » Significant deficiencies or material weaknesses;
- » Disagreements with management; and
- » Difficulties encountered in performing the audit.

Our findings will contain a statement of condition describing the situation and the area that needs strengthening, what should be corrected and why. Our suggestions will withstand the basic tests of corrective action:

Is the recommendation cost effective?

Is the recommendation the simplest to effectuate in order to correct a problem?

Is the recommendation at the heart of the problem and not just correcting a symptomatic matter?

Is the corrective action taking into account why the deficiency occurred?

To assure full agreement with facts and circumstances, we will fully discuss each item with Management prior to the final exit conference. This policy means there will be no “surprises” in the management letter and fosters a professional, cooperative atmosphere.

Communications

We emphasize a continuous, year-round dialogue between the District and our management team. We regularly communicate through personal telephone calls and electronic mail throughout the audit and on a regular basis.

Our clients have the ability to transmit information to us on our secure client portal with the ability to assign different staff with separate log on and viewing capability. This further facilitates efficiency as all assigned users receive electronic mail notification as soon as new information has been posted into the portal.

Cost of Services



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

Our proposed all-inclusive fees for the financial audit for the fiscal years ended September 30, 2023-2025 are as follows:

Year Ended September 30,	Fee
2023	\$3,200
2024	\$3,300
2025	<u>\$3,400</u>
TOTAL (2023-2025)	<u>\$9,900</u>

The above fees are based on the assumption that the District maintains its current level of operations. Should conditions change or Bonds are issued the fees would be adjusted accordingly upon approval from all parties concerned. If Bonds are issued the fee would increase by \$1,500. The fee for subsequent annual renewals would be agreed upon separately.

Supplemental Information



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

PARTIAL LIST OF CLIENTS

SPECIAL DISTRICTS	Governmental Audit	Single Audit	Utility Audit	Current Client	Year End
Boca Raton Airport Authority	✓	✓		✓	9/30
Captain's Key Dependent District	✓			✓	9/30
Central Broward Water Control District	✓			✓	9/30
Collier Mosquito Control District	✓			✓	9/30
Coquina Water Control District	✓			✓	9/30
East Central Regional Wastewater Treatment Facility	✓		✓		9/30
Florida Green Finance Authority	✓				9/30
Greater Boca Raton Beach and Park District	✓			✓	9/30
Greater Naples Fire Control and Rescue District	✓	✓		✓	9/30
Green Corridor P.A.C.E. District	✓			✓	9/30
Hobe-St. Lucie Conservancy District	✓			✓	9/30
Indian River Mosquito Control District	✓				9/30
Indian Trail Improvement District	✓			✓	9/30
Key Largo Wastewater Treatment District	✓	✓	✓	✓	9/30
Lake Padgett Estates Independent District	✓			✓	9/30
Lake Worth Drainage District	✓			✓	9/30
Loxahatchee Groves Water Control District	✓				9/30
Old Plantation Control District	✓			✓	9/30
Pal Mar Water Control District	✓			✓	9/30
Pinellas Park Water Management District	✓			✓	9/30
Pine Tree Water Control District (Broward)	✓			✓	9/30
Pinetree Water Control District (Wellington)	✓				9/30
Ranger Drainage District	✓	✓		✓	9/30
Renaissance Improvement District	✓			✓	9/30
San Carlos Park Fire Protection and Rescue Service District	✓			✓	9/30
Sanibel Fire and Rescue District	✓			✓	9/30
South Central Regional Wastewater Treatment and Disposal Board	✓			✓	9/30
South-Dade Venture Development District	✓			✓	9/30
South Indian River Water Control District	✓	✓		✓	9/30
South Trail Fire Protection & Rescue District	✓			✓	9/30
Spring Lake Improvement District	✓			✓	9/30
St. Lucie West Services District	✓		✓	✓	9/30
Sunshine Water Control District	✓			✓	9/30
West Villages Improvement District	✓			✓	9/30
Various Community Development Districts (297)	✓			✓	9/30
TOTAL	332	5	3	327	

ADDITIONAL SERVICES

CONSULTING / MANAGEMENT ADVISORY SERVICES

Grau & Associates also provide a broad range of other management consulting services. Our expertise has been consistently utilized by Governmental and Non-Profit entities throughout Florida. Examples of engagements performed are as follows:

- Accounting systems
- Development of budgets
- Organizational structures
- Financing alternatives
- IT Auditing
- Fixed asset records
- Cost reimbursement
- Indirect cost allocation
- Grant administration and compliance

ARBITRAGE

The federal government has imposed complex rules to restrict the use of tax-exempt financing. Their principal purpose is to eliminate any significant arbitrage incentives in a tax-exempt issue. We have determined the applicability of these requirements and performed the rebate calculations for more than 150 bond issues, including both fixed and variable rate bonds.

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Current
Arbitrage
Calculations

We look forward to providing **Terra Lago Community Development District with our resources and experience to accomplish not only those minimum requirements set forth in your Request for Proposal, but to exceed those expectations!**

**For even more information on Grau & Associates
please visit us on www.graucpa.com.**

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

6D

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT

AUDITOR EVALUATION MATRIX

RFP FOR ANNUAL AUDIT SERVICES	ABILITY OF PERSONNEL	PROPOSER'S EXPERIENCE	UNDERSTANDING OF SCOPE OF WORK	ABILITY TO FURNISH REQUIRED SERVICES	PRICE	TOTAL POINTS
PROPOSER	20 POINTS	20 POINTS	20 POINTS	20 POINTS	20 POINTS	100 POINTS
Berger, Toombs, Elam, Gaines & Frank						
Grau & Associates						

NOTES:

Completed by: _____

Board Member's Signature

Date: _____

Printed Name of Board Member

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

UNAUDITED FINANCIAL STATEMENTS

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
FINANCIAL STATEMENTS
UNAUDITED
OCTOBER 31, 2023**

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
BALANCE SHEET
GOVERNMENTAL FUNDS
OCTOBER 31, 2023**

	General Fund	Debt Service Fund	Capital Projects Fund	Total Governmental Funds
ASSETS				
Cash	\$ 3,932	\$ -	\$ -	\$ 3,932
Due from Landowner	14,430	-	18,877	33,307
Total assets	<u>18,362</u>	<u>-</u>	<u>18,877</u>	<u>37,239</u>
LIABILITIES AND FUND BALANCES				
Liabilities:				
Accounts payable	12,362	-	18,877	31,239
Due to Landowner	-	7,393	31,043	38,436
Landowner advance	6,000	-	-	6,000
Total liabilities	<u>18,362</u>	<u>7,393</u>	<u>49,920</u>	<u>75,675</u>
DEFERRED INFLOWS OF RESOURCES				
Deferred receipts	14,430	-	-	14,430
Total deferred inflows of resources	<u>14,430</u>	<u>-</u>	<u>-</u>	<u>14,430</u>
Fund balances:				
Restricted for:				
Debt service	-	(7,393)	-	(7,393)
Capital projects	-	-	(31,043)	(31,043)
Unassigned	(14,430)	-	-	(14,430)
Total fund balances	<u>(14,430)</u>	<u>(7,393)</u>	<u>(31,043)</u>	<u>(52,866)</u>
Total liabilities and fund balances	<u>\$ 18,362</u>	<u>\$ -</u>	<u>\$ 18,877</u>	<u>\$ 37,239</u>

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
FOR THE PERIOD ENDED OCTOBER 31, 2023**

	Current Month	Year to Date	Budget	% of Budget
REVENUES				
Landowner contribution	\$ -	\$ -	\$ 108,040	0%
Total revenues	<u>-</u>	<u>-</u>	<u>108,040</u>	<u>0%</u>
EXPENDITURES				
Professional & administrative				
Management/accounting/recording**	2,000	2,000	48,000	4%
Legal	-	-	25,000	0%
Engineering	-	-	2,000	0%
Audit	-	-	5,000	0%
Arbitrage rebate calculation*	-	-	750	0%
Debt service fund accounting***	-	-	5,500	0%
Dissemination agent*	-	-	2,000	0%
Trustee*	-	-	5,000	0%
Telephone	16	16	200	8%
Postage	-	-	250	0%
Printing & binding	42	42	500	8%
Legal advertising	-	-	6,500	0%
Annual special district fee	175	175	175	100%
Insurance	5,000	5,000	5,500	91%
Contingencies/bank charges	-	-	750	0%
Website hosting & maintenance	-	-	705	0%
Website ADA compliance	-	-	210	0%
Total professional & administrative	<u>7,233</u>	<u>7,233</u>	<u>108,040</u>	<u>7%</u>
Excess/(deficiency) of revenues over/(under) expenditures	(7,233)	(7,233)	-	
Fund balances - beginning	(7,197)	(7,197)	-	
Fund balances - ending	<u>\$ (14,430)</u>	<u>\$ (14,430)</u>	<u>\$ -</u>	

*These items will be realized when bonds are issued.

**WHA will charge a reduced management fee of \$2,000 per month until bonds are issued.

***For 2nd bond issuance and for each subsequent bond issuance.

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND
FOR THE PERIOD ENDED OCTOBER 31, 2023**

	Current Month	Year To Date
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
 EXPENDITURES		
Debt service	<u>-</u>	<u>-</u>
Total debt service	<u>-</u>	<u>-</u>
 Excess/(deficiency) of revenues over/(under) expenditures	 - -	 - -
 Fund balances - beginning	 <u>(7,393)</u>	 <u>(7,393)</u>
Fund balances - ending	<u><u>\$ (7,393)</u></u>	<u><u>\$ (7,393)</u></u>

**TERRA LAGO
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
CAPITAL PROJECTS FUND
FOR THE PERIOD ENDED OCTOBER 31, 2023**

	<u>Current Month</u>	<u>Year To Date</u>
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
 EXPENDITURES	 <u>-</u>	 <u>-</u>
Total expenditures	<u>-</u>	<u>-</u>
 Excess/(deficiency) of revenues over/(under) expenditures	 - -	 - -
 Fund balances - beginning	 <u>(31,043)</u>	 <u>(31,043)</u>
Fund balances - ending	<u><u>\$ (31,043)</u></u>	<u><u>\$ (31,043)</u></u>

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

MINUTES

DRAFT

**MINUTES OF MEETING
TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT**

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The Board of Supervisors of the Terra Lago Community Development District held a Public Hearing and Regular Meeting on August 14, 2023 at 1:00 p.m., at Indiantown Realty, 16654 S.W. Warfield Boulevard, Indiantown, Florida 34955.

Present at the meeting were:

Joshua Kellam	Chair
Thomas Kenny	Vice Chair
Kevin Powers	Assistant Secretary
David Powers (via telephone)	Assistant Secretary
Jason Dugan	Assistant Secretary

Also present were:

Cindy Cerbone	District Manager
Andrew Kantarzhi (via telephone)	Wrathell, Hunt and Associates, LLC
Tucker Mackie	District Counsel
Ryan Dugan	Kutak Rock LLP
Melissa Corbett	Interim District Engineer
Taryn Kryzda	Village Manager, Village of Indiantown
Chris Saliba	US Water
Brad LaBella	US Water

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Ms. Cerbone called the meeting to order at 1:11 p.m. Supervisors Kellam, Dugan and Kevin Powers were present. Supervisor David Powers attended via telephone. Supervisor Kenny was not present at roll call.

SECOND ORDER OF BUSINESS

Public Comments

No members of the public spoke.

THIRD ORDER OF BUSINESS

Consideration of First Amended and Restated Interlocal Agreement Relating to the Construction of Water Distribution and Wastewater Collection and Treatment System Project

43 Ms. Mackie recalled that it was previously determined that it is necessary to go through
 44 a design-build procurement process, with respect to a certain component of the wastewater
 45 treatment plant renovations as opposed to separately procuring design services and
 46 subsequently procuring construction services. Because that was not to the letter of the
 47 Interlocal Agreement, it was determined that it is necessary to go back and prepare an
 48 Amended and Restated Interlocal Agreement. She worked with Counsel to the Village of
 49 Indiantown to update the Agreement and have it approved and signed.

50

51 **On MOTION by Mr. Kevin Powers and seconded by Mr. Kellam, with all in**
 52 **favor, the First Amended and Restated Interlocal Agreement Relating to the**
 53 **Construction of Water Distribution and Wastewater Collection and Treatment**
 54 **System Project, was approved.**

55

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57 **FOURTH ORDER OF BUSINESS**

**Consideration of Response(s) to Request
for Qualifications (RFQ) for Engineering
Services**

58

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60

61 **A. Affidavit of Publication**

62 **B. RFQ Package**

63 **C. Respondent(s): Haley Ward, Inc.**

64 Ms. Cerbone stated Staff re-advertised the RFQ and there was only one respondent. The
 65 Chair conferred with the District Engineer.

66 **Mr. Kenny arrived at the meeting.**

67 **D. Competitive Selection Criteria/Ranking**

68

69 **On MOTION by Mr. Kellam and seconded by Mr. Kenny, with all in favor,**
 70 **ranking Haley Ward, the sole respondent, as the #1 ranked respondent to the**
 71 **RFQ for Engineering Services, was approved.**

72

73

74 **E. Award of Contract**

75

76 **On MOTION by Mr. Kellam and seconded by Mr. Kenny, with all in favor,**
 77 **authorizing Staff to enter into an agreement with Haley Ward for Engineering**
 78 **Services, was approved.**

79

80

81 FIFTH ORDER OF BUSINESS

Consideration of Response(s) to Request for Qualifications (RFQ) for Design-Build Services for Wastewater Treatment Plant Improvements (*under separate cover*)

86 A. Affidavit of Publication

87 B. Project Manual

88 C. Respondent(s)

89 I. Florida Design Drilling, LLC

90 II. US Water Services Corporation

91 Ms. Cerbone listed the two respondents and stated representatives from US Water
92 Services Corporation are in attendance.

93 D. Selection Criteria/Ranking

94 Ms. Corbett stated both respondents submitted very thorough and complete packages
95 and both are well-qualified to implement the design-build project. The only difference is that
96 Florida Design Drilling is MBE-certified, which increases their total score by 5 points.

97 Ms. Mackie stated, while it is not required, the Board may find it helpful to hear from
98 the representatives from US Water and from the Village, as both are present.

99 Ms. Kryzda stated she concurs with Ms. Corbett’s assessment of the two firms.

100 Mr. Saliba stated US Water is an employee-owned, Florida-based company in the Tampa
101 Bay area and 70% of its revenue is from work in Florida. US Water has engineering, construction
102 and underground utility experience and has completed projects in Martin County since 2003.

103 Mr. LaBella stated, in terms of the MBE, US Water is always committed to using local
104 subcontractors whenever possible.

105 Ms. Corbett reviewed her scoring on the Selection Ranking Criteria and explained the
106 reasons for the scoring. The Board used a group ranking approach.

107 The final scores were as follows:

108 Florida Design Drilling, LLC 93 points

109 US Water Services Corporation 90 points

110

111 **On MOTION by Mr. Kellam and seconded by Mr. Kevin Powers, with Mr.**
112 **Kellam, Mr. Kevin Powers, Mr. Dugan and Mr. David Powers in favor, and Mr.**
113 **Kenny dissenting, ranking Florida Design Drilling, LLC as the #1 ranked**
114 **respondent to the RFQ for Desing-Build Services for Wastewater Treatment**
115 **Plant Improvements, with 93 points, was approved. (Motion passed 4-1)**

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E. Authorization to Enter into Competitive Negotiations

On MOTION by Mr. Kellam and seconded by Mr. Dugan, with all in favor, authorizing Staff to enter into competitive negotiations with Florida Design Drilling, LLC, was approved.

SIXTH ORDER OF BUSINESS

Public Hearing on Adoption of Fiscal Year 2023/2024 Budget

On MOTION by Mr. Kenny and seconded by Mr. Kevin Powers, with all in favor, the Public Hearing was opened.

A. Affidavit of Publication

B. Consideration of Resolution 2023-36, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2023 and Ending September 30, 2024; Authorizing Budget Amendments; and Providing an Effective Date

Ms. Cerbone presented the Resolution 2023-36. She reviewed the proposed Fiscal Year 2024 budget, which will be Landowner-funded.

No members of the public spoke.

On MOTION by Mr. Kenny and seconded by Mr. Kevin Powers, with all in favor, the Public Hearing was closed.

On MOTION by Mr. Kellam and seconded by Mr. Kenny, with all in favor, Resolution 2023-36, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2023 and Ending September 30, 2024; Authorizing Budget Amendments; and Providing an Effective Date, was adopted.

SEVENTH ORDER OF BUSINESS

Consideration of Fiscal Year 2023/2024 Budget Funding Agreement

Ms. Cerbone presented the Fiscal Year 2023/2024 Budget Funding Agreement.

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On MOTION by Mr. Kellam and seconded by Mr. Kevin Powers, with all in favor, the Fiscal Year 2023/2024 Budget Funding Agreement, was approved.

EIGHTH ORDER OF BUSINESS

Consideration of Construction Funding Agreement between the District and Terra Lago, LLC

Ms. Mackie presented the Construction Funding Agreement. The Agreement is an alternative funding source until the CDD is able to pay for its CIP.

On MOTION by Mr. Kellam and seconded by Mr. Kenny, with all in favor, the Construction Funding Agreement between the District and Terra Lago, LLC, was approved.

Ms. Mackie and Ms. Cerbone responded to questions about the bond issuance process, on-roll and off-roll assessments, lot sales, debt service, the public hearing and the tax rolls.

NINTH ORDER OF BUSINESS

Consideration of Agreement between the District and Terra Lago, LLC, Regarding the Acquisition of Certain Work Product, Improvements and Real Property

Ms. Mackie presented the Agreement Regarding the Acquisition of Certain Work Product, Improvements and Real Property.

On MOTION by Mr. Kellam and seconded by Mr. Kenny, with all in favor, the Agreement between the District and Terra Lago, LLC, Regarding the Acquisition of Certain Work Product, Improvements and Real Property, was approved.

TENTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of June 30, 2023

Ms. Cerbone presented the Unaudited Financial Statements as of June 30, 2023.

On MOTION by Mr. Kevin Powers and seconded by Mr. Dugan, with all in favor, the Unaudited Financial Statements as of June 30, 2023, was accepted.

198 **ELEVENTH ORDER OF BUSINESS**

Approval of June 12, 2023 Regular Meeting Minutes

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Ms. Cerbone presented the June 12, 2023 Regular Meeting Minutes.

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On MOTION by Mr. Kellam and seconded by Mr. Kevin Powers, with all in favor, the June 12, 2023 Regular Meeting Minutes, was approved.

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207 **TWELFTH ORDER OF BUSINESS**

Staff Reports

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A. District Counsel: Kutak Rock LLP

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Ms. Mackie stated as a follow-up to the actions taken today, Staff will provide written notice of the rankings and, with the Chair and District Engineer, enter into negotiations with the highest-ranked respondents with the goal of having documents prepared for approval by the next meeting. On the understanding that the wastewater treatment plant will largely be funded by the Village, Staff will work with them to ensure the form of agreement is acceptable to Village officials.

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Ms. Mackie that the Board previously authorized undertaking an RFQ for wastewater collection. She would like to coordinate with the Chair regarding proceeding with this item. Staff will present it at the next meeting, after further discussions.

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Discussion ensued regarding the verbiage in the project manual, whether to modify the criteria, if an RFQ for design will be needed, timing associated with an RFP, the Village and the next meeting.

222 **B. District Engineer (Interim): Haley Ward, Inc.**

223 There was no report.

224 **C. District Manager: Wrathell, Hunt and Associates, LLC**

- 225 • **NEXT MEETING DATE: September 11, 2023 at 1:00 PM**
- 226 ○ **QUORUM CHECK**

227

228 **THIRTEENTH ORDER OF BUSINESS**

Board Members' Comments/Requests

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Asked to go over the Request for Proposals (RFP) Selection Criteria, Ms. Mackie stated, typically, the categories that Staff suggests to a Board for an RFP for construction is to consider personnel and equipment (10 points), experience (20 points), understanding the scope of work (20 points), evidence of bonding capacity and or financials (10 points), price (15 points),

234 reasonableness of price (10 points), schedule (10 points) and reasonableness of schedule (10
235 points).

236 Discussion ensued regarding the RFP components, minimum qualifications, location,
237 upcoming meetings and the goal date to award the contract.

238

On MOTION by Mr. Kenny and seconded by Mr. Kevin Powers, with all in favor, the modified RFP Selection Criteria for Construction Services, as stated, was approved.

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244 Staff will coordinate with the District Engineer to assemble the modified criteria,
245 develop the project manual and advertise the RFP.

246 The Board instructed the District Engineer to meet with the Developer’s Engineer and
247 the Village’s Engineer to develop the project manual.

248 Staff will include the RFP for construction services on the next agenda.

249

250 **FOURTEENTH ORDER OF BUSINESS**

Public Comments

251

252 No members of the public spoke.

253

254 **FIFTEENTH ORDER OF BUSINESS**

Adjournment

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On MOTION by Mr. Kenny and seconded by Mr. Kellam, with all in favor, the meeting adjourned at 2:24 p.m.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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Secretary/Assistant Secretary

Chair/Vice Chair

TERRA LAGO

COMMUNITY DEVELOPMENT DISTRICT

STAFF

REPORTS

TERRA LAGO COMMUNITY DEVELOPMENT DISTRICT

BOARD OF SUPERVISORS FISCAL YEAR 2023/2024 MEETING SCHEDULE

LOCATION

Indiantown Realty, 16654 S.W. Warfield Boulevard, Indiantown, Florida 34955

DATE	POTENTIAL DISCUSSION/FOCUS	TIME
October 9, 2023 CANCELED	Regular Meeting	1:00 PM
November 13, 2023 CANCELED	Regular Meeting	1:00 PM
December 11, 2023	Regular Meeting	1:00 PM
January 8, 2024	Regular Meeting	1:00 PM
February 12, 2024	Regular Meeting	1:00 PM
March 11, 2024	Regular Meeting	1:00 PM
April 8, 2024	Regular Meeting	1:00 PM
May 13, 2024	Regular Meeting	1:00 PM
June 10, 2024	Regular Meeting	1:00 PM
July 8, 2024	Regular Meeting	1:00 PM
August 12, 2024	Regular Meeting	1:00 PM
September 9, 2024	Regular Meeting	1:00 PM