

**AGREEMENT BETWEEN THE CITY OF COOPER CITY AND JVA ENGINEERING
CONTRACTOR, INC.**

This Contract made and entered into this ____ day of _____, 2024, between the CITY OF COOPER CITY, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as "CITY" and DESIGN BUILDER, a Florida Corporation authorized to transact business in Florida, its successors and assigns, hereinafter referred to as "DESIGN/BUILD FIRM," or collectively the "Party" or "Parties".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and DESIGN/BUILD FIRM agree as follows:

ARTICLE 1- DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Contract and the various covenants, conditions, terms and provisions which follow, the definitions set forth below are assumed to be true and correct and are agreed upon by the Parties.

Contract - This document, inclusive and including all exhibits and documents that are expressly incorporated by reference.

Applicable Laws - All federal, state, county, and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Project and any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws may be amended from time to time to perform the Work.

Change Order - A written document ordering a change in the Not-To-Exceed Maximum Price or Contract Time or a material change in the Work.

CITY - The CITY (or Owner) shall mean the City of Cooper City, a Florida municipal corporation, having its principal offices at 9090 SW 50 Place, Cooper City, Florida 33328, which is a Party hereto and/or for which this Contract is to be performed. In all respects hereunder, CITY's performance is pursuant to CITY's position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to the CITY's regulatory authority as a governmental body and shall not be attributable in any manner to CITY as a party to this Contract.

CITY Commission - CITY Commission shall mean the governing and legislative body of the CITY.

CITY Manager - CITY Manager shall mean the Chief Administrative Officer of the CITY.

Construction Documents Phase - The phase in which DESIGN/BUILD FIRM will consult with Project Manager and prepare the Construction Documents for the Project, based upon the information provided in the Design Criteria Package (DCP), for review and approval of the CITY (including, without limitation, any and all applicable CITY departments) and any applicable regulatory agencies.

Construction Manager - The Construction Manager is the authorized individual or firm which is the representative of the DESIGN/BUILD FIRM, who/which will administer/manage the construction effort on behalf of the DESIGN/BUILD FIRM.

Construction Phase - The phase which constitutes DESIGN/BUILD FIRM's administration of the construction of the Project and all activities necessary for the completion of the Project.

Consultant - The person or entity who is a registered architect, professional engineer, professional land surveyor, and/or registered landscape architect having a contract with DESIGN/BUILD FIRM to provide professional services for the design of the Project, and who is licensed by the State of Florida to provide said services.

Contract Documents - This Contract, as approved by the Mayor and CITY Commission and its exhibits, attachments and forms, any addenda, performance bond and payment bond, plans and specifications (as approved and permitted) as prepared by the DESIGN/BUILD FIRM in accordance with the information provided in the DCP, Notice of Award, Notice(s) to Proceed, and any and all agreed upon contract and/or design modifications, including but not limited to change orders; Project schedule; a schedule of values, and any additional documents the submission of which is required by this Contract. When reference is made in the Contract Documents to publications, standards or codes issued by associations or societies, the intent shall be to specify the current or adopted edition of such publication or standard including revision and effect on the date of the issuance of all applicable permits.

Contract Time - The time between the Project Initiation Date specified in the Notice to Proceed and final completion, including any milestone dates thereof, established in the Contract, as may be amended by Change Order.

Contract Price - The Not-To-Exceed Maximum Price agreed to between DESIGN/BUILD FIRM and the CITY. The Contract Price is not subject to increase, except as expressly allowed within the Contract Documents.

Design/Build Firm - VENDOR., its successors and assigns, is the DESIGN/BUILD FIRM selected to perform the Work pursuant to this Contract, and is the person, firm or corporation liable for the acceptable performance of, and payment of, all legal debts pertaining to the Project. All references in the Contract Documents to third parties under contract or control of DESIGN/BUILD FIRM shall be deemed to be a reference to DESIGN/BUILD FIRM. The DESIGN/BUILD FIRM will be responsible for the provision, installation, and performance of all equipment, materials, services and Work. The DESIGN/BUILD FIRM is in no way relieved of the responsibility for the performance of all equipment furnished.

Design Criteria Package (DCP) - DCP shall mean those certain conceptual plans and specifications and performance-oriented drawings or specifications of the Project, as prepared and sealed by the Design Criteria Professional, and in compliance with the requirements of Section 287.055, Florida Statutes.

Design Criteria Professional - Design Criteria Professional shall mean the individual or entity who/which holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who/which is employed by or retained by the CITY to provide professional services in compliance with the requirements of Section 287.055, Florida Statutes, and in connection with the preparation of the DCP who/which shall review and provide recommendations regarding the Construction Documents prepared by the DESIGN/BUILD FIRM for the Project, and evaluate compliance of Project construction with the DCP.

Field Order or Supplemental Instruction - A written order for minor changes or interpretations of the Contract Documents, but which does not involve a change in the Not to Exceed Price or Contract Time. **Final Completion** - The date certified by the Project Manager that all conditions of the permits and regulatory agencies have been met; all construction, including corrective and punch list work, has been performed and accepted by the CITY; all administrative requirements of the Contract Documents have been completed; and CITY has received from DESIGN/BUILD FIRM all necessary documentation, as deemed required by the CITY including, but not limited to, the following: all final releases of liens, consent of surety, release of claims by DESIGN/BUILD FIRM, correct as-built drawings, a final bill of materials, executed final adjusted Change Orders, final invoice, copies of pertinent test results, correspondence, warranties, guarantees, operational manuals, spare parts, service contracts and tools.

NOT TO EXCEED PRICE (NTE) - THE MUTUALLY AGREED UPON CONTRACT PRICE TO BE PAID TO THE DESIGN/BUILD FIRM, AND THAT THE DESIGN/BUILD FIRM SHALL NOT EXCEED, FOR ALL LABOR, EQUIPMENT, AND MATERIALS TO DESIGN, PERMITS (AS REQUIRED BY THE CONTRACT DOCUMENTS), ADMINISTER, COORDINATE, INSPECT, CONSTRUCT AND INSTALL THE PROJECT WITHIN THE CONTRACT TIME. THE DOLLAR AMOUNT SHALL INCLUDE, BUT NOT BE LIMITED TO ALL PROFIT, OVERHEAD, ON-SITE AND OFF-SITE CONDITIONS (KNOWN AND UNKNOWN) AND ADMINISTRATIVE COSTS. THE NOT TO EXCEED PRICE IS NOT SUBJECT TO INCREASE EXCEPT AS EXPRESSLY ALLOWED.

Holidays - Those designated non-work days as established by the CITY Commission of the City of Cooper City.

Notice to Proceed - One or more written notice(s) to DESIGN/BUILD FIRM issued by the Project Manager authorizing the commencement of specified Work.

Owners Representative - The individual or entity who holds a current certificate as a registered engineer under Chapter 471 to practice engineering and is employed by or retained by the CITY to provide professional services in compliance with the requirements of Section 287.055, Florida Statutes, and who shall review and provide recommendations regarding the Construction Documents prepared by the DESIGN/BUILD FIRM for the Project, and evaluate compliance of Project construction with the requirements of this Contract.

Plans and Specifications - The official graphic representations of the Project as prepared, signed and sealed by the Engineer and which, upon written approval of CITY, shall become a part of the Contract Documents.

Project - The design/construction project described in the Contract Documents.

Project Manager/Contract Administrator - The employee of the CITY, or other designated individual who is herein referred to as the Project Manager, will assume all duties and responsibilities and will have the rights and authorities assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with this Contract. The Project Manager, or designee, shall be the authorized agent for the CITY unless otherwise specified. The Term Project Manager and Contract Administrator are used interchangeably.

Punch List - The CITY's list of Work yet to be done or be corrected by the DESIGN/BUILD FIRM before the final completion date can be determined by the CITY.

Shop Drawings - Drawings, diagrams and schedules, and other data specially prepared by the DESIGN/BUILD FIRM or its subcontractors, sub-subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

Substantial Completion - The date, as certified by the Project Manager that all conditions of the permits and regulatory agencies have been met for the CITY's stated use of the Project, and all construction has been performed therein in accordance with the Contract Documents so CITY can beneficially enjoy, use or occupy and can operate it in all respects for its intended purpose.

Surety - The surety company or individual which is bound by the performance bond and payment bond with and for DESIGN/BUILD FIRM, who is primarily liable, and which surety company or individual is responsible for DESIGN/BUILD FIRM's acceptable performance of the Work under the Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

Work - The totality of the obligations, including design, permitting, governmental entitlements, site plan approvals and construction and all other services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided to or to be provided by DESIGN/BUILD FIRM to fulfill its obligations.

ARTICLE 2 - GENERAL PROVISIONS

- 2.1 DESIGN/BUILD FIRM hereby agrees to furnish all of the labor, materials, equipment, Work, services and incidentals necessary to complete the Project, in accordance with the Contract Documents, within the Contract Time and for the Not-to-Exceed Maximum Price.
- 2.2 Relationship of CITY and DESIGN/BUILD FIRM: The DESIGN/BUILD FIRM accepts the relationship of trust and confidence established between it and the CITY by this Contract. The DESIGN/BUILD FIRM warrants and represents to CITY that it will furnish its best skill and judgment in performing the Work, and shall always act to further the interest of the CITY in the expeditious completion of the Project at the lowest cost to the CITY, and in strict accordance with the Contract Documents and prudent and customary construction practices.
- 2.3 By signing this Contract, the DESIGN/BUILD FIRM accepts a fiduciary duty with the CITY and warrants and represents to the CITY that the DESIGN/BUILD FIRM: (a) has all licenses and certifications required by applicable laws; (b) is experienced in all aspects of pre-construction and construction planning for projects similar to the Project; (c) will act in the CITY's highest and best interests in performing the Work; and (d) that no employees or affiliates of the DESIGN/BUILD FIRM, including all Consultants, any sub-consultants, subcontractors, and suppliers, at any tier, have been convicted of a public entity crime, fraud, theft, and/or a property damage crime within the preceding thirty-six (36) months from the time this Contract is executed, as

required pursuant to Section 287.133, Florida Statutes.

- 2.4 Intention of Contract Documents: It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Any Work, design, construction, other professional services, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by the DESIGN/BUILD FIRM, whether or not specifically called for by the Contract Documents. When words, which have a well-known technical or trade meaning are used to describe Work, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of permit issuance. CITY shall have no duties, other than those duties and obligations expressly set forth within the Contract Documents.
- 2.5 DESIGN/BUILD FIRM shall plan, record, and update, at least monthly, the design and construction schedule of the Project. The Project Schedule shall indicate the dates for the commencement and completion of the various stages of design and construction and shall be revised at least monthly and as required by the conditions of the Work. The Project Schedule shall encompass all of the work of all professions and trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. DESIGN/BUILD FIRM shall be responsible to have available to it all materials, supplies, and appropriate personnel, trades, etc., necessary to complete the Work in accordance with the Project Schedule.

ARTICLE 3 - PROJECT MANAGER

- 3.1 The Project Manager is hereby designated by the CITY as Timothy A. Welch, P.E., Utilities Director/City Engineer whose work address is 11791 SW 49 Street, Cooper City, FL 33328. The Project Manager will assume all duties and responsibilities and will have the rights and authority assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with this Contract.

ARTICLE 4 - CONTRACT DOCUMENTS

- 4.1 The Contract Documents shall be followed as to Work, materials and dimensions except with the Project Manager may authorize, in his/her sole discretion, and in writing, an exception.
- 4.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Consultant, with concurrent written notice to Project Manager. DESIGN/BUILD FIRM shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Consultant, with concurrent written notice to Project Manager.
- 4.3 DESIGN/BUILD FIRM shall maintain two (2) copies of the Contract Documents, one of which shall be preserved and always kept accessible at the site for the

Project Manager, and/or authorized representatives.

- 4.4 The Contract Documents shall have the following order of precedence, beginning with the most important:
- A. This Contract and all exhibits, addendums, and amendments thereto;
 - B. Change Orders (to the extent permitted under this Contract);
 - C. The Specifications, as approved and permitted;
 - D. The Plans, as approved and permitted;
 - E. All other information provided in the DCP;
 - F. CPM Project Schedule and Schedule of Values; and
 - G. DESIGN/BUILD FIRM's response to the CITY's request;

ARTICLE 5 - SCOPE OF WORK

DESIGN/BUILD FIRM agrees to complete the Project generally described as (RFP) NO. 2024-01-UTL, submitted by the DESIGN/BUILD FIRM, to provide design-build services for the SW 49 Street Culvert.

The Design-Build Firm will be responsible for design, plans production, permitting and all construction related activities associated with the replacement of the SW 49th Street culvert crossing and the restoration of 49th Street up to and including the official project closeout. The Contractor will complete this work while preserving, protecting and safeguarding all existing underground utilities in accordance with customary industry standards for same and in accordance with City's Engineering specifications and standards.

The Project shall be construed in accordance with the requirements and provisions of said Contract Documents and for the Not-To-Exceed Maximum Price.

- 5.1 DESIGN/BUILD FIRM agrees to meet with the Project Manager or his/her respective designees at reasonable times and with reasonable notice.
- 5.2 Prior to the Final Completion of construction services under this Contract, and as a condition precedent to final payment, there shall be established a record set of plans on reproducible mylar and a record set of Specifications, both of which shall bear the written approvals of the DESIGN/BUILD FIRM and the CITY's Project Manager. Such approval shall be indicated by the written signature of both Parties. In addition, there shall be established electronic copies on USB drives of the record set plans, non-compressed, formatted in the latest version of AutoCAD and of the record set of Specifications.
- 5.3 DESIGN/BUILD FIRM herein represents that Construction Manager, at a minimum, will provide the following services:

- 5.3.1 At least five (5) days prior to the commencement of the construction phase of the Project, the DESIGN/BUILD FIRM will identify and provide the qualifications of a suitably qualified and experienced Construction Manager, approved by the CITY, who will be on site full time at the Project. **No more than twenty percent (20%) of the proposed team can be changed and such change will require CITY approval.**
- 5.3.2 DESIGN/BUILD FIRM will use reasonable efforts to have the same Construction Manager on the Project, full time, to its conclusion, and any new representative will first be approved in writing by Project Manager before permanent assignment. Approval shall not be unreasonably withheld.
- 5.3.3 The Construction Manager will conduct weekly meetings with the DESIGN/BUILD FIRM and its subcontractors at regular times, as previously agreed upon and approved by the Project Manager and shall issue weekly reports on the progress of the Work and the minutes of the previous meeting.
- 5.3.4 The Construction Manager will administer the DESIGN/BUILD FIRM's Work.
- 5.3.5 The Construction Manager shall coordinate the processing of shop drawings and material submittals.
- 5.3.6 The Construction Manager will achieve satisfactory performance by DESIGN/BUILD FIRM and, if required, will require corrections to DESIGN/BUILD Firm's Work including, but not limited to, maintaining punch lists and observing testing.
- 5.3.7 The Construction Manager will monitor the cost of the Project, including payment applications and the preparation thereof.
- 5.3.8 The Construction Manager will assist in the preparation of record drawings and shall transmit to the Consultant requests for additional information concerning the design. In addition, the Project Manager shall be copied on these requests for monitoring purposes.
- 5.3.9 The Construction Manager will observe testing, start-up activities, and commissioning of project scope as described in the DCP.
- 5.3.10 The Construction Manager will secure all equipment brochures and warranties from the DESIGN/BUILD FIRM.
- 5.3.11 The Construction Manager will coordinate the correction and completion of the Work including that required by the punch list.
- 5.4 DESIGN/BUILD FIRM herein represents that Consultant, at a minimum, will provide the following services:
 - 5.4.1 Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.

- 5.4.2 Consultant shall design the Project so as to comply with Applicable Laws.
- 5.4.3 Consultant shall prepare the Plans and Specifications, as well as obtain all required and necessary reviews and approvals (or take other appropriate action upon) for same, and/or other submittals including, but not limited to, shop drawings, product data, and samples.
- 5.4.4 Consultant shall also submit the Plans and Specifications to the Owners Representative, with a copy to Project Manager, for his/her review and written approval. Owners Representative shall expeditiously review and approve the Plans and Specifications in accordance with the accepted Project Schedule. Owners Representative's approval of the Plans and Specifications shall not constitute acceptance of any design work which does not comply with Applicable Laws, information provided in the DCP, and/or with the terms of this Contract. Except as provided herein, and to the extent limited by, the preceding sentence, the approval of the Plans and Specifications by the Owners Representative shall constitute a representation by the Owners Representative that the Project, if constructed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of DESIGN/BUILD FIRM subcontractors and those in the building trade; and include documents necessary for regulatory agencies and other governmental approvals.
- 5.4.5 Consultant shall prepare construction change directives, if necessary, at no additional cost to the CITY, and authorize minor changes in the Work, as provided in the Contract Documents.
- 5.4.6 Consultant shall receive and review for compliance with the Contract Documents, all written warranties and related documents required hereby to be assembled upon substantial completion and issue applications for payment performed in compliance with the requirements of the Contract Documents.
- 5.5 The approved and permitted Plans and Specifications shall constitute a representation by Consultant to CITY that the Project, if construed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of DESIGN/BUILD FIRM, sub-contractors, and those in the building trade; and include documents necessary for regulatory agencies and other governmental approvals.
- 5.6 DESIGN/BUILD FIRM's Project Manager will provide the following services:
 - 5.6.1 The Project Manager shall review applications for payment and coordinate the processing thereof with the CITY.

- 5.6.2 The Project Manager shall monitor the schedule(s).
- 5.6.3 The Project Manager shall track, log and review all required Project related documents and subsequently address any and all concerns with DESIGN/BUILD FIRM.
- 5.6.4 The Project Manager shall review and observe the Work and testing thereof for conformance and compliance with the requirements of the Contract Documents.
- 5.6.5 The Project Manager shall attend all required meetings and maintain and distribute meeting minutes.
- 5.6.6 At all times, the Project Manager will act as liaison between the Parties to this Contract, and the CITY's Project Manager.

ARTICLE 6 - CONTRACT TIME AND COMPLETION DATE

- 6.1 Time is of the essence for the DESIGN/BUILD FIRM's performance of the Work pursuant to this Contract. The DESIGN/BUILD FIRM agrees to complete the Work in accordance with the approved and accepted Project Schedule and to achieve substantial completion of the Work, in accordance with this Contract, and within the Contract Time. The DESIGN/BUILD FIRM acknowledges that failure to achieve substantial completion will result in substantial damages to the CITY, such as loss of beneficial use and/or occupancy of the Project.
- 6.2 DESIGN/BUILD FIRM shall be instructed to execute the Contract immediately. DESIGN/BUILD FIRM shall immediately commence scheduling activities, permit applications and other preconstruction Work after the Notice to Proceed.
- 6.3 The DESIGN/BUILD FIRM shall complete the Construction Documents Phase.
- 6.4 The DESIGN/BUILD FIRM shall meet the following construction duration:

MILESTONE	CALENDAR DAYS FROM NOTICE TO PROCEED (COMPLETION DATE)
Projected Notice to Proceed Date	January 13, 2025
Substantial Completion of PROJECT	210 days
Final Completion of PROJECT	240 days

ARTICLE 7 - LIQUIDATED DAMAGES

- 7.1 Failure of the DESIGN/BUILD FIRM to substantially complete the Project in accordance with Section 6.4 above, or meet any of the milestones as indicated in

Section 6.4 above, DESIGN/BUILD FIRM shall pay to the CITY the sum of **Five Hundred Dollars (\$500)** for each calendar day that the completion of the Work is delayed beyond the time after the date specified in Article 6 Section 6.4 above (plus any approved time extensions at the sole discretion of the CITY) that DESIGN/BUILD FIRM fails to meet time specified in Section 6.4 above.

- 7.1a Failure of the DESIGN/BUILD FIRM to achieve Final Completion within the time set forth in Article 6 Section 6.4 hereinabove, the DESIGN/BUILD FIRM shall pay to the CITY the sum of **One Thousand dollars (\$1,000)** per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the DESIGN/BUILD FIRM shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract.
- 7.2 The time frame for liquidated damages shall not commence and thus shall not be tolled until the Project Manager submits the punch list to the DESIGN/BUILD FIRM.
- 7.3 DESIGN/BUILD FIRM and CITY HEREBY MUTUALLY AGREE AND ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES AMOUNT SET FORTH HEREIN are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the CITY as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of DESIGN/BUILD FIRM to complete the Contract on time. Liquidated damages shall apply separately to each portion of the Work for which a time of completion is given.
- 7.4 The CITY shall have the right to deduct from or retain any compensation which may be due or which may become due and payable to the DESIGN/BUILD FIRM the amount of liquidated damages, and if the amount retained by the CITY is insufficient to pay in full such liquidated damages, the DESIGN/BUILD FIRM shall pay all liquidated damages in full. The DESIGN/BUILD FIRM shall be responsible for reimbursing the CITY, in addition to liquidated damages or other damages for delay, for all costs of engineering fees and inspection and other costs incurred in administering the construction of the Project beyond the completion date specified or beyond an approved extension of time granted to the DESIGN/BUILD FIRM whichever is later.
- 7.5 CITY is authorized to deduct liquidated damages from monies withheld due to DESIGN/BUILD FIRM for the Work under this Contract or as much thereof as CITY may, in its sole discretion, deem just and reasonable.

ARTICLE 8 - CHANGE OF THE CONTRACT TIME

- 8.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Project Manager within three (3) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 8.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the DESIGN/BUILD FIRM if a claim is made there for as provided in paragraph 8.1. Such delays shall include but not be limited to, acts or neglect by the CITY, or to fires, floods, labor disputes, abnormal weather conditions, or acts of God.
- 8.3 All time limits stated in the Contract Documents are of the essence. The provisions of this Article shall not exclude recovery for damages for delay by the DESIGN/BUILD FIRM.
- 8.4 Delays caused by or resulting from entities, contractors or subcontractors who are not affiliated with the DESIGN/BUILD FIRM shall not give rise to a claim by the DESIGN/BUILD FIRM for damages for increases in material and/or labor costs.
- 8.5 In the event DESIGN/BUILD FIRM has a right to a time extension for those events set forth in Section 8.1 above, DESIGN/BUILD FIRM shall not be entitled to an adjustment of the NTE price, and in no event, and under no circumstances, shall the contract price be increased for, nor shall the DESIGN/BUILD FIRM claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of delay to the work, whether critical or non-critical, and whether caused in whole or in part by the City. The DESIGN/BUILD FIRM shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. It is further agreed that such costs do not include the DESIGN/BUILD FIRM's home office overhead, loss of efficiency, consequential damages, or equipment costs in excess of actual equipment rental paid by the DESIGN/BUILD FIRM to a third party. The DESIGN/BUILD FIRM's sole and exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and allowable pursuant to the provisions of Paragraph 8.1.

ARTICLE 9 - CONTRACT PRICE (NOT TO EXCEED PRICE) AND METHOD OF PAYMENT

- 9.1 The Contract Price is the Not-To-Exceed Maximum Price by the DESIGN/BUILD FIRM and the CITY under this Contract, payable to complete the Work in accordance with the Contract and DCP, and, to the extent permitted by this Contract, as may be increased or decreased by Change Order.

9.2 The Contract Price for the Project, which is also the Not-To-Exceed Maximum Price is \$ 2,350,000.00. This includes bonds, allowances and material change with the exception of permit fees. The CITY will reimburse actual cost of permit(s) upon submission of paid permit receipts.

9.3 In the event that the DESIGN/BUILD FIRM's total approved expenditures for the Project exceed the Not-To-Exceed Maximum Price, the DESIGN/BUILD FIRM shall pay such excess from its own funds. CITY shall not be required to pay any amount that exceeds the Not-To-Exceed Maximum Price and the DESIGN/BUILD FIRM shall have no claim against the CITY on account thereof.

9.4 METHOD OF BILLING AND PAYMENT

9.4.1 During the Construction Documents Phase, DESIGN/BUILD FIRM may submit a request for payment monthly based upon percentage of completion of the (final construction) Plans and Specifications. During the Construction Phase, DESIGN/BUILD FIRM may submit a request for payment thirty (30) calendar days after beginning field operations, subject to the Notice to Proceed, and every thirty (30) calendar days thereafter. Payment during the Construction Phase will be based upon percentage of work completed for each item in the approved Schedule of Values. DESIGN/BUILD FIRM's requisition for payment shall show a complete breakdown of the Project components, and the amount due, together with such supporting evidence, as may be required by the Project Manager.

At a minimum, the requisition for payment shall be accompanied by a completed certification of Work; consent of surety in the applicable amount; list of subcontractors that performed Work during the payment application period being submitted; releases of liens from the DESIGN/BUILD FIRM for the previous period being billed; releases of liens from subcontractors that have performed Work during the previous billing period unless payment for the previous period has not been received by the DESIGN/BUILD FIRM; aerials and photographs of the areas of Work for the applicable billing period; an accepted, updated Project Schedule (as approved); and back up for all items being billed. The certification of Work will mean compliance by DESIGN/BUILD FIRM with the approved Project Schedule; that as-built drawings of improvements are current for the prior period; and Applicable Laws are being met and complied with. Each requisition for payment shall be submitted to the Project Manager for approval. Payment for Work performed will be made in accordance with the Florida Prompt Payment Act, Sections 255.0705 - 255.078, Florida Statutes, but not more frequently than once a month. The Contract Administrator shall verify completion of the various phases, as noted, and authorize payment accordingly. Should the Project fall behind schedule, as indicated in the Project Schedule, DESIGN/BUILD FIRM shall include a written plan demonstrating how the Final Completion date shall be maintained.

Material purchases can be invoiced to the CITY, upon receipt of invoice and documentation of order placement must be accompanied by a bill of sale from the manufacturer or supplier. The CITY will endeavor to pay material invoices earlier, albeit not later than thirty (30) days of receipt of a valid invoice. Any invoices that are not considered valid will be returned immediately for correction or additional documentation. No more than eight percent (8%) contractor's mark-up will be allowed for materials.

9.4.2 CITY agrees that it will pay DESIGN/BUILD FIRM in accordance with the Florida Prompt Payment Act, within thirty (30) calendar days of receipt of DESIGN/BUILD FIRM's proper requisition for payment, as provided above.

9.4.2.1 CITY will review DESIGN/BUILD FIRM's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform DESIGN/BUILD FIRM within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by DESIGN/BUILD FIRM to CITY.

9.4.3 The DESIGN/BUILD FIRM shall use the sums advanced to it solely for the performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the DESIGN/BUILD FIRM in performance of the Work.

9.4.4 DESIGN/BUILD FIRM shall remain liable for subcontractors' work and for any unpaid laborers, material suppliers of subcontractors in the event it is after discovered that said work is deficient or that any subcontractors, laborers, or material suppliers did not receive payments due to them on the Project.

9.4.5 Undisputed amounts remaining unpaid thirty (30) calendar days after CITY's request of DESIGN/BUILD FIRM's proper requisition for payment for conforming Work shall bear interest at the rate set forth in Section 218.74(4), Florida Statutes. This Section shall not apply if the CITY has a right to withhold any portion of the payment under this Contract.

9.4.6 Pursuant to Florida Statutes, Section 255.078, five percent (5%) of all monies earned by DESIGN/BUILD FIRM shall be retained by the CITY until the Project has obtained Final Completion and been accepted by the CITY. The CITY may incrementally reduce the rate of retainage pursuant to a schedule provided for in the Contract, or from releasing at any point or a portion of any retainage withheld by the CITY which is attributable to the labor, services, or materials supplied by the Consultant or by one or more subconsultant or suppliers, if applicable and determined to be in the City's best interest. If the City makes any payment of retainage to Consultant which is attributable to the labor, services, or materials supplied by one or more subconsultant or suppliers, the Consultant must timely remit payment of such retainage to those subconsultants and suppliers.

9.5 If, after the Project has been substantially completed, full completion thereof is delayed through no fault of DESIGN/BUILD FIRM, or by issuance of Change Orders affecting final completion, and the Project Manager so certifies, CITY shall, upon certification

of the Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the Project fully completed and accepted. Such payment shall be made as required by law under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- 9.6 Upon receipt of written notice from DESIGN/BUILD FIRM that the Project is ready for final inspection and acceptance, the Project Manager shall, within seven (7) calendar days, make an inspection thereof. If the Project Manager finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the Contract Administrator over his/her own signature, stating that the Work required by this Contract has been completed and is accepted under the terms and conditions thereof.
- 9.7 As a condition precedent to final payment to the DESIGN/BUILD FIRM, the DESIGN/BUILD FIRM shall deliver to the City the following documents in a form acceptable to the City; a final receipt and release of the City; the DESIGN/BUILD FIRM's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the DESIGN/BUILD FIRM and of any and all other parties required by the City's Representative or the City; consent of surety to final payment; a duly executed assignment of any and all warranties required by the Contract Documents; any and all operating manuals required by the Contract Documents; certification that all personal instruction or training required by the Contract Documents for the operation of any Project systems has been completed; any and all manuals relating to Project materials or Project maintenance; and all as-built drawings required by the Contract Documents or permitting agencies. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the DESIGN/BUILD FIRM shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability. The warranties provided after the initial warranty period of year one will be covered under the warranty bond attached as an Exhibit to this Contract. DESIGN/BUILD FIRM shall submit a completed as-built drawings package signed and sealed by a land surveyor registered in the State of Florida and as approved by the CITY's Utilities Department, and proof that all permits have been closed, which shall be delivered prior to requesting final payment.
- 9.8 CITY may withhold final payment or any progress payment to such extent as may be necessary on account of:
- A. Defective Work not remedied;
 - B. Claims filed or written notices of nonpayment indicating probable filing of claims as may be prescribed by law by other parties against DESIGN/BUILD FIRM;
 - C. Failure of DESIGN/BUILD FIRM to make payments properly to Consultant, subcontractors or subconsultants, or for material or labor;
 - D. Damage to another subcontractor, subconsultant, supplier, material, person (as provided for in Florida Statute Chapter 713), party or person

not remedied which are attributable to DESIGN/BUILD FIRM, its agents, servants, employees, contractor, consultant, subconsultants, subcontractors, sub-subcontractors, sub-subconsultants, material person and suppliers;

E. Liquidated damages pursuant to Article 7 herein;

F. As-built drawings not being in a current and acceptable state.

- 9.9 When the above grounds in 9.4.7 are removed or resolved, or DESIGN/BUILD FIRM provides a surety bond or a consent of surety satisfactory to CITY which will protect CITY in the amount withheld, payment may be made in whole or in part, as applicable.
- 9.10 If the Project Manager, in his/her reasonable judgment, determines that the portion of the Not To Exceed Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the DESIGN/BUILD FIRM hereunder unless and until the DESIGN/BUILD FIRM, at its sole cost, performs a sufficient portion of the Work so that such portion of the Not To Exceed Price then remaining unpaid is determined by the Project Manager to be sufficient to so complete the Work.
- 9.11 The making and acceptance of the final payment shall constitute a waiver of all claims by CITY, other than those arising from faulty or defective Work, failure of the Project to comply with requirements of the Contract Documents, or terms of any warranties required by the Contract Documents. It shall also constitute a waiver of all claims by DESIGN/BUILD FIRM, except those previously made in writing and identified by DESIGN/BUILD FIRM as unsettled at the time of the final application for payment.
- 9.12 The DESIGN/BUILD FIRM warrants to the CITY that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality and in conformance with the Contract Documents. Any warranties that are extended to the CITY beyond the standard warranty are to be in writing with the servicing firm information attached as an Exhibit. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Contract Administrator, may be considered defective. If required by the CITY, the DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the origin, nature and quality of materials and equipment used for the Project. DESIGN/BUILD FIRM shall properly store and protect all construction materials. Materials which become defective through improper storage shall be replaced with new materials at no additional costs. The DESIGN/BUILD FIRM's warranty excludes damage or defect caused by abuse, modifications not executed by the DESIGN/BUILD FIRM, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

ARTICLE 10 - ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK

- 10.1 Without invalidating the Contract and without notice to any surety, CITY reserves and shall have the right to make such changes from time to time in the character and quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the Project in a satisfactory manner. The CITY may order additions, deletions or revisions in the Work using agreed upon rates to be included in the Contract

Documents and/or Schedule of Values. Upon receipt of a Change Order, the DESIGN/BUILD FIRM shall proceed with the Work involved. All Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made on the basis of a claim made by either party.

- 10.2 The Project Manager may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. Such changes must be in writing and signed by the CITY and DESIGN/BUILD FIRM.

ARTICLE 11 - DESIGN/BUILD FIRM'S RESPONSIBILITIES

- 11.1 The Parties acknowledge and agree that the DESIGN/BUILD FIRM will be responsible for the design, construction and construction management of the Project according to the DCP.
- 11.2 The DESIGN/BUILD FIRM will be responsible for security, with full cooperation of the CITY all permits for the Project, including without limitation, South Florida Water Management District, Broward County, Army Corps of Engineers (as applicable) and Florida Department of Environmental Protection (as applicable) and Cooper City. Except as provided in the preceding sentences, the DESIGN/BUILD FIRM shall be fully responsible for any and all other permits and approvals from all governmental authorities having jurisdiction over the Project. All permits and licenses require by federal, state or local laws, rules, and regulations necessary for the prosecution of the Project by DESIGN/BUILD FIRM pursuant to this Contract shall be secured by the DESIGN/BUILD FIRM and paid for by the CITY. It is the DESIGN/BUILD FIRM's responsibility to have and maintain appropriate certificate(s) of competency, valid for the Work to be performed, and for all persons working on the Project for whom a certificate of competency is required.
- 11.3 DESIGN/BUILD FIRM shall be fully responsible for the actions of all its agents, servants, employees, including, but not limited to, the contractor, consultant, subcontractors, sub-consultants, sub-subcontractors, materials persons (pursuant to Chapter 713, Florida Statutes), and any and all other persons working for it in conjunction with the design and construction of the Project.
- 11.4 DESIGN/BUILD FIRM shall be fully responsible for all acts or omissions of its contractor, consultant, subcontractors, sub-consultants, sub-subcontractors, sub-sub-consultants, materials persons, and any and all other persons working for DESIGN/BUILD FIRM in conjunction with the design and construction of the Project; any and all persons working for contractor, consultant, subcontractors or sub-consultant; and any and all persons for whose acts any of the aforesaid may be liable, to the same extent DESIGN/BUILD FIRM is responsible for the acts and omissions of persons directly employed by DESIGN/BUILD FIRM. Nothing in this Contract shall create any contractual relationship between CITY and consultant, or CITY and any subcontractor, sub-consultant, sub-subcontractor, sub-sub-consultant, or any other person working either for DESIGN/BUILD FIRM or for any of the afore-stated parties in conjunction with the design and construction of the Project, including, without limitation, any obligation on the part of the CITY to pay or to see the payment of any

monies due to any of the afore-stated parties pursuant to this Section.

- 11.5 DESIGN/BUILD FIRM agrees to bind its consultant, subcontractors, and sub-consultants to the applicable terms and conditions of this Contract for the benefit of the CITY.
- 11.6 Unless otherwise provided herein, DESIGN/BUILD FIRM shall provide and pay for all architecture, engineering, landscape architecture, land surveying services, materials, construction and other labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the design and construction of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.
- 11.7 DESIGN/BUILD FIRM shall at all times enforce strict discipline and good order among its employees, consultants, subcontractors and sub-consultants at the Project site, and shall not employ on the Project any unfit person or anyone not skilled in the work and/or services assigned to him or her.
- 11.8 DESIGN/BUILD FIRM shall keep itself fully informed of, and shall take into account and comply with any and all Applicable Laws affecting those engaged or employed in the Project; or the materials used or employed in the design and construction of the Project; or in any way affecting the conduct of the Project, including, without limitation, all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Contract, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is in violation of any such Applicable Laws, DESIGN/BUILD FIRM shall forthwith report the same to the Project Manager in writing. DESIGN/BUILD FIRM shall cause all its employees, agents, consultant, subcontractors, subconsultants, sub-subconsultants and sub-subcontractors to observe and comply with all Applicable Laws.
- 11.9 DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.
- 11.10 If DESIGN/BUILD FIRM has knowledge that the Contract Documents do not comply with Applicable Laws, in any respect, the DESIGN/BUILD FIRM shall promptly notify the Project Manager, in writing, and any necessary changes shall be adjusted by appropriate revisions. If the DESIGN/BUILD FIRM performs any Work not in accordance with Applicable Laws, and without such notice to the Project Manager, the DESIGN/BUILD FIRM shall assume full responsibility therefore and shall bear all costs attributable thereto. DESIGN/BUILD FIRM warrants to CITY that it has thoroughly reviewed and studied the DCP, and has determined that it is in conformance with Applicable Laws, and is complete and sufficiently coordinated to perform the Work for the Not To Exceed Price and the Contract Time. DESIGN/BUILD FIRM warrants to CITY that the DCP is consistent, practical, feasible and constructible. DESIGN/BUILD FIRM further warrants to CITY that the Work described in the DCP is constructible for the Not To Exceed Price and the Contract Time.

THE CITY DISCLAIMS ANY WARRANTY THAT THE DCP FOR THE PROJECT IS ACCURATE, PRACTICAL, CONSISTENT, AND/OR CONSTRUCTIBLE.

- 11.11 DESIGN/BUILD FIRM accepts the Project site in its observable and/or documented condition existing at the time of this Contract, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project. By signing this Contract, the DESIGN/BUILD FIRM represents to the CITY that it has: (a) visited the Project site to become familiar with the conditions under which the Work is to be performed; (b) become familiar with all information provided (without warranty) by the CITY pertaining to the Project site; and (c) correlated its observations with the information furnished by the CITY (without warranty), and the Contract Documents. The DESIGN/BUILD FIRM hereby waives additional time or compensation for additional work made necessary by observable and/or documented conditions existing at the Project site, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project.
- 11.12 The DESIGN/BUILD FIRM agrees specifically that no Change Orders shall be required by the DESIGN/BUILD FIRM or considered by the CITY for reasons involving conflicts in the Contract Documents; questions of clarity with regard to the Contract Documents; and incompatibility or conflicts between the Contract Documents and the existing Project site conditions excluding, without limitation, utilities and unforeseen underground conditions at the discretion of the CITY and will not be unreasonably withheld. The DESIGN/BUILD FIRM acknowledges that it has ascertained all correct locations for points of connection for all utilities required for this Project.
- 11.13 The DESIGN/BUILD FIRM shall comply with all conditions of any permits issued by government authorities.
- 11.14 All material and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. Suppliers shall be selected and paid by the DESIGN/BUILD FIRM; the CITY reserves the right to approve all suppliers and materials.
- 11.15 The DESIGN/BUILD FIRM shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work, or any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The DESIGN/BUILD FIRM hereby expressly binds itself to indemnify and save harmless the CITY from all such claims and fees and from any and all suits and actions of every name and description that may be brought against CITY on account of any such claims, fees, royalties, or costs for any such invention or patent, and from any and all suits or actions that may be brought against said CITY for the infringement of any and all patents or patent rights claimed by any person, firm, corporation or other entity.
- 11.16 Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours between 8:00 A.M. to 7:00 P.M., Monday through Friday. The DESIGN/BUILD FIRM will not permit overtime work or the performance of work on Saturday, Sunday or any legal

holiday (designated by the CITY of Cooper City) without the Project Manager's written consent at least three business days in advance of starting such work. If the Project Manager permits overtime work, the DESIGN/BUILD FIRM shall pay for the additional charges to the CITY with respect to such overtime work. Such additional charges shall be a subsidiary obligation of the DESIGN/BUILD FIRM and no extra payment shall be made to the DESIGN/BUILD FIRM for overtime work. The cost to the DESIGN/BUILD FIRM to reimburse the CITY for overtime inspections is established at direct-labor and overtime costs for each person or inspector required. Incidental overtime costs for engineering, testing and other related services will also be charged to the DESIGN-BUILD FIRM at the actual rate accrued.

CITY Inspector Hours: 8:00 am to 4:00 pm

Overtime: 4:01 pm to 7:59 am

Inspection Overtime Cost: \$125/hr. with a minimum of 2 hrs.

11.17 DESIGN/BUILD FIRM requests to work during other than regular hours that conform to the standard hours listed in the CITY's Noise Ordinance, Chapter 10 of the Cooper City Code of Ordinances, must be submitted to the CITY Project Manager with six (6) business days in advance of scheduled work. Request shall include the following information:

- Cover page with DESIGN/BUILD FIRM name, project name, and location
- Description of work to be performed outside of normal work hours
- Site plan and location map
- Legal description
- Justification for work and why extended work hours are being requested
- Commencement date and duration of work
- List of DESIGN/BUILD FIRM contacts, including those on site
- Details on type of equipment to be used during extended work hours
- Details on noise levels that may be produced by range of decibels, including current ambient levels at site and levels predicted from proposed construction impacts
- Details on vibratory control measures to be implemented
- Details on how neighbors in vicinity of work area will be notified
- Details on how complaints will be resolved and/or mitigated
- Maintenance of Traffic plans approved by CITY's Community Development Department (CCD) and any other agencies (if applicable).

11.17.1 If no lane closure or traffic impacts are necessary, the DESIGN/BUILD FIRM request must be submitted seven (7) business days in advance of scheduled work. If the Work requires lane closures, request should be submitted at least ten (10) business days in advance, along with MOT plans approved by CITY's CCD, and any

other agencies if necessary, to allow time for CITY Manager consideration and approval, CITY MOT permit issuance, and notification to the public.

11.17.2 The DESIGN/BUILD FIRM will not be permitted overtime work or the performance of work on Saturday, Sunday or any legal holiday (designated by the CITY of Cooper City) without the CITY Project Manager's written consent at least three business days in advance of the period proposed for such overtime work. Hours of work shall conform to the requirements of the CITY's Noise Regulations.

11.17.3 If the DESIGN-BUILD FIRM requests to work outside regular hours that require a special exemption from the provisions of

11.18 In the event of an emergency affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, DESIGN/BUILD FIRM, without special instruction or authorization from the CITY is obligated to act to prevent threatened damage, injury or loss. DESIGN/BUILD FIRM shall give the Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

11.19 Upon issuance of a hurricane watch by the National Weather Service, DESIGN/BUILD FIRM shall submit to the CITY a plan to secure the work area in the event a hurricane warning is issued. The plan shall detail how the DESIGN/BUILD FIRM will secure the premises, equipment and materials in a manner as to prevent damage to the Work and prevent materials and equipment from becoming a hazard to persons and property on and around the premises. The plan shall include a time schedule required to accomplish the hurricane preparations and a list of emergency contacts that will be available and in the CITY before, during and immediately after the storm.

Upon issuance of a hurricane warning by the National Weather Service, if the DESIGN/BUILD FIRM has not already done so, the DESIGN/BUILD FIRM shall implement its hurricane preparedness plan. Cost of development and implementation of the hurricane preparedness plan shall be considered as incidental to construction. Cost of any clean up and rework required after the storm will be considered normal construction risk within Florida and shall not entitle

the DESIGN/BUILD FIRM to any additional compensation. DESIGN/BUILD FIRM shall be entitled to request an extension of time for completion of the Work, in accordance with the provision of Article 8 of this Contract, equal to the time it is shut down for implementation of the preparedness plan, the duration of the storm and a reasonable period to restore the Premises.

11.20 Force Majeure: No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For these purposes, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should

such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No Party shall be liable for its failure to carry out its respective obligations under the Contract during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The DESIGN/BUILD FIRM further agrees and stipulates, that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a force majeure delay has commenced within 96 hours after such an occurrence. The DESIGN/BUILD FIRM shall use its reasonable efforts to minimize such delays. The DESIGN/BUILD FIRM shall promptly provide an estimate of the anticipated additional time required to complete the Project.

ARTICLE 12 - CITY'S RESPONSIBILITIES

- 12.1 CITY shall assist DESIGN/BUILD FIRM by placing at its disposal any available information pertinent to the Project including previous reports, laboratory tests and inspections of samples, materials and equipment, property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed and other land use restrictions.
- 12.2 CITY shall arrange for access to and make all provisions for DESIGN/BUILD FIRM to enter upon public property as required for DESIGN/BUILD FIRM to perform its services.
- 12.3 CITY shall render decisions under this Contract in a timely manner.

ARTICLE 13 - SUPERINTENDENCE AND SUPERVISION

- 13.1 The orders of the CITY are to be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case, provided that they are in accordance with this Contract and the other Contract Documents. Construction Manager shall keep on the Project during its progress, a full-time, competent, English speaking supervisor, who shall be the Construction Manager Representative and who shall serve as the superintendent, and any necessary assistants, all satisfactory to the Project Manager.
- 13.2 Construction Manager or Construction Manager Representative shall prepare, on a daily basis, and keep on the Project site, a bound log setting forth at a minimum, for each day: the weather conditions and how any weather conditions affected progress of the Work; time of commencement of Work for the day; the Work performed; materials, labor, personnel, equipment and subcontractors used for the Work; any idle equipment and reasons for idleness; visitors to the Project site; any special or

unusual conditions or occurrences encountered; any materials delivered to the Project site; and the time of termination of Work for the day. The daily bound log shall be available for inspection by the CITY, or its authorized designee, at all times during the Project, without previous notice.

- 13.3 If DESIGN/BUILD FIRM, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the site, or any errors or omissions in the Contract Documents including, but not limited to, the Plans and Specifications, it shall be DESIGN/BUILD FIRM's sole obligation and duty to immediately inform the Project Manager, in writing, and the Project Manager will promptly verify same. Any Work done prior to or after such discovery will be done at DESIGN/BUILD FIRM's sole risk. **NOTWITHSTANDING THE PRECEDING, OR ANY OTHER TERM OR CONDITION OF THIS CONTRACT, DESIGN/BUILD FIRM HEREBY ACKNOWLEDGES AND AGREES THAT THIS IS A DESIGN/BUILD PROJECT AND, ACCORDINGLY, ANY ERRORS OR OMISSIONS SHALL BE CORRECTED AT THE SOLE COST AND EXPENSE OF DESIGN/BUILD FIRM AND WITHOUT A CLAIM FOR ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE.**
- 13.4 DESIGN/BUILD FIRM shall coordinate, supervise and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform and complete the Project in accordance with the Contract Documents. DESIGN/BUILD FIRM shall be solely responsible for the design, preparation of Construction Documents, means, methods, techniques, safety, sequences and procedures of construction. DESIGN/BUILD FIRM shall give efficient supervision to the Work, using DESIGN/BUILD FIRM's best skill, attention and judgment.

ARTICLE 14 - RESOLUTION OF DISPUTES

- 14.1 If either DESIGN/BUILD FIRM or City believes that it is entitled to relief against the other for any event arising out of or related to the work or project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.
- 14.2 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, DESIGN/BUILD FIRM and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner as to avoid unnecessary losses, delays and disruptions to the work.

14.2.1 DESIGN/BUILD FIRM and City will attempt to resolve disputes or disagreements at the field level through discussions between DESIGN/BUILD FIRM's Representative and City's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 14.1 unless the City and DESIGN/BUILD FIRM mutually agree otherwise.

14.3 City and DESIGN/BUILD FIRM hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the construction of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

14.4 Unless provided to the contrary in the contract, DESIGN/BUILD FIRM shall continue to perform the work and City shall continue to satisfy its payment obligations to DESIGN/BUILD FIRM, pending the final resolution of any dispute or disagreement between DESIGN/BUILD FIRM and City.

14.5 **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 14.5.1 BELOW), NEITHER DESIGN/BUILD FIRM NOR CITY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.**

14.5.1 The consequential damages limitation set forth in Section 14.5. above is not intended to affect the payment of liquidated damages, which both parties recognize has been established, in part, to reimburse City for some damages that might otherwise be deemed to be consequential.

ARTICLE 15 - CITY'S RIGHT TO TERMINATE CONTRACT

FOR CONVENIENCE

15.1 The City may for any reason whatsoever terminate performance under this Contract by the DESIGN/BUILD FIRM for convenience. The City shall give written notice of such termination to the DESIGN/BUILD FIRM specifying when termination becomes effective.

15.2 The DESIGN/BUILD FIRM shall incur no further obligations in connection with the Work and the DESIGN/BUILD FIRM shall stop Work when such termination becomes effective. The DESIGN/BUILD FIRM shall also terminate outstanding orders and subcontracts. The DESIGN/BUILD FIRM shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the DESIGN/BUILD FIRM to assign the DESIGN/BUILD FIRM's right, title and interest under terminated orders or subcontracts to the City or its designee.

15.3 The DESIGN/BUILD FIRM shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the DESIGN/BUILD FIRM has.

15.4 The DESIGN/BUILD FIRM shall submit a termination claim to the City and the City's Representative specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City's Representative. If the DESIGN/BUILD FIRM fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the DESIGN/BUILD FIRM, an amount derived in accordance with sub-paragraph (b) below.

- (a) The City and the DESIGN/BUILD FIRM may agree to the compensation, if any, due to the DESIGN/BUILD FIRM hereunder.
- (b) Absent agreement to the amount due to the DESIGN/BUILD FIRM, the City shall pay the DESIGN/BUILD FIRM the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the DBF's performance, plus a fair and reasonable allowance for overhead in the amount of seven percent (7%) of the DESIGN/BUILD FIRM's direct costs, and a reasonable allowance for profit in the amount of five percent (5%) of the DESIGN/BUILD FIRM's direct costs (such profit shall not include anticipated profit or consequential damages); and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the DESIGN/BUILD FIRM would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 15.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the DESIGN/BUILD FIRM under this Subparagraph 15.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

FOR CAUSE

15.5 If DESIGN/BUILD FIRM fails to begin the design and construction of the Project within the time specified, or fails to perform the Project with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Project, in accordance with the Contract Documents and schedules, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable; or shall discontinue the prosecution of the Project, except for excused delays in accordance

with this Contract; or if DESIGN/BUILD FIRM shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors; or shall not carry on the Project in accordance with the Contract Documents, then the CITY shall give notice, in writing, to DESIGN/BUILD FIRM and its surety of such delay, neglect or default, specifying the same. If DESIGN/BUILD FIRM within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may, upon written notice from the Project Manager of the fact of such delay, neglect or default and DESIGN/BUILD FIRM's failure to comply with such notice, terminate the services of DESIGN/BUILD FIRM, exclude DESIGN/BUILD FIRM from the Project site, and take the prosecution of the Project out of the hands of DESIGN/BUILD FIRM, as appropriate, or use any or all materials and equipment on the Project site as may be suitable and acceptable, in the CITY's reasonable discretion. In such case, DESIGN/BUILD FIRM shall not be entitled to receive any further payment until the Project is finished. In addition, CITY may enter into a Contract for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in its opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY shall be deducted from any monies due or which may become due to said DESIGN/BUILD FIRM. Actions will be instituted to recover on the posted bonds. In case the damages and expense so incurred by CITY shall be less than the sum which would have been payable under this Contract, if it had been completed by said DESIGN/BUILD FIRM, then DESIGN/BUILD FIRM shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then DESIGN/BUILD FIRM shall be liable and shall pay to CITY the amount of said excess. If, after Notice of Termination of DESIGN/BUILD FIRM's right to proceed, it is determined for any reason that DESIGN/BUILD FIRM was not in default, the rights and obligations of CITY and DESIGN/BUILD FIRM shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause, as set forth in Section 15.3 below.

- 15.6 Notwithstanding any other provision in this Contract, the performance of work under this Contract may be terminated in writing by CITY, for convenience and without cause, upon ten (10) business days from the date of DESIGN/BUILD FIRM's receipt of the written notice to DESIGN/BUILD FIRM of intent to terminate and the date on which such termination becomes effective. In such case, DESIGN/BUILD FIRM shall be paid for all Work and reimbursables executed, and expenses incurred, such as materials stored, cost of severance of leases/contracts directly associated with the Project, and demobilization prior to termination. PAYMENT SHALL INCLUDE REASONABLE PROFIT FOR SERVICES ACTUALLY PERFORMED IN FULL PRIOR TO TERMINATION DATE, BUT SHALL EXCLUDE ALL LOSS PROFITS, INDIRECT CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.
- 15.7 Upon receipt of Notice of Termination pursuant to Sections 15.1 and 15.2 above, DESIGN/BUILD FIRM shall, at its sole cost and expense (other than demobilization as a result of the Notice of Termination pursuant to Section 15.3 which shall be paid for by the CITY) and as a condition precedent to any further payment obligation by the CITY, promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver to CITY within seven (7) calendar days of termination, all data,

drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents, whether completed or in process. Compensation shall be withheld until all documents are produced to CITY pursuant to this Article.

ARTICLE 16 - DESIGN/BUILD FIRM’S RIGHT TO STOP WORK OR TERMINATE CONTRACT

16.1 If the Project should be stopped under any order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of DESIGN/BUILD FIRM or of anyone employed by DESIGN/BUILD FIRM, or if the Project Manager should fail to review and approve or state in writing reasons for non-approval of any requisition for payment within twenty (20) business days after it is presented; or if CITY fails to pay DESIGN/BUILD FIRM within thirty (30) calendar days after submittal of a proper requisition for payment, as approved by the Project Manager, then DESIGN/BUILD FIRM may give written notice to CITY, of such delay, neglect or default, specifying same. If CITY, within a period of ten (10) business days after such written notice, shall not remedy the delay, neglect, or default upon which notice is based, then DESIGN/BUILD FIRM may stop work until payment is made, or terminate this Contract and recover from CITY payment for all Work executed and reasonable expenses sustained, but excluding any claim for payments for loss profits, indirect, special, consequential or other damages.

ARTICLE 17 - NOTICES

17.1 Whenever either Party desires to give notice to the other, such notice must be in writing with proof of delivery or receipt. The notice shall be address to the Party for whom it is intended at the place last specified; and the place for giving of notice shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

<p>FOR THE CITY:</p> <p>Procurement Manager City of Cooper City 9090 SW 51 Place Cooper City, Florida 33328</p> <p>with copies to: City Attorney Goren Cherof Doody & Ezrol P.A. 3099 East Commercial Boulevard, Fort Lauderdale, Florida 33308</p>	<p>FOR THE DESIGN/BUILD FIRM:</p> <p>JVA ENGINEERING CONTRACTOR, INC. 6600 NW 32nd Avenue Miami, FL 33147</p>
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ARTICLE 18 – BONDS AND INSURANCE

18.1 DESIGN/BUILD FIRM shall furnish, or cause to be furnished, on or before seven (7) days after execution of this Contract, the following:

Performance Bond and Payment Bond (Surety)

- 18.2 THE DESIGN/BUILD FIRM shall execute and record in the Public Records of Broward County, Florida, a payment and performance bond in an amount at least equal to the Contract Price guaranteeing to CITY the completion and performance of the Project covered in this Contract as well as full payment of all suppliers, material persons, laborers, or sub-contractors employment pursuant to the Project. The Payment and Performance Bond shall be with a surety insurer authorized to do business in the state of Florida as surety ("Bond"), in accordance with Sec. 255.05, Fla. Stat., as may be amended or revised, as security for the faithful performance and payment of all of the Contractor's obligations under the Contract Documents. The performance and payment bond shall remain in full force and effect during the Project and 60 days beyond the contract term for close out.

Insurance Requirements

- 18.3 The specific insurance coverage requirements for this project are identified in the Minimum Insurance Requirements Attachment A, which is a part of the Contract Documents. For purposes of this article, the term "City" shall include City of Cooper City and its members, officials, officers, and employees.
- 18.4 For the duration of the Contract, Contractor shall, at its sole expense, maintain at least the minimum limits of insurance coverage designated in the Contract Documents (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. The required insurance coverage shall be primary and non-contributory, and 'per occurrence' based. If Contractor maintains broader coverage or higher limits than the insurance requirements stated in Attachment A, City of Cooper City shall be entitled to all such broader coverages and higher limits. City of Cooper City reserves the right at any time to review and adjust the limits and types of coverage required under this article. Contractor shall add City of Cooper City as an additional insured on all required insurance coverage.
- 18.5 Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with the Contract. All required insurance under this article shall provide primary coverage, list City of Cooper City as an additional insured, and shall not require contribution from any City of Cooper City insurance, self-insurance or otherwise. All insurance held by City, as well as City's self-insurance, shall be in excess of and shall not contribute to the insurance provided by Contractor. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurers may acquire against City, and agrees to obtain same in an endorsement on all lines of insurance required of Contractor under this article including any excess or umbrella policies.
- 18.6 All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by City's Risk Management Division in writing.
- 18.7 Contractor shall declare in writing any self-insured retentions or deductibles over the

limit(s) prescribed in Attachment A, and shall submit same to City, at least fifteen (15) days prior to the effective date of the Contract or commencement of the Work for City's written approval of such retentions or deductibles. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against City. City of Cooper City may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured retention may be satisfied by either the named insured or City, if so elected by City, and Contractor agrees to obtain same in endorsements to the required policies.

18.8 To the extent insurance requirements are designated in the Minimum Insurance Requirements, the applicable policies shall comply with the following:

18.8.1 Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of: Mold, fungus, or bacteria; Terrorism; Silica, asbestos or lead; Sexual molestation; and Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Contract. City of Cooper City and Consultant shall be included on the policy (and any excess or umbrella policy) as "Additional Insureds" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor).

18.8.2 Contractor shall maintain products or completed work coverage for a minimum of three (3) years from the date of the final completion of the Work, unless otherwise stated in the Insurance Requirements Exhibit. In that case, the term specified in the Insurance Requirements shall govern the duration of the coverage required by this paragraph.

18.8.3 Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of Work under this Contract. City of Cooper City and Consultant shall be included on the policy (and any excess or umbrella policy) as "Additional Insureds."

18.8.4 Workers' Compensation/Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's right to subrogate against City of Cooper City in the manner which would result from the attachment of the NCCI form "Waiver of our Right to Recover from Others Endorsement" (Advisory Form WC 00 03 13) with City of Cooper City scheduled thereon. Where appropriate, coverage shall be included to the extent required by

Applicable Law, including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

If Contractor provides all or a portion of the Workers' Compensation/Employer's Liability insurance required herein via a professional employer organization ("PEO") or employee leasing company, any such Workers' Compensation/Employer's Liability insurance provided will only be deemed acceptable solely for the purposes of insuring Contractor's enrolled employees. In addition, and notwithstanding the foregoing, in order to adequately protect City of Cooper City against injuries to uninsured employees of Subcontractors and non-enrolled employees of Contractor, Contractor must still procure, maintain, and furnish City of Cooper City with evidence of a stand-alone separate Workers' Compensation/Employer's Liability insurance policy issued with Contractor as an additional insured, and complying with all requirements for Contractor provided Workers' Compensation contained in the Contract Documents. It is permissible for Contractor to exclude payroll of leased employees from such separate Workers' Compensation/Employer's Liability insurance policy.

- 18.8.5 Professional Liability Insurance. Such insurance shall cover Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in this Contract.
- 18.8.6 Cyber Liability, or Technology Errors and Omissions Insurance. Coverage is required for any system connected to, and, or accessible from the internet. Coverage may be included as part of the required Professional Liability Insurance. Such policy shall cover, at a minimum, the following: Data Loss and System Damage Liability; Security Liability; Privacy Liability; Privacy/Security Breach Response coverage, including Notification Expenses.
- 18.8.7 Environmental Pollution Liability. Such insurance shall include clean-up costs and provide coverage to Contractor for liability resulting from pollution or other environmental impairment arising out of, or in connection with, Work performed under this Contract, or which arises out of, or in connection with this Contract, including coverage for clean-up of pollution conditions and third-party bodily injury and property damage arising from pollution conditions. Such insurance shall also include Transportation Coverage and Non-Owned Disposal Sites coverage. Should policy provide coverage on a claims-made basis, the coverage shall be in force and effect to respond to all claims reported within at least three years following the period for which coverage is required, unless a longer period is indicated in the Minimum Insurance Requirements, and which claims would have been covered had the coverage been provided on an occurrence basis.
- 18.8.8 Property Insurance, Builder's Risk, or Installation Floater. Such insurance shall be in force and evidenced to City of Cooper City as a condition precedent to the Notice to Proceed for construction. Coverage shall be "All Risks," Completed Value form with a deductible not to exceed Ten Thousand Dollars (\$10,000) for each claim for all perils except wind and flood. For the perils of wind and flood, Contractor shall maintain a deductible that is commercially feasible but which does not exceed five percent (5%) of the "values at risk at the time of loss" unless otherwise approved by City of Cooper City.

Sub-limits: With respect to coverage for the peril of wind, the policy shall not be subject to any sublimit less than Fifty Million Dollars (\$50,000,000) per occurrence. With respect to the peril of Flood, the policy shall not be subject to any sublimit less than Ten Million Dollars (\$10,000,000) per occurrence. Any sublimit for wind or flood lower than those identified in the foregoing must be approved by City.

Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by City of Cooper City.

City of Cooper City reserves the right to purchase or provide property insurance covering the materials, equipment and supplies that are intended for specific installation in the Project while such materials, equipment and supplies are located at the Project site (this coverage will be specifically to cover property under construction or similar coverage), in transit, and while temporarily located away from the Project site for the purpose of repair, adjustment or storage at the risk of one (1) of the insured parties. This coverage will not cover any of Contractor's or Subcontractors' tools, equipment, machinery or provide any business interruption or time element coverage to the contractors. If City of Cooper City elects to purchase property insurance or provide for coverage under its existing insurance for this Project, then in that case, the insurance required to be carried by Contractor may be modified to account for the insurance being provided by City of Cooper City, at City of Cooper City's discretion. Such modification may also include execution of Waiver of Subrogation documentation. If a claim with respect to this Project is made upon City's insurance policy, Contractor shall be responsible for up to the first Fifty Thousand Dollars (\$50,000) of the deductible amount for such claim.

- 18.8.9 On or before the effective date of the Contract, or at least fifteen (15) days prior to commencement of the Work, as requested by City of Cooper City, Contractor shall provide City of Cooper City with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article.
- 18.8.10 Contractor shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage for the duration of this Contract and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor shall provide notice to City of Cooper City of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide City of Cooper City with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).
- 18.8.11 If and to the extent requested by City of Cooper City, Contractor shall provide to City of Cooper City complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after City's request.

- 18.8.12 Contractor shall ensure that “City of Cooper City, 9090 SW 50th Place, Cooper City, Florida 33328” and Consultant are listed as additional insureds on all policies required under this article. City of Cooper City shall be listed as Certificate Holder.
- 18.8.13 Contractor shall require each Subcontractor to maintain insurance coverage that adequately covers the Work provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that “City of Cooper City” and Consultant are named as additional insureds under the Subcontractors’ applicable insurance policies. If Contractor or any Subcontractor fails to maintain the insurance required by the Contract Documents, City of Cooper City may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide services under the Contract unless and until the requirements of this section are satisfied. If requested by City of Cooper City, Contractor shall provide, within one (1) business day, evidence of each Subcontractor’s compliance with this article.

The Certificate Holder must read as follows:

City of Cooper City
9090 SW 50 Place
Cooper City, FL 33328

ARTICLE 19 - SUBSTANTIAL COMPLETION

- 19.1 When DESIGN/BUILD FIRM considers that the Project, or a designated portion thereof, which is acceptable to CITY, in the event CITY chooses to accept same pursuant to the sole authority and discretion, is substantially complete, DESIGN/BUILD FIRM shall so notify the Project Manager, in writing, and shall prepare for submission to the Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete all Work in accordance with the Contract Documents. The Project Manager, and such other persons as they may deem necessary, shall conduct a joint inspection to determine that the Project (or designated portion thereof) is substantially complete.
- 19.2 The Project Manager will then instruct DESIGN/BUILD FIRM to prepare and deliver to the Contract Administrator a Certificate of Substantial Completion which shall establish the date of Substantial Completion for the Project (or that portion of the Project). After review of the certificate by the Contract Administrator, CITY shall either accept or reject the certificate. Acceptance of Substantial Completion by CITY shall be based upon compliance with the Contract Documents and Applicable Laws. DESIGN/BUILD FIRM shall have thirty (30) days to complete the items listed therein. Warranties required by the Contract Documents and submitted in appropriate form to the Project Manager along with the request for Substantial Completion shall commence on the date of Substantial Completion of the Project (or for that portion of the Project). The Certificate of Substantial Completion shall be submitted to CITY through the Project Manager and DESIGN/BUILD FIRM for its written acceptance of the responsibilities assigned to it in

such Certificate.

ARTICLE 20 - FINAL COMPLETION

- 20.1 When the DESIGN/BUILD FIRM considers that the Project, or a designated portion thereof, which is acceptable to CITY, in the event CITY chooses to accept same pursuant to the sole authority and discretion, is finally complete, DESIGN/BUILD FIRM shall so notify the Project Manager, in writing, that the work is complete, and that the DESIGN/BUILD FIRM has satisfied all prerequisites to Final Completion. The DESIGN/BUILD FIRM and the Project Manager and such other persons as they may deem necessary, shall conduct a final inspection. The DESIGN/BUILD FIRM will notify in writing of all particulars in which this inspection reveals that the Work is incomplete, non-conforming or defective. Construction Manager shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies and shall notify all Parties that the Project (or designated portion thereof) is finally complete.

After Project Manager will then instruct DESIGN/BUILD FIRM to prepare and deliver to the Project Manager a Certificate of Final Completion which shall establish the date of Final Completion for the Project (or that portion of the Project). After review of the certificate by the Project Manager, CITY shall either accept or reject the certificate. Acceptance of Final Completion by CITY shall be based upon compliance with the Contract Documents and Applicable Laws. DESIGN/BUILD FIRM shall have thirty (30) days to complete the items listed therein. Warranties required by the Contract Documents and submitted in appropriate form to the Project Manager along with the request for Final Completion shall commence on the date of Final Completion of the Project (or for that portion of the Project). The Certificate of Final Completion shall be submitted to CITY through the Project Manager and DESIGN/BUILD FIRM for its written acceptance of the responsibilities assigned to it in such certificate.

ARTICLE 21 - SHOP DRAWINGS AND SCHEDULE OF VALUES

- 21.1 DESIGN/BUILD FIRM shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of a Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.
- 21.2 DESIGN/BUILD FIRM shall thoroughly review and check the Shop Drawings and each and every copy shall show DESIGN/BUILD FIRM's approval thereon.
- 21.3 If the Shop Drawings show or indicate departures from the Contract requirements, DESIGN/BUILD FIRM shall make specific mention thereof in its shop drawing submittal and a separate letter. Failure to point out such departures shall not relieve DESIGN/BUILD FIRM from its responsibility to comply with the Contract Documents. Project Manager shall determine acceptability of change and, in considering said change, may require data, technical comparisons, cost comparisons, quality comparisons and/or calculations to determine the equality of deviations. Contract Administrator is not obligated to accept deviations.
- 21.4 No acceptance will be given to partial submittal of Shop Drawings for items which

interconnect and/or are interdependent. It is DESIGN/BUILD FIRM's responsibility to assemble the Shop Drawings for all such interconnecting and/or independent items, check them, and then make submittal of two (2) copies of applicable shop drawings to the Project Manager, along with DESIGN/BUILD FIRM's comments as to compliance, noncompliance, or features requiring special attention. Project Manager will review, mark approved as noted, or request specific revisions to shop drawings and return to the DESIGN/BUILDER for corrections and resubmittal, as applicable.

- 21.5 If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. Catalog sheet with multiple options shall be highlighted to depict specific pertinent data including options.
- 21.6 DESIGN/BUILD FIRM shall submit to Project Manager four (4) copies of approved shop drawings. Re-submissions of Shop Drawings shall be made in the same quantity until final acceptance is obtained.
- 21.7 Project Manager's acceptance of the Shop Drawings, as approved by DESIGN/BUILD FIRM, will be for general compliance with the Plans and Specifications, and shall not relieve DESIGN/BUILD FIRM of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the Work, nor for the furnishing of the materials or Work required by the Contract and not indicated on the Drawings.
- 21.8 DESIGN/BUILD FIRM shall keep one (1) set of Shop Drawings, marked with the Project Manager's acceptance, at the Project site at all times.
- 21.9 The DESIGN/BUILD FIRM shall submit a Schedule of Values to the Project Manager as specified in the Technical Specifications. DESIGN/BUILD FIRM shall submit to the Project Manager a separate Schedule of Values for demolition, abatement, and site work ten (10) calendar days prior to commencing such portion of the Work. The schedule will be typed on 8 ½" x 11" white paper listing: title of Project, location, Project number, Consultant, Contractor, Contract designation and date of submission. The schedule shall list the installed value of the component parts of the Work in sufficient detail to serve as a basis for computing values for progress payments during the construction. The table of contents of the specifications shall establish the format for listing the component items. Each line item will be identified by the number and title of the respective major section of the specifications. For each line item, DESIGN/BUILD FIRM shall list the sub-values of major products or operations under the item. Each item shall include the proportion of DESIGN/BUILD FIRM's overhead and profit. For any items for which progress payments will be requested for stored materials, the value will be broken down with:

A. Schedule must include the following but is not limited to:

Separate identifiable activity on the critical path, an activity labeled "Other Conditions Allowance." This activity duration shall be thirty (30) calendar days and inserted at the end of the schedule prior to Substantial Completion. This allowance may or may not be used at the discretion of the CITY. Use of this activity shall be subject to the review and approval of the CITY and the Design Criteria Professional. The duration of the "Other Conditions Allowance" activity shall be reduced as other conditions are experienced and inserted in the schedule;

- B. The cost of materials delivered, unloaded, properly stored and safeguarded, with taxes paid; and
- C. The total installed value review.

ARTICLE 22 - FIELD ENGINEERING

22.1 The DESIGN/BUILD FIRM shall provide and pay for field engineering services required for the Project. This Work shall include the following elements:

- A. Survey work required in execution of the Project;
- B. Civil, structural or other professional engineering, architectural, landscape architectural, or land surveying services specified, or required to execute the DESIGN/BUILD FIRM's construction methods;
- C. The survey completed by DESIGN/BUILD FIRM will identify the qualified engineer or registered land surveyor, acceptable to the CITY, and he or she shall be retained by the DESIGN/BUILD FIRM at the outset of this Project;
- D. The survey will locate and protect control points prior to starting site work, and will preserve all permanent reference points during construction;
- E. No changes or relocations will be made without prior written notice to the Project Manager;
- F. A written report shall be made to the Project Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations;
- G. The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by state law;
- H. Replacement shall be established based upon original survey control.

22.2 The survey completed by DESIGN/BUILD FIRM will identify the qualified engineer or registered land surveyor, acceptable to the CITY, and he or she shall be retained by the DESIGN/BUILD FIRM at the outset of this Project.

22.2.1 The survey will locate and protect control points prior to starting sitework, and will preserve all permanent reference points during construction.

22.2.2 No changes or relocations will be made without prior written notice to the Project Manager.

22.2.3 A written report shall be made to the Project Manager when any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations.

22.2.4 The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by state law.

22.2.5 Replacements shall be established based upon original survey control.

ARTICLE 23 - FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

- 23.1 The entire responsibility for establishing and maintaining a line and grade in the field lies with DESIGN/BUILD FIRM. DESIGN/BUILD FIRM shall maintain an accurate and precise horizontal and vertical record of the existing pavement conditions; final pavement conditions; and all pipelines, conduits, structures, underground utility access portals, hand holes, fittings, etc. encountered or installed during construction. DESIGN/BUILD FIRM shall deliver these records in good order to the Contract Administrator as the Work is completed. These records shall serve as a basis for "as-built" drawings. The cost of all such field layout and recording work is included in the Contract Price.
- 23.2 DESIGN/BUILD FIRM shall maintain in a safe place at the site, one (1) record copy of the Plans and Specifications, addenda, written amendments, Change Orders and written interpretations and clarifications, in good order and annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to Contract Administrator for reference. Upon completion of the Project, these record documents, samples and Shop Drawings shall be delivered to Contract Administrator.
- 23.3 At the completion of the Project, the DESIGN/BUILD FIRM shall turn over to the CITY a set of reproducible drawings and a complete set of all drawings in the latest version of AutoCAD on Compact Disk, not compressed, which accurately reflect the "as-built" conditions of the new facilities. All changes made to the Construction Documents, either as clarifications or as changes, will be reflected in the plans. The changes shall be submitted at least monthly to the Project Manager. These "as-built" drawings are to be AutoCAD version 2018 and to CITY Standard Details and CADD Standards. Format media must be delivered and found to be acceptable prior to final payments.

ARTICLE 24 - NO DAMAGES FOR DELAY

- 24.1 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS. DESIGN/BUILD FIRM shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact, or other costs, expenses or damages including, but not limited to, costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, DESIGN/BUILD FIRM hindrances or delays are not due solely to fraud, bad faith or active interference by the CITY, DESIGN/BUILD FIRM shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided above. The specific application of this Article to other provisions of this Contract shall not be construed as a limitation of any sort upon the further application of this Article. Ten Dollars (\$10.00) of DESIGN/BUILD FIRM's fee is acknowledged as separate and independent consideration for the

covenants contained in this Article.

ARTICLE 25- LIMITATION OF LIABILITY

- 25.1 The CITY desires to enter into this Contract only if in so doing the CITY can place a limit on the CITY's liability for any cause of action arising out of this Contract, so that the CITY's liability for any breach never exceeds the sum of \$1,000.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the DESIGN/BUILD FIRM hereby expresses its willingness to enter into this Contract with the knowledge that the DESIGN/BUILD FIRM's recovery from the CITY to any action or claim arising from the Contract is limited to a maximum amount of \$1,000.00, which amount shall be reduced by the amount actually paid by the CITY to the DESIGN/BUILD FIRM pursuant to this Contract, for any action or claim arising out of this Contract. Nothing contained in this paragraph or elsewhere in this Contract is in any way intended either to be a waiver of the limitation placed upon the CITY's liability beyond the limits established in Section 768.28, Florida Statutes; and no claim or award against the CITY shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

ARTICLE 26 - GOVERNING LAW

- 26.1 This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, DESIGN/BUILD FIRM SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS AND ANY AND ALL SUBCONTRACTORS TO THE PROVISIONS OF THE CONTRACT.

ARTICLE 27 - MISCELLANEOUS PROVISIONS

- 27.1 **OWNERSHIP OF DOCUMENTS:** All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications, plans and reports prepared or provided by DESIGN/BUILD FIRM in connection with this Contract shall become the property of CITY, whether the Project for which they are made is completed or not, shall become the property of CITY and shall be delivered by DESIGN/BUILD FIRM to Project Manager within fifteen (15) days of the receipt of the written notice of termination or upon completion of the Project. If applicable, CITY may withhold payments then due to DESIGN/BUILD FIRM until DESIGN/BUILD FIRM complies with the provisions of this section.
- 27.2 **AUDIT RIGHT AND RETENTION OF RECORDS:** CITY shall have the right to audit the books, records, and accounts of DESIGN/BUILD FIRM that are related to this Project. DESIGN/BUILD TEAM shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. DESIGN/BUILD FIRM shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention

period of the Florida Public Records Act, Chapter 119, Florida Statutes, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to DESIGN/BUILD FIRM's records, DESIGN/BUILD FIRM shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by DESIGN-BUILD FIRM. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

- 27.3 **ARCHITECT/ENGINEER:** DESIGN/BUILD FIRM shall use the architect/engineer, including subconsultants, identified in the proposal that were a material part of the selection of the DESIGN/BUILD TEAM to provide the services for this Project. DESIGN/BUILD FIRM shall obtain written approval of CITY's Utilities Director prior to changing or modifying the list of subconsultants submitted by the DESIGN/BUILD FIRM. SEE APPENDICES attached hereto and made a part hereof.
- 27.4 **ASSIGNMENT AND PERFORMANCE:** Neither this Contract nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other Party.
- 27.5 **THREE ORIGINAL CONTRACTS:** This Contract will be executed in three original.
- 27.6 **ALL PRIOR CONTRACTS SUPERSEDED:** This Contract incorporates and includes all prior negotiations, correspondence, conversations, Contracts or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, Contracts or understandings concerning the subject matter of this Contract that are not contained in this Contract. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Contracts whether oral or written.
- 27.7 **AMENDMENTS:** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both Parties with the same formality and of equal dignity herewith.
- 27.8 **INDEPENDENT CONTRACTOR:** DESIGN/BUILD FIRM is an independent contractor under this Contract. Services provided by DESIGN/BUILD FIRM shall be subject to the supervision of DESIGN/BUILD FIRM. In providing the services, DESIGN/BUILD FIRM or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to DESIGN/BUILD FIRM or its agents any authority of any kind to bind CITY in any respect whatsoever
- 27.9 **NO THIRD PARTY BENEFICIARIES:** Except as may be expressly set forth to the contrary herein, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Contract. None of the parties intend to directly or substantially benefit a third party by this Contract. The parties agree that there are no

third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against any of the parties based on this Contract. Nothing herein shall be construed as consent by City to be sued by third parties in any manner arising out of this Contract.

27.10 **NON-WAIVER OF BREACH:** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

27.11 **MATERIAL TERM:** CITY and DESIGN/BUILD FIRM agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Contract, and therefore, is a material term hereof.

27.12 **COMPLIANCE WITH LAWS:** DESIGN/BUILD FIRM and the Services shall comply with all applicable federal, state, and local laws, codes, ordinances, rules and regulations including, without limitation, American with Disabilities Act (ADA), 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations in performing its duties, responsibilities, and obligations related to this Contract.

27.12.1 Upon request, DESIGN/BUILD FIRM will provide the City with any accessibility testing results and written documentation verifying accessibility for documents delivered by the DESIGN/BUILD FIRM to the City, as well as promptly respond to and resolve accessibility complaints.

27.13 **NONDISCRIMINATION:** The DESIGN/BUILD FIRM warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, sex, gender identity, sexual orientation, age, disability/handicap, religion, family or income status.

27.14 **PUBLIC ENTITY CRIMES:**
Pursuant to Section 287.133, 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By execution of this Contract, DESIGN/BUILD FIRM represents that it has not been placed on the convicted vendor list as provided in Section 287.133, Florida Statutes.

27.15 **SEVERANCE:** In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be

effective unless CITY elects to terminate this Contract. The election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

27.16 **JOINT PREPARATION:** Preparation of this Contract has been a joint effort of the CITY and DESIGN/BUILD FIRM and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

27.17 **PRIORITY OF PROVISIONS:** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Contract by reference and a term, statement, requirement, or provision of this Contract, the term, statement, requirement, or provision contained in Articles 1 through 21 shall prevail and be given effect.

In the event of a conflict among the Contract Documents, the most stringent requirements shall control.

27.18 **TAXES:** DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes as required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements. All such taxes that are required as of the time of Contract execution shall be included in the Not-To-Exceed Maximum Price.

27.19 **SCRUTINIZED COMPANIES:** Pursuant to Section 287.135, Florida Statutes, DESIGN/BUILD FIRM certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes and that it is not engaged in a boycott of Israel.

Pursuant to Section 287.135, Florida Statutes, in the event the Contract is for one million dollars or more, DESIGN/BUILD FIRM certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Sectors List created pursuant to Section 215.473, Florida Statutes; and DESIGN/BUILD FIRM further certifies that it is not engaged in business operations in Cuba or Syria.

Pursuant to Section 287.135, Florida Statutes, City may, at the option of the City Commission, terminate this Contract if DESIGN/BUILD FIRM is found to have submitted a false certification as provided under subsection 287.135(5), Florida Statutes; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List; has been placed on the Scrutinized Companies with Activities in the Iran List created pursuant to Section 215.473, Florida Statutes; or has been engaged in business operations in Cuba or Syria.

27.20 **PUBLIC RECORDS:**

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

**CITY CLERK
9090 SW 50th PLACE
COOPER CITY, FL 33328
(954) 434-4300
PRR@CooperCity.gov**

DESIGN/BUILD FIRM shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes.

27.20.1 To the extent that the DESIGN/BUILD FIRM and this Contract are subject to the requirements in Section 119.0701, Florida Statutes, the DESIGN/BUILD FIRM shall: (a) keep and maintain public records required by the City to perform the services provided hereunder; (b) upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law

27.20.2 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Contract and following completion of this Contract if the DESIGN/BUILD FIRM does not transfer the records to the City.

Upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the DESIGN/BUILD FIRM or keep and maintain public records required by the City to perform the service. If the DESIGN/BUILD FIRM transfers all public records to the City upon completion of the Contract, the DESIGN/BUILD FIRM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

27.20.3 If the DESIGN/BUILD FIRM keeps and maintains public records upon completion of the Contract, the DESIGN/BUILD FIRM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. If the DESIGN/BUILD FIRM fails to comply with the requirements in this Section, the City may enforce these provisions in accordance with the terms of this Agreement. If the DESIGN/BUILD FIRM fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

27.21 **E-VERIFY- EMPLOYMENT ELIGIBILITY:** DESIGN/BUILD FIRM warrants and represents that it complies with Section 448.095, Florida Statutes, as may be amended. DESIGN/BUILD FIRM has: (1) registered with and use the E-Verify System (E-Verify.gov), to electronically verify the work authorization status of all newly hired employees; and (2) verified that all of the DESIGN/BUILD FIRM's subcontractors performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

27.21.1 DESIGN/BUILD FIRM shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. DESIGN/BUILD FIRM shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

27.21.2 City shall terminate this Contract if it has a good faith belief that DESIGN/BUILD FIRM has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If City has a good faith belief that DESIGN/BUILD FIRM's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, City shall notify DESIGN/BUILD FIRM to terminate its contract with the subcontractor and DESIGN/BUILD FIRM shall immediately terminate its contract with the subcontractor.

27.21.3 If City terminates this Contract pursuant to the subsection 14.12.3 above, DESIGN/BUILD FIRM shall be barred from being awarded a future contract by City for a period of one (1) year from the date on which this Contract was terminated. In the event of such Contract termination, DESIGN/BUILD FIRM shall also be liable for any additional costs incurred by City as a result of the termination.

27.22 **DISCRIMINATORY VENDOR LIST:** Pursuant to Section 287.134, 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. By execution of this Contract, DESIGN/BUILD FIRM represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

- 27.23 **ANTITRUST VIOLATIONS:** The DESIGN/BUILD FIRM has a continuous duty to disclose to the City if it or any of its affiliates (as defined by Section 287.137(1)(a), Florida Statutes) are placed on the Antitrust Violator Vendor List. 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 for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new 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 new leases of real property to a public entity; may not be awarded or perform work as a DESIGN/BUILD FIRM, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering this Contract, DESIGN/BUILD FIRM certifies that neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this Contract. False certification under this paragraph or being subsequently added to that list will result in termination of this Contract, at the option of the City consistent with Section 287.137, Fla. Stat. as amended.
- 27.24 **FOREIGN GIFTS AND CONTRACTS:** Pursuant to Fla. Stat. §286.101(3), where the amount of the grant or contract is 100,000.00 or more, DESIGN/BUILD FIRM shall disclose any current or prior interest of, any contract with, or any grant or gift received from a country of foreign concern with a value of \$50,000 or more that was received or in force during the previous five (5) years. Definitions, disclosure requirements and exceptions are found in Fla. Stat. §268.101. DESIGN/BUILD FIRM represents and warrants it has complied with Fla. Stat. §286.101, it has properly disclosed such interests, contracts, grants or gifts to City before execution of this Contract, and it will remain in compliance with Fla. Stat. §286.101 for the duration of this Contract.
- 27.25 **PROHIBITED TELECOMMUNICATIONS EQUIPMENT:** DESIGN/BUILD FIRM represents and certifies that it and all its subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. DESIGN/BUILD FIRM represents and certifies that it and all its subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the term of this Contract.
- 27.26 **ENTITIES OF FOREIGN CONCERN:** The provisions of this section apply only if Design/Build Firm or any Subcontractor will have access to an individual's personal identifying information under this Contract. DESIGN/BUILD FIRM represents and certifies: (i) DESIGN/BUILD FIRM is not owned by the government of a foreign country of concern; (ii) the government of a foreign country of concern does not have a controlling interest in DESIGN/BUILD FIRM; and (iii) DESIGN/BUILD FIRM is not organized under the laws of and does not have its principal place of business in, a foreign country of concern. On or before the Effective Date, DESIGN/BUILD FIRM and any Subcontractor that will have access to personal identifying information shall submit to City executed affidavit(s) under penalty of perjury, in a form approved by City attesting that the entity does not meet any of the criteria in Section 287.138(2), Florida Statutes. Compliance with the requirements of this section is included in the requirements of a proper invoice for purposes of this Contract. Terms used in this section that are not otherwise defined

in this Contract shall have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

[THIS SPACE WAS INTENTIONALLY LEFT BLANK]

SW 49 STREET CULVERT REPLACEMENT
Project No. DB RFP 2024-01-UTL

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

CITY OF COOPER CITY, a Florida municipal corporation

ATTEST:

BY: _____
CITY MANAGER

BY: _____
CITY CLERK

BY: _____
CITY MAYOR

APPROVED AS TO LEGAL FORM:

BY: _____
CITY ATTORNEY

DESIGN/BUILDER:

JVA ENGINEERING CONTRACTOR, INC.

BY: _____

Name: Jose M. Alvarez

Title: President

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me by means of X physical presence or N/A online notarization, this 9th day of December, 2024 by Jose M. Alvarez as President of JVA ENGINEERING CONTRACTOR, INC., a Florida Corporation, who is personally known to me or has produced N/A (Personally Known) as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid this 9th day of December, 2024.



NOTARY
PUBLIC

Rafael E. Ramon
Print or Type Name

My Commission Expires: 07/04/2027

END OF DOCUMENT



JVAENGI-01

SNIEDERMEYER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Collinsworth, Alter, Fowler & French, LLC 15050 NW 79th Court Suite 200 Miami Lakes, FL 33016	CONTACT NAME: Susan Niedermeyer PHONE (A/C, No, Ext): FAX (A/C, No):
	E-MAIL ADDRESS: Sniedermeyer@caffllc.com
INSURER(S) AFFORDING COVERAGE	
INSURER A : American Casualty Co Reading	NAIC # 20427
INSURER B : Federal Insurance Company	20281
INSURER C : Certain Underwriter at Lloyds of London	10736
INSURER D : National Casualty Company	
INSURER E : Evanston Insurance Company	35378
INSURER F : Travelers Property Casualty Co. of America	25674

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			7063703372	12/13/2023	12/13/2024	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 15,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			54309593	12/13/2023	12/13/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			SCX1026923	12/13/2023	12/13/2024	EACH OCCURRENCE \$ 5,000,000
							AGGREGATE \$ 5,000,000
							\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below			WCC343032A	12/13/2023	12/13/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Pollution Liability			MKLV2ENV103935	12/13/2023	12/13/2024	Each Occ/Aggregate 4,000,000
F	Equipment Floater			QT66075031536TIL23	12/13/2023	12/13/2024	Leased/Rented Equip 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER City of Cooper City 9090 SW 50th Place Cooper City, FL 33328	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 