

CONTRACT BETWEEN BROWARD COUNTY AND _____ FOR THE DESIGN/BUILD
SHERIDAN ST BRIDGE OVER FL TURNPIKE (RFP/CONTRACT NO. _____)

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This design/build contract ("Contract" or "Design/Build Contract") is between Broward County, a political subdivision of the State of Florida ("County"), and _____, a _____ corporation ("Design/Build Firm") (each a "Party" and collectively referred to as the "Parties"), for the goods and services set forth herein.

RECITALS

A. County issued a solicitation seeking a firm to design, develop, construct, and increase vertical clearance of Sheridan Street Bridge (Number 860155) over Florida Turnpike to 16.5 feet ("Project").

B. Design/Build Firm is experienced in the business of designing, developing, and constructing bridge and arterial roadway facilities.

C. County has met the requirements of Section 287.055, Florida Statutes, "Consultants' Competitive Negotiation Act," and desires to enter into this Contract providing for Design/Build Firm to perform the design and construction-related services for the Project under the terms and conditions set forth below.

D. County and Design/Build Firm negotiated the Contract and the Contract incorporates the results of those negotiations.

E. [Insert recitals as applicable]

F. [Insert recitals as applicable]

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. – DEFINITIONS

Whenever the following terms appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, including as may be amended from time to time.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida, its successors and assigns.

1.3. **Change Order** means a written document ordering a change in the Contract Price or Contract Time or a material change in the Work.

- 1.4. **Code** means the Broward County Code of Ordinances.
- 1.5. **Contract Administrator** means the Director of the County Highway Construction and Engineering Division ("HCED"), or such other person designated by the Director of HCED in writing.
- 1.6. **Contract Documents** means the Contract and its exhibits, attachments and forms, the request for proposals ("RFP"), the Design Criteria Package, and Design/Build Firm's submissions and responses thereto (as negotiated and accepted by County), any addenda, design plans, specifications, and drawings that are to be developed, signed, and sealed by Design/Build Architect/Engineer, the record of the contract award by the Board, the performance bond and payment bond, the notice of award, the Notice(s) to Proceed, the purchase order(s), change order(s), field order(s), and supplemental instructions, and all agreed on contract and/or design modifications issued after execution of the Contract.
- 1.7. **Contract Price** means the amount established in the Contract as the lump sum price including the pass-thru allowance(s) for the Work, as may be amended by Change Order.
- 1.8. **Contract Time** means the time between the start of the Project, as specified in the first Notice to Proceed, and Final Completion, including any milestone dates thereof, established in the Contract, as may be amended by Change Order.
- 1.9. **County Project Manager** means County's employee assigned by and representing the Contract Administrator to provide managerial services on this Project.
- 1.10. **Design/Build Architect/Engineer** means the Architect/Engineering firm under contract with Design/Build Firm that will provide design and other related professional services for the Project.
- 1.11. **Design/Build Firm** means the person, firm, or corporation identified in this Contract as the Party with whom County has contracted and who is responsible for the acceptable performance of the Work and for the payment of all legal debts or other obligations pertaining to the Work. 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.
- 1.12. **Design Criteria Package** means the performance criteria developed by the Design Criteria Professional that establishes the performance requirements for the Work, as shown in Exhibit A.
- 1.13. **Design Criteria Professional** means County's employee or consultant who is a design professional registered to practice the respective discipline under the laws of Florida, who is responsible for the Design Criteria Package and who will perform related professional duties assigned by County during the Project.

1.14. **Disadvantaged Business Enterprise** or **DBE** means an entity certified as meeting the applicable requirements of 49 C.F.R Part 26.

1.15. **Field Order** or **Supplemental Instruction** means a written order of minor changes or interpretations in the Work that does not involve a change in the Contract Price or Contract Time.

1.16. **Final Completion** means the date certified by Design/Build Firm and approved by the Contract Administrator in the Final Certificate of Payment as the date upon which (a) all conditions and requirements of any permits and regulatory agencies have been satisfied; (b) any documents required by the Contract Documents have been received by the Contract Administrator; (c) any other documents required to be provided by Design/Build Firm have been received by Contract Administrator; and (d) the Work has been fully completed in accordance with the terms and conditions of the Contract Documents.

1.17. **General Conditions** means the provision of facilities or performance of work by the Design/Build Firm for items that do not lend themselves readily to inclusion in the separate trade contracts. Payment for the General Conditions items shall be included as part of the Contract Price.

1.18. **Materials** means physical items incorporated in this Project or used or consumed in the performance of the Work.

1.19. **Notice(s) to Proceed** means one or more written notice(s) to Design/Build Firm issued by the Contract Administrator authorizing commencement of specified Work identified therein.

1.20. **Owner's Allowance Account** means the Owner's Allowance Account, which shall be is available at the discretion of the Contract Administrator to cover additional elements of Work not included in the Design/Build Firm's Design Build Services. The Design/Build Firm shall not perform Work subject to the Owner's Allowance Account without the Contract Administrator's prior issuance of a Contract Price Adjustment Memorandum transferring such approved amounts to the Design Build Services and authorizing Design/Build Firm to proceed with said Work. At final payment, any amount remaining in the Owner's Allowance Account shall be retained by the County.

1.21. **Project** means the design and construction project of [REDACTED] as described in Exhibit A and the Contract Documents, including the Work described therein.

1.22. **Punch List** means a document developed by County Project Manager and Contract Administrator and provided to Design/Build Firm simultaneously with, or within thirty (30) to forty-five (45) days after, the issuance of a Certificate of Substantial Completion or Partial Substantial Completion, that lists Work that Design/Build Firm has yet to complete or that does not conform to the Contract Documents and that Design/Build Firm must complete or correct, as indicated in the document, to satisfy the requirements of this Contract for Final Completion and to make the Work satisfactory and acceptable.

1.23. **Subconsultant** or **Subcontractor** means any person, firm, or corporation having a direct contract with Design/Build Firm, regardless of tier, to perform all or any portion of the Work described in the Contract Documents, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes materials not so worked.

1.24. **Substantial Completion** means that date, as certified in writing by Design/Build Architect/Engineer and as finally determined by Contract Administrator, whose approval may not be unreasonably withheld, on which the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and County or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose.

1.25. **Surety** means the surety company or individual that is bound by the performance bond and payment bond with and for Design/Build Firm. The surety is responsible for Design/Build Firm's acceptable and timely performance of the Work and for the payment of all debts and other obligations pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.26. **Work** means the design, construction, and other professional services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment, and services provided or to be provided by Design/Build Firm to fulfill Design/Build Firm's obligations.

ARTICLE 2. – THE WORK

2.1. County intends to describe in this Contract a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Design/Build Firm shall supply any Work, materials, and equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, whether or not specifically called for by the Contract Documents. When words that have a well-known technical or trade meaning are used to describe Work, those words will 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, means the latest standard specification, manual, code, or laws or regulations in effect at the time of permit issuance.

2.2. Design/Build Firm shall establish a fixed schedule that is the standard by which the Project performance is measured ("Project Schedule") attached hereto and incorporated herein as Exhibit B. Design/Build Firm shall plan, record, and update, at least monthly, the Project Schedule. The Project Schedule must include all contractual start and finish dates and critical interim milestones, and demonstrate how these dates are achieved, through the sequencing of project activities as also described in the Project Schedule or within the Contract Documents. The Project Schedule shall indicate the dates for the commencement and completion of the various stages of design and construction and shall be revised as required by the conditions of the Work. The

Project Schedule shall encompass all 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 have available to it all materials, supplies, and appropriate personnel, trades, and all other items necessary to complete the Work in accordance with the Project Schedule.

ARTICLE 3. – SCOPE OF WORK

Design/Build Firm shall provide all services needed to fulfill the requirements set forth in this Contract including all necessary, incidental, and related activities and services to complete the Project.

ARTICLE 4. – TIME FOR PERFORMANCE; LIQUIDATED DAMAGES; SUBSTANTIAL COMPLETION; AND TRAFFIC PROVISIONS

4.1. Design/Build Firm shall perform the Work described in Exhibit A within the time periods specified in the Project Schedule in Exhibit B; said time periods shall commence from the date of the issuance of a Notice to Proceed for such Work.

4.2. Before beginning the performance of any Work under this Contract, Design/Build Firm must receive a Notice to Proceed authorizing the performance of the specific Work. Before granting approval for Design/Build Firm to proceed to a later phase, the Contract Administrator may, at his or her sole option, require Design/Build Firm to submit certain itemized deliverables/documents identified in Exhibit A for the Contract Administrator's review.

4.3. Design/Build Firm must receive all necessary permits, for the portions of work to commence as applicable, before Contract Administrator may issue a Notice to Proceed for construction of that portion of the Work. The Work to be performed under a Notice to Proceed for construction shall start on or before the tenth (10th) calendar day after the date specified in that Notice to Proceed.

4.4. Time is of the essence for Design/Build Firm's performance under this Contract. Design/Build Firm's must obtain Substantial Completion of the Work within 510 calendar days after the Project Initiation Date specified in the Notice to Proceed, and Final Completion within 30 calendar days after Substantial Completion.

4.5. Liquidated Damages. Upon failure of Design/Build Firm to obtain Substantial Completion within the deadline stated in Section 4.4, as extended by any approved time extensions, Design/Build Firm shall pay to County the sum per day set forth below for each day after the deadline for Substantial Completion, as extended by any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Design/Build Firm fail to complete the remaining Work and obtain Final Completion within the deadline stated in Section 4.4, as extended by approved time extensions thereof, Design/Build Firm shall pay to

County the sum per day set forth below for each day after the deadline for Final Completion, as extended by any approved extensions, until Final Completion is obtained.

Project Phase	Amount (per day)
Phase II – Construction (Substantial Completion)	<u>\$3,819.00</u>
Phase II – Construction (Final Completion)	\$1,909.50

Phases and time periods to complete the phases will be itemized within Exhibit B, Project Schedule. The forgoing liquidated damage amounts will be calculated and payable at the end of Phase II but will be calculated based upon the Phase in which the delay occurred.

These amounts are not penalties but are liquidated damages to County for its inability to obtain full beneficial occupancy and/or use of the Project in a timely manner under the Project Schedule. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by County as a consequence of Design/Build Firm's failure to timely obtain Substantial Completion, Final Completion, or both; and (2) both Parties' desire to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Design/Build Firm to achieve Substantial Completion, Final Completion, or both, on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for Substantial Completion, Final Completion, or both, is given.

4.5.1. Liquidated damages do not address costs incurred by County or Design Criteria Professional: (a) due to an audit conducted pursuant to Article 35; or (b) having Design Criteria Professional administer the construction of the Project beyond the deadlines for Substantial Completion, Final Completion, or both. Design/Build Firm is separately responsible to County for the actual costs referenced in (a) and (b) above, pursuant to Section 4.5.2.

4.5.2. Separate and apart from the liquidated damages stated in Section 4.5, Design/Build Firm shall also reimburse County for all costs incurred by Design Criteria Professional in administering the construction of the Project beyond the completion dates specified in Section 4.4, as extended by any approved time extensions. Design Criteria Professional construction administration costs shall be in the amounts set forth in the contract between County and Design Criteria Professional. County may, but is not obligated to, deduct such costs from the monies due Design/Build Firm for performance of Work under this Contract by means of unilateral credit Change Orders issued by County as costs are incurred by Design Criteria Professional and agreed to by County.

4.6. County may, but is not obligated to, deduct liquidated damages from monies due to Design/Build Firm for the Work under this Contract or as much thereof as County may, in its sole discretion, deem just and reasonable.

4.7. Substantial Completion. When Design/Build Firm considers in good faith that the Work, or any portion thereof designated by Contract Administrator pursuant to Section 4.8 herein, has reached Substantial Completion, Design/Build Firm shall so notify the Contract Administrator, Design/Build Architect/Engineer, and the County Project Manager in writing. The County Project Manager and Design/Build Architect/Engineer shall then promptly inspect the Work. When County Project Manager and Design/Build Architect/Engineer, on the basis of such an inspection, determine that the Work, or the designated portion thereof, is substantially complete, the County Project Manager will notify the Contract Administrator and prepare a Certificate of Substantial Completion (Form 10) for the Contract Administrator's approval. The Contract Administrator shall sign the Certificate of Substantial Completion, which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of County and Design/Build Firm for maintenance, utilities, damage to the Work, and insurance.

The estimated cost of the Project is as follows (select one):

☒ **less than \$10,000,000**. Within thirty (30) calendar days after the issuance of the Certificate of Substantial Completion, Consultant and the Contract Administrator shall develop and Design/Build Firm shall review the Punch List.

☐ **equal to or greater than \$10,000,000**. Within forty-five (45) calendar days after the issuance of the Certificate of Substantial Completion, Consultant and the Contract Administrator shall develop and Design/Build Firm shall review the Punch List.

The Punch List shall describe all Work yet to be completed by Design/Build Firm, including the estimated cost to complete each item of Work on the Punch List, to satisfy the requirements of this Contract for Final Completion and to make the Work satisfactory and acceptable. The County Project Manager shall provide the Punch List to Design/Build Firm within five (5) days after the Punch List's final development and review. If the final Punch List is not provided within the stated five (5) days, the Contract Time for completion shall be extended by the number of days exceeding the five (5) days. The failure to include any items of corrective Work or remaining Work on such Punch List does not alter the responsibility of Design/Build Firm to complete all Work in accordance with this Contract. Warranties required by this Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted by the Contract Administrator to Design/Build Firm for Design/Build Firm's written acceptance of the responsibilities assigned to it in the Certificate of Substantial Completion.

The process for developing the estimated cost of each item of Work on the Punch List shall use the following methodology or methodologies (select all that apply):

- ☒ Direct costs
- ☒ Prorated value of outstanding Work based on Design/Build Firm's original Schedule of Values
- ☒ Unit prices provided in the bid
- ☒ Labor costs per hour
- ☒ Per square foot of site area
- ☒ Per assembly
- ☒ Historical and current prices for similar work
- ☒ Industry cost database(s)
- ☐ Other: _____

4.8. Use of Completed Portions.

4.8.1. County shall have the right at the Contract Administrator's sole option to take possession of and use any completed or partially completed portions of the Project ("Designated Area"). Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with this Contract. If such possession and use increase the cost of or delays the Work, Design/Build Firm shall be entitled to reasonable extra compensation or reasonable extension of time, or both, as approved by County.

4.8.2. If County decides to take possession of any completed or partially completed portions of the Project, the following shall occur:

4.8.2.1. Contract Administrator shall give notice to Design/Build Firm in writing at least thirty (30) days prior to County's intended occupancy of a Designated Area.

4.8.2.2. Design/Build Firm shall complete to the point of Substantial Completion the Designated Area and request inspection and issuance of a Certificate of Substantial Completion (Form 10) from Contract Administrator.

4.8.2.3. Upon issuance of the Certificate of Substantial Completion for the Designated Area, County will assume responsibility for maintenance, utilities, subsequent damages of County and the public, and any adjustment in insurance

coverages. Issuance of the Certificate of Substantial Completion starts the warranty for the Designated Area, unless otherwise agreed in writing by the Parties hereto.

4.8.2.4. Design/Build Firm shall complete all items noted on the Certificate of Substantial Completion within the time specified therein, and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Contract Administrator shall issue a Final Certificate of Payment relative to the Designated Area.

4.8.2.5. If County decides to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by County and Design/Build Firm and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Design/Build Firm shall not cancel or let lapse insurance on the unoccupied or unused portion or portions on account of such partial occupancy or use. Design/Build Firm and the insurance company or companies shall not unreasonably withhold consent to such occupancy or use.

4.9 Legal Restrictions and Traffic Provisions.

4.9.1. Design/Build Firm shall conform to and obey all Applicable Law with regards to labor employed, hours of work, and Design/Build Firm's operations. Design/Build Firm shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on railway, highways, or water, without the written consent of the proper authorities.

4.9.2. All contracts with County for construction in public right-of-way must contain provisions for the assessment of liquidated damages for unauthorized peak-hour lane closures, pedestrian access route closures, and traffic signal maintenance and operation not in conformity with the Minimum Standards or, where applicable, the elevated requirements contained in the Contract Documents.

4.9.2.1. Peak-Hour Lane Closures. Peak-hour lane closures will be prohibited unless all viable alternatives have been explored and reasons for the closures are warranted, justified, and documented. Peak-hour lane closures proposed by Design/Build Firm must be preapproved in writing by County; otherwise, they are expressly prohibited. Failure of Design/Build Firm to comply with this requirement will result in assessment of liquidated damages according to the schedule below and will be assessed until the prohibited peak-hour lane closure is reopened.

Unauthorized Lane Closure Liquidated Damage Schedule	Occurrence Adjustment Factor			
	1st	2nd	3rd	4th

	10%	25%	50%	100%
Liquidated Damage Cost First 30 minutes	\$815	\$1,320	\$2,160	\$3,820
Liquidated Damage Cost Each Additional 30 minutes	\$335	\$845	\$1,660	\$0
Maximum Daily Charge Per Calendar Day	\$3,820			

4.9.2.2. Pedestrian Access Route Closures. For any temporary or permanent alteration or removal of a pedestrian access route, curb ramp, or street crossing, for ingress or egress, Design/Build Firm shall ensure that there is a viable alternate route accessible to pedestrians during construction, events, or other temporary conditions, for traversing the public right-of-way. Failure of Design/Build Firm to comply with the County-approved MOT plan or to request or obtain preapproval of a variance from the County-approved MOT plan will result in the assessment of liquidated damages in the amount of Six Hundred Twenty Dollars (\$620) for each occurrence plus One Hundred Forty Dollars (\$140) for each ensuing thirty (30) minute interval, up to a maximum amount not to exceed of Three Thousand Eight Hundred Twenty Dollars (\$3,820) per day, which will be assessed until the pedestrian access route is made available.

4.9.2.3. Traffic Signal Maintenance and Operation During Construction. After issuance of the first notice to proceed and prior to beginning construction, Design/Build Firm shall submit to the County Traffic Engineering Division for approval the signal timing plan(s) for all signalized intersections identified in those plan(s). The plan(s) must clearly identify each intersection's proposed traffic movements with associated timing throughout each phase of construction.

a) Design/Build Firm shall assume and accept maintenance responsibilities for the signalized intersections identified in the Contract Documents. Maintenance responsibilities include, but are not limited to:

1. Repairing or replacing defective equipment.
2. Implementing signal timing plan(s) and performing necessary adjustments thereto.
3. Performing all video/vehicle detection system changes required by the Minimum Standards and all traffic control manuals, and deemed necessary by the Traffic Engineering Division's Director, or designee.
4. Maintaining existing systems communications with the Traffic Engineering Division's Traffic Management Center.

5. Adjusting signal equipment to meet the Minimum Standards and all traffic control manuals during each phase of construction.

b) At the sole discretion of County, and if the approved signal timing plan causes extended congestion or delays, Design/Build Firm will be directed to study the intersection signal timing plan and to prepare a report with its recommendations. Based on the report, the Design/Build Firm may direct its Subcontractor to prepare an alternative signal timing plan for the Traffic Engineering Division's review and approval. The report shall be provided to the Traffic Engineering Division within two (2) business days after such direction. Failure of Design/Build Firm to provide a report of the intersection signal timing plan recommendations to the Traffic Engineering Division within two (2) business days after request will result in liquidated damages in the amount of Three Thousand Five Hundred Dollars (\$3,500) per day until the report is received. Within twenty-four (24) hours after Design/Build Firm's receipt of the Traffic Engineering Division's approved changes to an intersection's signal timing plan, Design/Build Firm shall submit to the Traffic Engineering Division any proposed modifications to the approved changes; otherwise, any objections to the approved changes will be deemed waived. Thereafter, Design/Build Firm's failure to implement the approved changes within twenty-four (24) hours will result in liquidated damages in the amount of One Thousand Dollars (\$1,000) per day until the approved changes to the signal timing plan are implemented.

c) All existing traffic signalization equipment is presumed to be in good working order unless Design/Build Firm submits written notice to the Traffic Engineering Division's Director, or designee, before beginning construction, identifying any issues with the equipment. After commencement of construction, any subsequent damage or malfunctions to the signal equipment, including but not limited to mast arm and strain pole structures, must be repaired by Design/Build Firm at Design/Build Firm's sole expense.

4.9.2.4. Appeals. If Design/Build Firm desires to appeal any assessment of liquidated damages imposed herein, Design/Build Firm shall submit to the Contract Administrator written notice of its intent to dispute the assessment within ten (10) calendar days after Design/Build Firm's receipt of County's notice of assessment; otherwise, any objection to either the assessment or the amount will be deemed waived. Design/Build Firm's notice of appeal must provide the basis for the objection(s) and any other supporting documentation to assist in dispute resolution. Once the Contract Administrator receives notice of Design/Build Firm's intent to dispute, County and Design/Build Firm will hold a conference within ten (10) calendar days in an attempt to resolve the dispute. If

disputed issues remain after the conference is held, or if no such conference occurs within ten (10) calendar days after the Contract Administrator's receipt of Design/Build Firm's notice, the Parties shall undertake dispute resolution in accordance with Article 16.

ARTICLE 5. – CONTRACT AMOUNT AND METHOD OF COMPENSATION

5.1. County shall pay Design/Build Firm the following compensation for performance of the Work described below:

Design Build Services

Project Phase	Lump Sum Price/Phase
Phase I: Engineering Services - Design	\$ _____
Phase II: Construction	\$ _____
Phase III: Engineering Services - Post Design	\$ _____
Total for Design Build Services (Lump Sum)	\$ _____
Owner's Allowance Account	\$ _____
TOTAL CONTRACT PRICE (LUMP SUM)	\$ _____

The Owner's Allowance Account will only be used for Work performed under this Contract.

5.2. Progress Payments.

5.2.1. Design/Build Firm may make an application for payment ("Application for Payment"), at intervals of not more than once a month, for work completed on the Project during the preceding interval. Design/Build Firm shall, where the Project involves DBE Subcontractors, make Application for Payment at monthly intervals for Work completed on the Project by such Subcontractors during the preceding monthly interval. Design/Build Firm's Application for Payment must show a complete breakdown of the Project components, the quantities completed during the applicable interval, and the amount of payment sought, together with such supporting evidence as may be required by County Project Manager or Contract Administrator. At a minimum, Design/Build Firm shall submit with each Application for Payment an updated project schedule acceptable to Contract Administrator as required by the Contract Documents; a Certification of Payments to Subcontractors Form (Form 9); a statement indicating the cumulative amount of DBE participation to date; and a release of claims relative to the Work that was the subject of any previous Applications for Payment or consent of surety relative to the Work that is the subject of the Application for Payment. If Design/Build Firm has not made payment to a Subcontractor, the Certification of Payments to Subcontractors Form must be accompanied by a copy of the notification sent to each Subcontractor (listed in Item 2 of the Form) to who, payment has not been made, explaining the good cause why payment was not made. When applicable, each Application for Payment shall be

accompanied by a completed Statement of Wage Compliance Form (Form 8A or 8B). Each Application for Payment shall be submitted in triplicate to County Project Manager for approval as follows:

Joan Shen, P.E.
Highway Bridge and Maintenance Division
1600 Blount Road
Pompano Beach, Florida 33069

All Applications for Payment shall be stamped as received on the date on which it is delivered in the manner specified above. Payments of Applications for Payment shall be subject to approval as specified herein and, if approved, payment for the undisputed portion(s) of the Application for Payment shall be due twenty (20) business days after the date on which the Application for Payment is stamped received. At the end of the twenty (20) business days, Design/Build Firm may send the Contract Administrator an overdue notice. If the Application for Payment is not rejected within four (4) business days after delivery of the overdue notice, the Application for Payment shall be deemed accepted, excepting any portions that County determines to be fraudulent or misleading. If the Application for Payment does not meet the requirements of this Contract, County shall reject the Application for Payment within twenty (20) business days after the date stamped received and said rejection shall specify each deficiency and the action necessary by Design/Build Firm to cure each deficiency. If Design/Build Firm submits a request that corrects each deficiency, the corrected Application for Payment must be paid or rejected within ten (10) business days after the corrected Application for Payment is stamped as received. Any dispute between County and Design/Build Firm shall be communicated in writing and resolved in accordance with the Prompt Payment Ordinance (Section 1-51.6 of the Code), subject to the process and time frames for payment set forth above. For all other disputes related to payment, the dispute shall be resolved pursuant to the dispute resolution procedure set forth in Article 16. In no event shall County be required to make payment for items of Design/Build Firm's costs for which the County Project Manager or the Contract Administrator reasonably takes exception.

5.2.2. The schedule of values for this Contract shall list the cost of major work items, permit and inspection fees, and premiums for bonds and insurance. Each monthly application for payment shall be for a sum equal to (i) that portion of Design/Build Firm's construction cost equal to the percentage of the Work completed; plus (ii) an appropriate amount of Design/Build Firm's design fee as related to the percentage of the Work completed. The calculation of the percentage of the Work completed shall be in accordance with the approved Project Schedule.

5.2.3. Design/Build Firm shall promptly pay all bills for labor performed and material furnished by its Subcontractors, suppliers, and material providers, in connection with the Work. Design/Build Firm shall deliver to County the Form of Certification of Payments to

Subcontractors (Form 9) with each payment application in accordance with the provisions in Section 5.2.1.

5.2.4. Design/Build Firm shall remain solely liable for Subcontractor's work and for any unpaid laborers, material suppliers, or subcontractors of Subcontractor's work if it is later discovered that said work is deficient or that any of said laborers, material suppliers, or Subcontractors did not receive payments due them on the Project.

5.2.5. Prior to issuance of the Punch List, County may withhold retainage on each progress payment as set forth in Section 255.078, Florida Statutes, as may be amended during this Contract. Any reduction in retainage below the maximum amount set forth in Section 255.078, Florida Statutes, shall be at the sole discretion of the Contract Administrator, after consultation with the County Project Manager. Any interest earned on retainage shall accrue to the benefit of County.

5.2.5.1. Notwithstanding the above, the Contract Administrator may, in his or her sole discretion, release the retainage for Phases I and II related to design services only being performed by the Design/Build Architect/Engineer upon completion of those respective Phases.

5.2.6. Notwithstanding any provision of this Contract to the contrary, County may withhold payment, in whole or in part, in accordance with Applicable Law, as a consequence of Design/Build Firm's material breach of any obligations under the Contract Documents, or to such extent as may be necessary to protect itself from loss on account of:

5.2.6.1. Inadequate or defective Work not remedied or resolved in a manner satisfactory to the Contract Administrator.

5.2.6.2. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Design/Build Firm or County relating to Design/Build Firm's (or its Subcontractors') performance.

5.2.6.3. Failure of Design/Build Firm to make payments properly to Subcontractors or for material or labor.

5.2.6.4. Damage to another contractor not remedied.

5.2.6.5. Failure of Design/Build Firm to provide any document(s) required by the Contract Documents.

5.2.6.6. Liquidated damages and costs incurred for extended construction administration on the Project.

When the above grounds are removed or resolved to the satisfaction of the Contract Administrator, any applicable withheld payment shall be made to the extent otherwise due.

5.2.7. County Project Manager and Design/Build Firm's Architect/Engineer shall conduct an inspection within ten (10) days after receipt of written notice from Design/Build Firm that all Work described in the Punch List has been completed and the Work is ready for final inspection and acceptance. A Final Certificate of Payment (Form 11) for the Work, or the applicable phase thereof, shall be issued if Contract Administrator finds that: (a) the Work is acceptable; (b) the requisite documents have been submitted; (c) the requirements of the Contract Documents are fully satisfied; and (d) all conditions of the permits and regulatory agencies have been met. Such Final Certificate of Payment shall be issued by Contract Administrator, under its signature, stating that the applicable requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions of the Contract Document.

5.2.8. Before issuance of the Final Certificate for Payment, Design/Build Firm shall deliver to Contract Administrator the following final payment package: a complete release of all claims arising out of this Contract, or receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness and financial obligations connected with the applicable Work have been paid, or, in the alternative, a consent of the Surety to final payment on Design/Build Firm's behalf; the final corrected as-built drawings; the final bill of materials, if required; and the final Application for Payment.

5.2.9. Final payment shall be made only after the Board or Director of Purchasing, as applicable, has reviewed a written evaluation of the performance of Design/Build Firm prepared by the Contract Administrator and has approved the final payment. The acceptance of final payment shall constitute a waiver of all claims by Design/Build Firm, except those previously made in strict accordance with the claim provisions of this Contract and identified by Design/Build Firm as unsettled at the time of the application for final payment.

ARTICLE 6. – COUNTY'S RESPONSIBILITIES

6.1. The Contract Administrator shall provide, for Design/Build Firm, all information County has available about the Project, including previous reports and any other data about design or construction of the Project.

6.2. The Contract Administrator shall arrange for access to and make all provisions for Design/Build Firm to enter on public and private property as required for Design/Build Firm to perform the Work.

6.3. The Contract Administrator shall review the itemized deliverables/documents identified in Exhibit A, and respond in writing with any comment within the time set forth on the up-to-date, approved Project Schedule.

6.4. The Contract Administrator shall give prompt written notice to Design/Build Firm whenever the Contract Administrator observes or otherwise becomes aware of (a) any development that affects the scope or timing of Design/Build Firm's services; or (b) any defect in the Work.

6.5. Contract Administrator retains authority to direct the Design/Build Firm to stop the progress of the Work whenever, in the sole discretion of the Contract Administrator, such stoppage is (a) necessary to ensure proper execution of the Work and fulfillment of this Contract; or (b) in an emergency affecting the safety of life or the Work or the adjoining property.

ARTICLE 7. – CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

7.1. Without invalidating this Contract and without notice to any surety, County has the right to make such increases, decreases, or other changes in the character or quantity of the Work as may be considered necessary or desirable by County to fully and acceptably complete the proposed Work in a satisfactory manner. Any extra or additional Work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders. In no event shall the Contract Price be modified except by appropriate Change Order or Amendment.

7.1.1. Any changes to the terms of this Contract must be contained in a written document, executed by the Parties hereto, with the same formality and of equal dignity as this Contract prior to the initiation of any Work described in such change. This section does not prohibit the issuance of Change Orders executed only by County, as provided in this Contract.

7.2. Field Orders and Supplemental Instructions.

7.2.1. County Project Manager, through Contract Administrator, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of this Contract and ordering minor changes in the Work. Field Orders may not change the Contract Price or the Contract Time.

7.2.2. County Project Manager shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or performance of the Work. Supplemental Instructions may not change the Contract Price or the Contract Time.

7.3. Change Orders.

7.3.1. Changes in the quantity or character of the Work within the scope of the Project that cannot be accomplished by means of Field Orders or Supplemental Instructions, including all changes resulting in changes to the Contract Price or the Contract Time, shall be authorized only by Change Orders approved in advance issued in accordance with the provisions of the Broward County Procurement Code, as amended from time to time.

7.3.2. Design/Build Firm shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by County. If Design/Build Firm starts work on any such changes, Design/Build Firm does so at its own risk and with the understanding that it may receive no money for the Work, or a portion of the Work, performed before a valid Change Order is approved by County. Upon receipt of a Change Order, Design/Build Firm shall promptly proceed with the Work set forth in the Change Order.

7.3.3. If satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, County may, at its sole option, either terminate this Contract as it applies to the items in question and make such arrangements as County deems necessary to complete the work associated with the disputed item or submit the matter in dispute to County Administrator as set forth in Article 16.

7.3.4. Under circumstances determined necessary by County, Change Orders may be issued unilaterally by County. During the pendency of the dispute, and upon receipt of a Change Order from County, Design/Build Firm shall promptly proceed with the change in the Work involved and advise County Project Manager and Contract Administrator in writing within seven (7) days after receipt of the Change Order of Design/Build Firm's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

7.3.5. On approval of any Contract change increasing the Contract Price, Design/Build Firm shall promptly ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased. Design/Build Firm will promptly provide County such updated bonds.

7.4. Value of Change Order Work.

7.4.1. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

7.4.1.1. If the Work involved is covered by unit prices contained in this Contract, by application of unit prices to the quantities of items involved, subject to the following:

a) If the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in this Contract, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

7.4.1.2. By mutual acceptance of a lump sum that Design/Build Firm and County acknowledge contains a component for overhead and profit.

a) Whenever a change in the Work is to be based on a mutual acceptance of a lump sum, whether the amount is an addition, credit, or no change-in cost, Design/Build Firm shall submit an initial cost estimate acceptable to Contract Administrator.

(i) Such cost estimate shall include a breakdown listing the quantities and unit prices for materials, labor, equipment, and other items of cost.

(ii) Whenever a change involves Design/Build Firm and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Design/Build Firm and each Subcontractor shall be itemized separately.

7.4.1.3. On the basis of the "Cost of Work," determined as provided in Sections 7.4.2 and 7.4.3, plus a fee for overhead and profit that is determined as provided in Section 7.4.4.

a) Whenever the cost of any Work is to be determined under "Cost of Work," Design/Build Firm will submit in a form acceptable to Contract Administrator an itemized cost breakdown together with the supporting data.

7.4.2. The term "Cost of Work" means the sum of all direct costs necessarily incurred and paid by Design/Build Firm (or, if applicable, Subcontractors) in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by County, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in Section 7.4.3.

7.4.2.1. Payroll costs for employees in the direct employ of Design/Build Firm in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by County and Design/Build Firm. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall

include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized in advance by County.

7.4.2.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Design/Build Firm unless County deposits funds with Design/Build Firm to make payments, in which case the cash discounts shall accrue to County. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to County, and Design/Build Firm shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery, and the parts thereof whether rented by Design/Build Firm, in accordance with written rental agreements approved by County with the advice of Design/Build Architect/Engineer, and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof, all in accordance with the terms of said agreements. County will not be responsible for the cost of the rental of any such equipment, machinery, or parts when the use thereof is no longer necessary for the Work.

7.4.2.3. If required by County, Design/Build Firm shall obtain competitive bids from Subcontractors acceptable to Design/Build Firm, and shall deliver such bids to County who will then determine, with the advice of Design/Build Architect/Engineer, which bids will be accepted. If the subcontract provides that the Subcontractor is to be paid on the basis of Cost of Work plus a fee, the Subcontractor's Cost of Work shall be determined in the same manner as Design/Build Firm's Cost of Work. All Subcontractors shall be subject to the other provisions of this Contract insofar as applicable.

7.4.2.4. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.

7.4.2.5. Supplemental costs include the following:

- a) All materials, supplies, equipment, machinery, appliances, office and temporary facilities, including transportation and maintenance thereof, at the site and hand tools not owned by the workers used in the performance of the Work, less market value of such items used but not consumed, and which items remain the property of Design/Build Firm.

b) Sales, use, or similar taxes related to the Work, imposed by any governmental authority, for which Design/Build Firm is liable.

c) The cost of utilities, fuel, and sanitary facilities at the site.

d) Cost of premiums for additional bonds and insurance required because of changes in the Work.

7.4.3. The term "Cost of Work" shall not include any of the following:

7.4.3.1. Payroll costs and other compensation of Design/Build Firm's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, schedulers, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design/Build Firm whether at the site or in its principal or a branch office, for general administration of the Work that are not specifically included in the agreed-upon schedule of job classification referred to in subsection 7.4.2.1, all of which payroll costs and other compensation are to be considered administrative costs covered by Design/Build Firm's fee.

7.4.3.2. Expenses of Design/Build Firm's principal and branch offices other than Design/Build Firm's office at the Project site.

7.4.3.3. Any part of Design/Build Firm's capital expenses, including but not limited to interest on Design/Build Firm's capital employed for the Work as well as charges against Design/Build Firm for delinquent payments.

7.4.3.4. Cost of premiums for all bonds and for all insurance, whether Design/Build Firm is required by this Contract to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.

7.4.3.5. Costs due to the negligence or neglect of Design/Build Firm, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and repairing or remedying any damage to property.

7.4.3.6. Other overhead or general expense costs of any kind.

7.4.4. Design/Build Firm's fee for overhead and profit shall not exceed five percent (5%) of the net change to the Cost of Work.

7.4.5. If a subcontract is on the basis of Cost of Work plus a fee, the Subcontractor's fee for overhead and profit shall be determined as follows:

7.4.5.1. In no event shall the aggregate of all Subcontractors' overhead and profit exceed fifteen percent (15%) of the net change(s) to the Subcontractors' Cost of Work. If a Subcontractor is owned by an affiliate of, or managed by, Design/Build Firm, or Work is to be "self performed" by Design/Build Firm, no overhead and profit will be allowed on that cost. If there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all the Subcontractors' including any tiered Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed fifteen percent (15%) of the aggregate net change to the Subcontractors' Cost of Work.

7.4.5.2. Whenever a change in the Subcontractor's Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit, or no change-in-cost, Design/Build Firm shall submit an initial cost estimate obtained from the Subcontractor and acceptable to the County Project Manager before commencing the Work. The breakdown must list the quantities and unit prices for materials, labor, equipment, and other items of cost. Whenever a change involves more than one (1) Subcontractor and the change is an increase in the Contract Price, overhead and profit percentage of each Subcontractor and Design/Build Firm, if applicable, must be itemized separately.

7.4.6. The amount of credit to County for any change that results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any. Design/Build Firm shall not be entitled to claim lost profits for any Work not performed.

7.4.8. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "Cost of Work."

7.5. Notification and Claim for Change of Contract Time or Contract Price.

7.5.1. Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Design/Build Firm to the County Project Manager and the Contract Administrator, with a copy to Design/Build Architect/Engineer and Design Criteria Professional, within twenty (20) days after the commencement of the event giving rise to the claim or Design/Build Firm's knowledge of the claim, and the notice shall state the general nature and cause of the claim. Thereafter, within ten (10) days after the termination of the event giving rise to the claim or Design/Build Firm's knowledge of the claim, Design/Build Firm shall submit written notice of the extent of the claim with supporting information and documentation to the Contract Administrator and County

Project Manager (hereinafter "Claim Notice"). The Claim Notice shall include Design/Build Firm's written notarized certification that the adjustment claimed is the entire adjustment to which Design/Build Firm has reason to believe it is entitled as a result of the occurrence of the event giving rise to the claim. If the Contract Administrator and Design/Build Firm cannot resolve a claim for changes in the Contract Time or Contract Price within twenty (20) days after receipt of the Claim Notice by the Contract Administrator and County Project Manager, then Design/Build Firm shall submit the claim to County Administrator within five (5) days after the date of impasse in accordance with Article 16 hereof. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

7.5.2. The Contract Time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Design/Build Firm if a claim for an extension is made in accordance with Section 7.5.1. Such delays shall include, but not be limited to, acts, omissions, or neglect by any separate contractor employed by County, fires, floods, labor disputes, epidemics, pandemics, abnormal weather conditions, or acts of God. Any extension of time regarding an epidemic or pandemic will only apply when a government mandated physical shutdown of the subject project site is required due to an order issued by County or the State of Florida (collectively referred to herein as "Shut Down Order"). Such extension of time shall only apply to any physical labor that cannot be provided due to such Shut Down Order and shall not delay any other office work, design work, engineering work, etc. that can continue forward and not be in violation of such a Shut Down Order.

7.6. No Damages for Delay. No claim for damages or any claim, other than for an extension of time, shall be made or asserted against County by reason of any delays except as provided herein. Design/Build Firm shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from County for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising from 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. Design/Build Firm shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above; provided, however, that this provision shall not preclude recovery of damages by Design/Build Firm for actual delays due solely to fraud, bad faith, or active interference on the part of County or its agents.

7.7. Excusable Delay.

7.7.1. Delay that extends the completion of the Work and that is caused by circumstances beyond the control of Design/Build Firm or its Subcontractors, suppliers, or vendors are Excusable Delay. Design/Build Firm is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Design/Build Firm

shall document its claim for any time extension as provided in Section 7.5 hereof. **Failure of Design/Build Firm to comply with Section 7.5 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment, or relinquishment of any and all claims resulting from that particular event of delay. Excusable Delay may be compensable or non-compensable as provided below.**

7.7.2. Excusable Delay: Compensable & Non-Compensable.

7.7.2.1. Compensable Excusable Delay. Excusable Delay is compensable when (a) the delay extends the Contract Time; (b) is caused by circumstances beyond the control of Design/Build Firm or its Subcontractors, suppliers, or vendors; and (c) is caused solely by fraud, bad faith, or active interference on the part of County or its agents. In no event shall Design/Build Firm be compensated for interim delays that do not extend the Contract Time. Design/Build Firm shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Design/Build Firm are limited to the actual additional costs allowed pursuant to Section 7.4 hereof.

County and Design/Build Firm recognize and agree that the amount of Design/Build Firm's precise actual indirect costs for delay in the performance and completion of the Work is impossible to determine on the date of execution of this Contract, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by Design/Build Firm shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Design/Build Firm for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, lost profits, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity, and all other indirect costs incurred by Design/Build Firm. The amount of liquidated indirect costs recoverable shall be Six Hundred Fifty Dollars (\$650) per day for each day this Contract is delayed due to a Compensable Excusable Delay.

7.7.2.2. Non-Compensable Excusable Delay. When Excusable Delay is (a) caused by circumstances beyond the control of Design/Build Firm, its Subcontractors, suppliers, and vendors; (b) caused by circumstances beyond the control of County or its agents; or (c) caused jointly or concurrently by Design/Build Firm or its Subcontractors, suppliers, or vendors and by County or its agents, then Design/Build Firm shall be entitled only to a time extension and no further compensation for the delay.

ARTICLE 8. – INSURANCE

8.1. The specific insurance coverage requirements for this project are identified in the minimum insurance requirements attached hereto as Exhibit C (the "Minimum Insurance Requirements"). For the purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.

8.2. For the duration of the Design/Build Contract, Design/Build Firm shall, at its sole expense, maintain at least the minimum limits of insurance coverage designated in the Minimum Insurance Requirements (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. If Design/Build Firm maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, County shall be entitled to all such broader coverages and higher limits. County reserves the right at any time to review and adjust the limits and types of coverage required under this article. Design/Build Firm shall add County as an additional insured on all required insurance coverage.

8.3. Design/Build Firm shall maintain insurance coverage against claims relating to any act or omission by Design/Build Firm, its agents, representatives, employees, or Subcontractors in connection with the Design/Build Contract. All required insurance under this article shall provide primary coverage, list County as an additional insured, and shall not require contribution from any County insurance, self-insurance or otherwise. All insurance held by County, as well as County's self-insurance, shall be in excess of and shall not contribute to the insurance provided by Design/Build Firm. Unless prohibited by the applicable policy, Design/Build Firm waives any right to subrogation that any of Design/Build Firm's insurers may acquire against County, and agrees to obtain same in an endorsement on all lines of insurance required of Design/Build Firm under this article including any excess or umbrella policies.

8.4. 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 County's Risk Management Division in writing.

8.5. Design/Build Firm shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C, and shall submit same to County, at least fifteen (15) days prior to the effective date of the Design/Build Contract or commencement of the Work for County's written approval of such retentions or deductibles. Design/Build Firm shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Design/Build Firm 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. Design/Build Firm agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Design/Build Firm agrees to obtain same in endorsements to the required policies.

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

8.6.1. 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. County 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).

8.6.2. Design/Build Firm shall maintain products or completed work coverage for a minimum of three (3) years after the date of the final completion of the Work, unless otherwise stated in the Minimum Insurance Requirements. In that case, the term specified in the Minimum Insurance Requirements shall govern the duration of the coverage required by this paragraph.

8.6.3. 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 the Design/Build Contract. County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured."

8.6.4. 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 County 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 County 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 Design/Build Firm 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 Design/Build Firm's enrolled employees. In addition, and notwithstanding the foregoing,

in order to adequately protect the County against injuries to uninsured employees of Subcontractors and non-enrolled employees of Design/Build Firm, Design/Build Firm must still procure, maintain, and furnish County with evidence of a stand-alone separate Workers' Compensation/Employer's Liability insurance policy issued with Design/Build Firm as an additional insured, and complying with all requirements for Design/Build Firm provided Workers' Compensation contained in the Design/Build Contract. It is permissible for Design/Build Firm to exclude payroll of leased employees from such separate Workers' Compensation/Employer's Liability insurance policy.

8.6.5. Professional Liability Insurance. Such insurance shall cover Design/Build Firm for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the Design/Build Contract.

8.6.6. 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.

8.6.7. Environmental Pollution Liability. Such insurance shall include clean-up costs and provide coverage to Design/Build Firm for liability resulting from pollution or other environmental impairment arising out of, or in connection with, Work performed under the Design/Build Contract, or which arises out of, or in connection with the Design/Build 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 the 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 would have been covered had the coverage been provided on an occurrence basis.

8.6.8. Property Insurance, Builder's Risk, or Installation Floater. Such insurance shall be in force and evidenced to County 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, Design/Build Firm shall maintain a deductible that is commercially feasible but which does not exceed five (5%) of the "values at risk at the time of loss" unless otherwise approved by County.

Sublimits: 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 County.

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 County.

County 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 the Design/Build Firm's or Subcontractors' tools, equipment, or machinery or provide any business interruption or time element coverage to the Design/Build Firm. If County 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 Design/Build Firm may be modified to account for the insurance being provided by County, at County's discretion. Such modification may also include execution of Waiver of Subrogation documentation. If a claim with respect to this Project is made upon County's insurance policy, Design/Build Firm shall be responsible for up to the first Fifty Thousand Dollars (\$50,000) of the deductible amount for such claim.

8.7. On or before the full execution of the Design/Build Contract, or at least fifteen (15) days prior to the commencement of the Work, as requested by County, Design/Build Firm shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the coverage required in this article.

8.8. Design/Build Firm 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 the Design/Build Contract and until all performance required by Design/Build Firm has been completed, as determined by Contract Administrator. Design/Build Firm shall provide notice to County 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 County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.9. If and to the extent requested by County, Design/Build Firm shall provide to County complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.10. Design/Build Firm shall ensure that "Broward County, 115 S. Andrews Avenue, Fort Lauderdale, Florida 33301" is listed as an additional insured on all policies required under this article. Broward County shall be listed as Certificate Holder.

8.11. Design/Build Firm 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 Design/Build Firm under this article. Design/Build Firm shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. If Design/Build Firm or any Subcontractor fails to maintain the insurance required by this article, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Design/Build Firm. Design/Build Firm shall not permit any Subcontractor to provide services under the Design/Build Contract unless and until the requirements of this section are satisfied. If requested by County, Design/Build Firm shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

8.12. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the effective date of the Design/Build Contract; (2) the required coverage must be maintained after termination or expiration of the Design/Build Contract for at least the duration stated in Exhibit C; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Design/Build Contract, Design/Build Firm must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Design/Build Contract for at least the duration stated in Exhibit C.

SECTIONS 8.13-8.21 APPLY TO DESIGN PROFESSIONALS ONLY

8.13. General Commercial Liability. Design/Build Architect/Engineer agrees to maintain Commercial General Liability coverage 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

Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Contract.

County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

8.14. Professional Liability Insurance. Design/Build Architect/Engineer agrees to maintain Professional Liability coverage 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. If the policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in Exhibit C. Design/Build Architect/Engineer shall be responsible to pay for all deductibles.

Design/Build Architect/Engineer shall notify County in writing within thirty (30) calendar days of any claims filed or made against the Professional Liability Insurance Policy.

8.15. Workers' Compensation Insurance/Employers 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 County 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 County scheduled thereon. When appropriate, coverage shall be included for any applicable Federal or State employer's liability laws including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

8.16. Business Automobile Liability. 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. County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured." The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

8.17. Within fifteen (15) calendar days after the full execution of this Contract or notification of award, whichever is earlier, Design/Build Architect/Engineer shall provide to County satisfactory evidence of the insurance required in this Contract. With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability, and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

8.18. Coverage is not to cease and is to remain in force until County determines all performance required of Design/Build Architect/Engineer is completed. If any of the insurance coverage will

expire before the completion of the Services, proof of insurance renewal shall be provided to County before the policy's expiration.

8.19. Design/Build Architect/Engineer shall provide County thirty (30) business days' advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which County shall be given ten (10) business days' advance notice.

8.20. Design/Build Architect/Engineer shall provide, within thirty (30) business days after receipt of a written request from County, a copy of the policies providing the coverage required by this Contract. Design/Build Architect/Engineer may redact portions of the policies that are not relevant to the insurance required by this Contract.

8.21. If Design/Build Architect/Engineer uses a Subconsultant, Design/Build Architect/Engineer shall require each Subconsultant to endorse County as an "Additional Insured" on the Subconsultant's Commercial General Liability policy.

FDOT INSURANCE REQUIREMENTS SECTION

8.22. To the extent FDOT's Standard Specifications for Road and Bridge Construction, as revised at the time County enters into this Contract for construction of the Project, require higher or different insurance coverages, the requirements of the Standard Specifications shall control.

ARTICLE 9. – INDEMNIFICATION

Design/Build Firm shall indemnify and hold harmless County and its current, past, and future officers and employees (collectively, "Indemnified Party"), from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees (collectively, a "Claim"), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Design/Build Firm or persons employed or utilized by Design/Build Firm in the performance of this Contract, including but not limited to Design/Build Firm's Subconsultants, sub-subconsultants, materialmen, or agents of any tier, or any of their respective employees. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Design/Build Firm under this Contract may be retained by County until all County's claims for indemnification pursuant to this Contract have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County.

Design/Build Firm shall indemnify and hold harmless County and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Design/Build Firm, any persons employed or utilized by the Design/Build Firm in the performance of this Contract, and/or any Subconsultant or any Subcontractor retained by Consultant.

The provisions of this article shall survive the expiration or earlier termination of this Contract.

ARTICLE 10. – PERFORMANCE BOND AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

10.1. Within fifteen (15) calendar days after the Board executing this Contract, Design/Build Firm shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond (Form 1) and Payment Bond (Form 2).

10.1.1. Each bond shall be for one hundred percent (100%) of the Contract Price guaranteeing to County the completion and performance of the Work covered in this Contract and full payment of all suppliers, material providers, laborers, or Subcontractors of all tiers employed under this Project. Each bond shall be with a surety company which is qualified under Section 10.2.

10.1.2. Each bond shall continue in effect for one (1) year after Final Completion and acceptance of the Work, or an additional bond shall be obtained by Design/Build Firm and conditioned that Design/Build Firm will, upon notification by County, correct any defective or faulty Work or materials that appear within one (1) year after Final Completion and acceptance of the Work.

10.1.3. Pursuant to the requirements of Section 255.05, Florida Statutes, Design/Build Firm shall ensure that the bond(s) referenced above shall be recorded in the Official Records of Broward County and provide County with evidence of such recording as a precondition to commencing any Work.

10.2. Qualifications of Surety.

10.2.1. Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least the past five (5) years.

10.2.2. The surety company shall hold a current Certificate of Authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify as a proper surety herein, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised (31 C.F.R. §§ 223.10, 223.111). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

10.2.3. A surety company that is rejected by County may be substituted by Design/Build Firm with a surety company acceptable to County, but only if the bid amount does not increase.

10.2.4. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications according to the latest edition of Best's Insurance Guide, published by AM Best Company, Oldwick, New Jersey:

Amount of Bond	Minimum Policy Holder's Ratings Strength/Financial Size
\$500,001 to \$1,500,000	A / III
\$1,500,001 to \$2,500,000	A / VI
\$2,500,001 to \$5,000,000	A / VII
\$5,000,001 to \$10,000,000	A / VIII
Over \$10,000,000	A / IX

ARTICLE 11. – PERMITS, LICENSES, AND IMPACT FEES

11.1. The Design/Build Firm shall procure and pay for all permits, licenses, charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. The cost of all licenses, certifications, business taxes, etc., which may be required by the State of Florida, State Agencies or by other local governmental entities are included in the Design/Build Firm's overhead costs.

11.2. Impact fees that the Contract Administrator agrees are applicable to the Project and levied by the authority having jurisdiction shall be paid by the County through the pass-thru allowance.

ARTICLE 12. – PERSONNEL

12.1. Design/Build Firm shall ensure that any personnel used or employed in the performance of the Work are qualified by training and experience to perform their assigned tasks. At the request of the County Project Manager, Design/Build Firm shall not use in the performance of the Work any personnel deemed by the County Project Manager to be incompetent, careless, or unqualified to perform the Work assigned to that person or that are otherwise unsatisfactory to County Project Manager.

12.2. In the performance of the Work, Design/Build Firm shall employ only such labor, and engage Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement that Design/Build Firm or any other Design/Build Firm may then be erecting or altering on County's behalf.

Design/Build Firm shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other contractors.

12.3. Design/Build Firm shall furnish the County Project Manager or the Contract Administrator, upon request, resumes of Design/Build Firm's key personnel involved in the Work.

[DELETE IF FEDERALLY FUNDED OR PRECLUDED BY STATE STATUTE/FUNDING]

12.4. Prevailing Wage Rate Ordinance. This Project is not federally or state-funded. Because the Contract is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), the following sections apply:

12.4.1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as the most recently published in the Federal Register.

12.4.2. All mechanics, laborers, and apprentices, employed or working directly on the site of the Work shall be paid in accordance with the above referenced wage rates. Design/Build Firm shall post notice of these provisions at the site of the Work in a prominent place where it can easily be seen by the workers.

12.4.3. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.

12.4.4. If the Contract Administrator determined that any laborer or mechanic or apprentice employed by Design/Build Firm or any Subcontractor on the site of the Work has been or is being paid wages less than the rate of wages required by the Prevailing Wage Ordinance, Section 26-5 of the Broward County Code of Ordinances, as amended, the Contract Administrator may (1) by written notice to Design/Build Firm direct Design/Build Firm to terminate the Work or such part of the Work for which there has been a failure to pay said required wages; and (2) contract with another party to perform the Work or portion thereof to completion. Whereupon, Design/Build Firm and its Sureties shall be liable to County for any and all costs incurred by County to complete such Work to the extent such costs exceed any amounts that Design/Build Firm would be due for performance of such Work.

12.4.5. Design/Build Firm shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve such records for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; the employee's current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

12.4.6. Design/Build Firm shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" (Form 8) attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County Code of Ordinances, as amended.

12.4.7. The Contract Administrator may withhold or cause to be withheld from Design/Build Firm so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by Design/Build Firm or any Subcontractor on the Work, the full amount of wages required by this Contract.

12.4.8. If Design/Build Firm or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by this Contract, the Contract Administrator may, after written notice to Design/Build Firm, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

ARTICLE 13. – DESIGN/BUILD FIRM'S REPRESENTATIONS AND WARRANTIES

13.1. Design/Build Firm warrants to County that all materials and equipment under this Contract will be new unless otherwise specified and that all the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by the Contract Administrator and the County Project Manager, may be considered defective. If required by the County Project Manager, Design/Build Firm shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 14 herein.

13.2. Design/Build Firm also represents and warrants:

13.2.1. That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract; that it is able to furnish the materials and services; that it is experienced in and competent to perform the Work; and that it is qualified to do the Work herein and is authorized to do business in the State of Florida.

13.2.2. That it holds a license, permit, or other special license to perform the services included in this Contract, as required by law; or that it employs or works under the general supervision of the holder of such license, permit, or special license.

13.2.3. That the Work shall be performed in a competent, safe, qualified, and professional manner, free from defects in materials and workmanship, and constructed in accordance with manufacturers' recommendations and that all materials are new and approved by, or acceptable to, the County Project Manager, except as otherwise expressly provided for in the Contract Documents.

13.3. Prohibited Telecommunications Equipment. Design/Build Firm represents and certifies that Design/Build Firm and all Subconsultants 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 Design/Build Firm and all Subconsultants shall not provide or use such covered telecommunications equipment, system, or services at any time for the duration of this Contract.

13.4. Criminal History Screening Practices. If this Contract is subject to the requirements of Section 26-125(d) of the Code, Design/Build Firm represents and certifies that Design/Build Firm will comply with Section 26-125(d) of the Code for the duration of this Contract.

13.5. Construction Apprenticeship Program. If this Contract is a construction contract as defined in Section 26-9 of the Code and is not funded with any state funding, Design/Build Firm represents and certifies that it shall at all times comply with the requirements of the Construction Apprenticeship Program as set forth in Sections 26-8 through 26-11 of the Code.

13.6. 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: (a) Design/Build Firm is not owned by the government of a foreign country of concern; (b) the government of a foreign country of concern does not have a controlling interest in Design/Build Firm; and (c) 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 of this Contract, Design/Build Firm and any Subcontractor that will have access to personal identifying information shall submit to County executed affidavit(s) under penalty of perjury, in a form approved by County 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 Application for Payment for purposes of Section 5.2. 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.

13.7. Representation of Authority. Design/Build Firm represents and warrants that this Contract constitutes the legal, valid, binding, and enforceable obligation of Design/Build Firm, and that neither the execution nor performance of this Contract constitutes a breach of any agreement that Design/Build Firm has with any third party or violates Applicable Law. Design/Build Firm further represents and warrants that execution of this Contract is within Design/Build Firm's legal powers, and each individual executing this Contract on behalf of Design/Build Firm is duly authorized by all necessary and appropriate action to do so on behalf of Design/Build Firm and does so with full legal authority.

13.8. Solicitation Representations. Design/Build Firm represents and warrants that all statements and representations made in Design/Build Firm's proposal, bid, or other supporting

documents submitted to County in connection with the solicitation, negotiation, or award of this Contract, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Design/Build Firm executes this Contract, unless otherwise expressly disclosed in writing by Design/Build Firm.

13.9. Contingency Fee. Design/Build Firm represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design/Build Firm, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Design/Build Firm, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For a breach or violation of this provision, the Board shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

13.10. Public Entity Crimes. Design/Build Firm represents that it is familiar with the requirements and prohibitions of the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Contract will not violate that Act. In addition to the foregoing, Design/Build Firm further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime,” regardless of the amount of money involved or whether Design/Build Firm has been placed on the convicted vendor list.

13.11. Convicted Vendors. 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13.12. Discriminatory Vendor and Scrutinized Companies List; Countries of Concern. Design/Build Firm represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. Design/Build Firm further represents that it is not, and for the duration of the Contract will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Design/Build Firm represents that it is, and for the duration of this Contract will remain, in compliance with Section 286.101, Florida Statutes.

13.13. Claims Against Design/Build Firm. Design/Build Firm represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator,

governmental or other board or official, pending or, to the knowledge of Design/Build Firm, threatened against or affecting Design/Build Firm, the outcome of which may (a) affect the validity or enforceability of this Contract, (b) materially and adversely affect the authority or ability of Design/Build Firm to perform its obligations under this Contract, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Design/Build Firm or on the ability of Design/Build Firm to conduct its business as presently conducted or as proposed or contemplated to be conducted.

13.14. Verification of Employment Eligibility. Design/Build Firm represents that Design/Build Firm and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Contract will not violate that statute. If Design/Build Firm violates this section, County may immediately terminate this Contract for cause and Design/Build Firm shall be liable for all costs incurred by County due to the termination.

13.15. Warranty of Performance. Design/Build Firm represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Work and that each person and entity that will perform or provide Work is duly qualified to perform such Work by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render such Work. Design/Build Firm represents and warrants that the Work shall be performed in a skillful and respectful manner, and that the quality of all such Work shall equal or exceed prevailing industry standards for such Work.

13.16. Truth-In-Negotiation Representation. Design/Build Firm's compensation under this Contract is based upon its representations to County, and Design/Build Firm certifies that the wage rates, factual unit costs, and other information supplied to substantiate Design/Build Firm's compensation, including without limitation those made by Design/Build Firm during the negotiation of this Contract, are accurate, complete, and current as of the date Design/Build Firm executes this Contract. Design/Build Firm's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Design/Build Firm's compensation in this Contract.

13.17. Breach of Representations. Design/Build Firm acknowledges that County is materially relying on the representations, warranties, and certifications of Design/Build Firm stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Contract without any further liability to Design/Build Firm; (c) set off from any amounts due Design/Build Firm the full amount of any damage incurred; and (d) debarment of Design/Build Firm.

13.18. Design/Build Firm shall ensure that the following provisions are included in any agreements with Subcontractors for the Project:

13.18.1. The Subcontractor shall warrant to County and to Design/Build Firm that all quality of Work and materials are free from defects in installation. The express warranty/guarantee shall be consistent with the durations stipulated in the Contract Documents.

13.18.2. Design/Build Firm shall collect and transmit to the Contract Administrator any and all manufacturer's warranties and manufacturer's guarantees specified in the Contract Documents. The obligation and liability of Design/Build Firm and/or its surety is limited to the collection and proper transmittal of these warranties and guarantees to the Contract Administrator.

ARTICLE 14. – DEFECTIVE WORK

14.1. The County Project Manager may reject or disapprove Work that he or she finds to be defective. Design/Build Architect/Engineer may also reject or disapprove Work. If required by the County Project Manager or Design/Build Architect/Engineer, Design/Build Firm shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Design/Build Firm shall bear all direct, indirect, and consequential costs of such removal or correction including cost of testing laboratories and personnel. County shall not reimburse Design/Build Firm for the cost of such Work.

14.2. If Design/Build Firm fails or refuses to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of this Contract within the time indicated in writing by the County Project Manager or Design/Build Architect/Engineer, County shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary, at Design/Build Firm's expense. Any expense incurred by County in making such removals, corrections, or repairs, shall, at County's election, be paid for out of any monies due or which may become due to Design/Build Firm or charged against the Payment or Performance Bond. If Design/Build Firm fails to make all necessary repairs promptly and fully, County may declare Design/Build Firm in default.

14.3. If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by this Contract, or by any specific provision of this Contract any of the Work is found to be defective or not in accordance with this Contract, Design/Build Firm, after receipt of written notice from County, shall promptly correct such defective or nonconforming Work within the time specified by County, without cost to County. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that Design/Build Firm might have under this Contract, including, but not limited to, Article 13 hereof and any claim regarding latent defects.

14.4. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, nor shall such failure obligate County to final acceptance.

14.5. Design/Build Firm shall, at its sole expense: (i) replace any non-conforming part of the Work discovered during the Project; (ii) remedy any defects in the Work due to faulty materials or quality of Work that appear within one (1) year after the date of Substantial Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (iii) replace, repair, or restore any parts of the Project, or furniture, fixtures, equipment, or other items placed therein (whether by County or any other party) that are injured or damaged by any such parts of the Work that do not conform to this Contract or are due to defects in the Work. The provisions of this article shall not apply to corrective Work attributable solely to the acts or omissions of any separate contractor or subcontractor of County unless Design/Build Firm is acting in such capacity or capacities. Design/Build Firm shall bear the cost of performing any of its obligations under this article. Design/Build Firm's responsibility to make repairs and redo Work under this article is in addition to Design Build Firm's responsibility to County for any other damages of any kind for which Design/Build Firm would be legally responsible.

14.6. If County deems it inexpedient to require the correction of Work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made by an agreement between Design/Build Firm and County. Until such settlement, County may withhold such sums as County deems just and reasonable from money, if any, due Design/Build Firm.

14.7. Design/Build Firm's express warranties herein shall be in addition to, and not instead of, any other warranties or remedies County may have under this Contract or any other remedies available by law.

ARTICLE 15. – COUNTY'S RIGHT TO TERMINATE CONTRACT

15.1. Contract Administrator may give notice in writing to Design/Build Firm and its Surety of delay, neglect, or default, specifying the same with a notice to cure, upon the occurrence of any of the following:

15.1.1. Design/Build Firm fails to begin the Work within ten (10) days after the time specified in the first Notice to Proceed;

15.1.2. Design/Build Firm fails to perform the Work with sufficient workers, equipment, or materials to ensure the prompt completion of the Work;

15.1.3. Design/Build Firm performs the Work unsuitably or causes it to be rejected as defective and unsuitable;

15.1.4. Design/Build Firm discontinues performance of the Work in contravention of the accepted schedule;

15.1.5. Design/Build Firm fails to perform any material term set forth in this Contract;

15.1.6. Design/Build Firm becomes insolvent or declared bankrupt, commits any act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors; or

15.1.7. From any other cause whatsoever, Design/Build Firm fails to carry on the Work in an acceptable manner.

15.2. If Design/Build Firm, within a period of ten (10) days after such notice, does not proceed to cure in accordance therewith, then County may upon written certificate from the Contract Administrator 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 performance of the Work out of the hands of Design/Build Firm, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable. In such case, Design/Build Firm shall not be entitled to receive any further payment until the Project is completed. In addition, County may enter into an agreement for the completion of the Project according to the terms and provisions of this Contract, or use such other methods as in Contract Administrator's sole opinion shall be required for the completion of the Project according to the terms and provisions of this Contract, or use such other methods as in Contract Administrator's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs, and charges incurred by County, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Design/Build Firm. If the damages and expenses so incurred by County shall exceed the unpaid balance, Design/Build Firm shall be liable and shall pay to County the amount of said excess.

15.3. Unless otherwise stated in this Contract, if this Contract was approved by Board action, termination for cause by County must be by action of the Board or County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Contract, or the County representative (including any successor) who executed the Contract on behalf of County. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and the rights and obligations of County and Design/Build Firm shall be the same as if the termination had been exercised pursuant to the Termination for Convenience clause as set forth in Section 15.4 below.

15.4. This Contract may be terminated for convenience, for any reason or no reason, in writing by the Board with at least ten (10) days' advance written notice to Design/Build Firm (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. If this Contract is terminated by County pursuant to this section, Design/Build Firm shall be paid for all Work properly executed and actual expenses incurred prior

to termination in addition to termination settlement costs reasonably incurred by Design/Build Firm relating to commitments that had become firm prior to the termination. Payment shall include reasonable profit for Work and services performed as limited by Section 7.4 hereof. All actual expenses incurred shall have sufficient back-up documentation to verify that such expenses were actually incurred by Design/Build Firm. No payment shall be made for profit for Work and services that Design/Build Firm has not performed. Design/Build Firm acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Contract for convenience including in the form of County's obligation to provide advance notice to Design/Build Firm of such termination in accordance with this Section 15.4.

15.5. Upon receipt of a notice of termination under Sections 15.2 or 15.4, or 15.6, Design/Build Firm shall promptly discontinue all affected Work unless the notice of termination directs otherwise, and shall deliver or otherwise make available to County all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by this Contract whether completed or in process.

15.6. This Contract may also be terminated by the Board:

15.6.1. Upon the disqualification of Design/Build Firm as a DBE firm by County's Director of the Office of Economic and Small Business Development ("OESBD") if Design/Build Firm's status as a DBE firm was a factor in the award of this Contract.

15.6.2. Upon the disqualification of Design/Build Firm by County's Director of the OESBD due to fraud, misrepresentation, or material misstatement by Design/Build Firm in the course of obtaining this Contract or attempting to meet the DBE contractual obligation;

15.6.3. Upon the disqualification of one or more of Design/Build Firm's DBE participants by County's Director of the OESBD if any such participant's status as a DBE firm was a factor in the award of this Contract;

15.6.4. Upon the disqualification by County's Director of the OESBD of one or more of Design/Build Firm's DBE participants by County's Director of the OESBD if such DBE participant attempted to meet its DBE contractual obligations through fraud, misrepresentation, or material misstatement;

15.6.5. If Design/Build Firm is determined by County's Director of the OESBD to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the DBE status of its disqualified DBE participant; or

15.6.6. If Design/Build Firm is a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes, if Design/Build Firm is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Design/Build Firm is otherwise ineligible to transact business with County under Applicable Law or provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

ARTICLE 16. – RESOLUTION OF DISPUTES

16.1. To prevent all disputes and litigation, the Parties agree that all questions, claims, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality, amount, and value of any Work done and materials furnished, or proposed to be done or furnished, under or by reason of the Contract Documents that cannot be resolved by mutual agreement of the Contract Administrator and Design/Build Firm shall be submitted to the County Administrator, or designee, for resolution. When either Party has determined that a disputed question, claim, difficulty, or dispute is at an impasse that Party shall, within five (5) days after the date of impasse, notify the other Party in writing and submit the question, claim, difficulty, or dispute to the County Administrator, or designee, for resolution. The Parties may agree to a proposed resolution at any time without the involvement and determination of the County Administrator.

16.2. The County Administrator, or designee, shall notify the Contract Administrator and Design/Build Firm in writing of the County Administrator's, or designee's, decision within twenty-one (21) days after the date of the receipt of the question, claim, difficulty, or dispute, unless the County Administrator, or designee, requires additional time to gather information or allow the Parties to provide additional information. The County Administrator's, or designee's, estimates and decisions upon all questions, claims, difficulties, and disputes shall be final and binding to the extent provided in Section 16.4.

16.3. Except for disputes directly related to the promptness of payment as set forth in Section 5.2 hereof, all nontechnical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Design/Build Firm, Design/Build Architect/Engineer, the County Project Manager and the Contract Administrator shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

During the pendency of any dispute arising under this Contract, other than termination herein, Design/Build Firm shall proceed diligently with performance of this Contract and County shall continue to make payments for undisputed amounts in accordance with the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as Design/Build Firm and County may otherwise agree in writing. Suspension of Work by Design/Build Firm during any dispute or disagreement with County shall entitle County to terminate this Contract for cause.

16.4. If the determination of a dispute under this article is unacceptable to either Party, the Party objecting to the determination must notify the other Party in writing within ten (10) days after receipt of the written determination. The notice must state the basis of the objection, the

objecting Party's proposed resolution, and must be accompanied by a statement that any Contract Price or Contract Time adjustment claimed is the entire adjustment to which the objecting Party has reason to believe it is entitled to because of the question, claim, difficulty, or dispute. Within sixty (60) days after Final Completion of the work, the Parties shall participate in mediation to address all objections to any determination and to attempt to prevent litigation. Neither Party shall commence litigation prior to the expiration of the sixty (60) day mediation period. The mediator shall be mutually agreed upon by the Parties. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under State law. **A PARTY SPECIFICALLY WAIVES ALL ITS RIGHTS, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS PROVIDED IN THIS CONTRACT, INCLUDING ITS RIGHTS AND REMEDIES UNDER STATE LAW, IF SAID PARTY FAILS TO COMPLY IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.**

16.5. In any lawsuit or legal proceeding arising under this Contract, Design/Build Firm hereby waives any claim or defense based on facts or evidentiary materials of which Design/Build Firm had knowledge but were not presented for consideration during the resolution of disputes process set forth in Sections 16.1 thru 16.4 above.

16.6. This article shall survive any dispute or litigation between the Parties, or expiration or termination of this Contract for any reason, and Design/Build Firm expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County.

ARTICLE 17. – COUNTY PROJECT MANAGER'S RESPONSIBILITY AND AUTHORITY

17.1. The County Project Manager shall:

- a. Interpret the intent and meaning of the Contract Documents.
- b. Inspect the Work and require special testing to verify the Work's compliance with the Contract Documents.
- c. Issue Field Orders to Design/Build Firm that will not affect the Contract Price or Time.
- d. Organize and conduct Substantial Completion and Final Completion inspections as required in the Contract Documents.
- e. Serve as the point of contact between County and Design/Build Firm for correspondence and other communication.
- f. Perform other administrative duties as assigned by Contract Administrator.

17.2. It shall be the duty of the County Project Manager within a reasonable time and as promptly as possible, to make and render decisions in the interpretation of the Contract

Documents; and as well, other matters of controversy arising between County and Design/Build Firm.

ARTICLE 18. – DESIGN/BUILD ARCHITECT/ENGINEER AUTHORITY

18.1. If at any time the Design/Build Architect/Engineer observes or becomes aware of any fault or defect in the Work or of any nonconformance with the Contract Documents, Design/Build Architect/Engineer will promptly notify the Contract Administrator and Design/Build Firm in writing and will direct that all reasonable steps be taken to correct such fault, defect, or nonconformance. The Design/Build Architect/Engineer may reject Work that does not in its opinion, or in the opinion of the Contract Administrator, conform to the Contract Documents.

18.2. The Design/Build Architect/Engineer shall monitor the overall quality, progress and cost of the Work.

18.3. The Design/Build Architect/Engineer shall not have control over construction means, methods, techniques, sequences, or procedures employed by Design/Build Firm in the performance of the Work, but shall use its best efforts to review and, if unacceptable, disapprove such Work and shall recommend a course of action to County when the requirements of the Contract Documents are not being met by Design/Build Firm.

18.4. The Design/Build Architect/Engineer shall assist County with on-site review of Work in progress, review of pay requests submitted by Design/Build Firm, interpreting the intent of the Contract Documents for the proper execution of the Work, and such other assistance as County may request.

18.5. The Contract Administrator must approve all deviations from the Contract Documents whether they are sought by the Design/Build Architect/Engineer or Design/Build Firm. The Design/Build Architect/Engineer shall have no authority to order or approve any deviation from the Contract Documents.

ARTICLE 19. – EQUAL EMPLOYMENT OPPORTUNITY AND DBE COMPLIANCE

19.1. Nondiscrimination and Equal Employment.

19.1.1. Design/Build Firm and Subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Contract, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Design/Build firm shall include the foregoing or similar language in its contracts with any Subcontractors.

19.1.2. By January 1 of each year, Design/Build Firm must submit, and cause each of its Subcontractors to submit, an Ownership Disclosure Form (or such other form or information designated by County), which said form is available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

19.1.3. Discriminatory Vendors. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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.

19.2. DISADVANTAGED BUSINESS ENTERPRISE or "DBE"

19.2.1. This Contract is funded by grants from FDOT and must comply with the non-discrimination requirements in 49 C.F.R. Part 26, as amended, pertaining to Disadvantaged Business Enterprises (DBE) as defined herein. Agreements receiving such funding must comply with 49 C.F.R. Part 26, the implementing rules of the above-noted agency, and with Broward County's Disadvantaged Business Enterprise Program.

19.2.2. In addition to County transportation surtax funds, this Contract is funded using FDOT funds and it is County's policy to ensure that DBEs, as defined in 49 C.F.R. Part 26, can compete fairly for opportunities to participate as subconsultants and suppliers on all agreements awarded by County to ensure a level playing field. Design/Build Firm has committed to the following DBE participation by utilizing DBE firms for the Services as follows:

DBE Requirement	Percent (10%) DBE Participation
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19.2.3. Prior approval of the Broward County Office of Economic and Small Business Development (OESBD) must be obtained to add or change a DBE subconsultant.

19.2.4. Contract Assurances. The following clauses of 49 C.F.R. Part 26 are a part of this Contract, and are hereby incorporated into the Design/Build Firm's subconsultant agreements, material supply contracts, and purchase orders. In the event the following clauses conflict with any other terms or provisions of this Contract, or any of the terms of Design/Build Firm's subconsultant agreements, material supply contracts, and purchase orders, the clauses set forth in this section shall control.

19.2.5. Compliance monitoring will be conducted to determine if Design/Build Firm and its subconsultants are complying with the requirements of the DBE Program. Failure of Design/Build Firm to comply with this provision may result in County imposing penalties or sanctions pursuant to the provisions of the DBE regulations, 49 C.F.R. Part 26. Compliance will encompass monitoring for contract dollar achievement and DBE utilization. OESBD shall have the authority to audit and monitor all contracts and contract related documents pertaining to Broward County projects.

19.2.6. Design/Build Firm shall be responsible for ensuring proper documentation with regard to its utilization and payment of DBE subconsultants.

19.2.7. Design/Build Firm shall submit a Monthly DBE Utilization Report to the Contract Administrator with a copy to OESBD, which shall contain a record of total DBE participation and payments made to all DBE subconsultants.

19.2.8. Design/Build Firm shall submit a Final DBE Utilization Report to the Contract Administrator with a copy to OESBD, containing the total amount paid to its DBE subconsultants. This report must be submitted with Design/Build Firm's request for final payment.

19.2.9. Nondiscrimination – Design/Build Firm and its subconsultants shall not discriminate on the basis of race, national origin, or sex in the performance of this Contract. Design/Build Firm shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of FDOT-assisted contracts. Failure by Design/Build Firm to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as County deems appropriate, which may include, but is not limited to: (1) withholding payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying Design/Build Firm from future solicitations as non-responsible.

19.2.10. Prompt Payment – Design/Build Firm shall pay its subconsultants and suppliers within thirty (30) calendar days following receipt of payment from County for Services satisfactorily completed by subconsultants. Further, if Design/Build Firm has withheld retainage from any of its DBE subconsultants and suppliers, it shall release and pay such retainage within thirty (30) calendar days from the date when either Contractor received payment of the retained amounts from County or, if County did not withhold retainage from Design/Build Firm, the Services were satisfactorily completed. A finding of nonpayment by Design/Build Firm to any subconsultant or supplier is a material breach of this Contract.

19.2.11. Design/Build Firm shall provide the required written monthly reports to the Contract Administrator attesting to Design/Build Firm's compliance with the DBE Requirement. In addition, Design/Build Firm shall allow County to engage in onsite reviews to monitor Design/Build Firm's progress in achieving and maintaining

Design/Build Firm's DBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the Contract Administrator.

ARTICLE 20. – WEATHER

Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to Section 7.5. Time extensions are justified only when rain, other inclement weather conditions, or related adverse soil conditions result in Design/Build Firm being unable to work at least fifty percent (50%) of the normal workday on controlling items of Work identified on the accepted schedule or updates to that schedule.

ARTICLE 21. – RIGHTS OF VARIOUS INTERESTS

Whenever work being done by County's forces or by other contractors is contiguous to or within the limits of Work covered by the Contract, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the Work in general harmony.

ARTICLE 22. – EXPLOSIVES

When the use of explosives is necessary in performance of the Work, Design/Build Firm shall exercise the utmost care in the handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner in storage clearly marked "Dangerous-Explosives," and shall be placed in the care of competent watchmen. When the use of explosives becomes necessary, Design/Build Firm shall furnish to County proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to its regular policies, unless otherwise included in the policies themselves.

ARTICLE 23. – DIFFERING SITE CONDITIONS

If during the course of the Work Design/Build Firm encounters (1) subsurface or concealed conditions at the Project site that differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract; or (2) unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract, then Design/Build Firm, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify Contract Administrator and Design Criteria Professional in writing of the existence of the aforesaid conditions. Design Criteria Professional and Contract Administrator shall, within two (2) business days after receipt of

Design/Build Firm's written notice, investigate the site conditions identified by Design/Build Firm. If, in the sole opinion of Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Design/Build Firm's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Contract Administrator may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Contract Administrator and Design/Build Firm cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Design Criteria Professional for determination in accordance with the provisions of Article 16. No request by Design/Build Firm for an equitable adjustment to the Contract under this provision shall be allowed unless Design/Build Firm has given written notice to Contract Administrator in strict accordance with the provisions of this article. **No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Contract Administrator as the date of Substantial Completion.**

ARTICLE 24. – DESIGN/BUILD FIRM'S RESPONSIBILITY FOR DAMAGES AND ACCIDENTS

24.1. Design/Build Firm shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by County, and shall promptly repair any damage done from any cause whatsoever, except as provided in Section 4.8.

24.2. Design/Build Firm shall be responsible for all materials, equipment and supplies pertaining to the Project. If any such materials, equipment or supplies are lost, stolen, damaged, or destroyed prior to final acceptance by County, Design/Build Firm shall replace same without cost to County, except as provided in Section 4.8.

ARTICLE 25. – SUBCONTRACTS

25.1. Each Subcontractor must possess certificates of competency and licenses required by Applicable Law. Design/Build Firm shall notify the Contract Administrator and Design Criteria Professional of any change in Subcontractors.

25.2. Design/Build Firm shall not employ any Subcontractor against whom County or Design Criteria Professional may have a reasonable objection. Design/Build Firm shall not be required to employ any Subcontractor against whom Design/Build Firm has a reasonable objection.

25.3. Design/Build Firm shall be fully responsible for all acts and omissions of its Subcontractors, persons directly or indirectly employed by its Subcontractors, and persons for whose acts any of its Subcontractors may be liable to the same extent that Design/Build Firm is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract shall create any contractual relationship between any Subcontractor and County or any obligation on the part of County to pay or to see the payment of any monies due any Subcontractor. County or Design Criteria Professional may furnish to any Subcontractor evidence of amounts paid to Design/Build Firm on account of specific Work performed.

25.4. Design/Build Firm shall bind specifically every Subcontractor to the applicable terms and conditions of the Contract for the benefit of County.

25.5. Design/Build Firm shall perform the Work with its own organization, amounting to not less than forty percent (40%) of the Contract Price.

ARTICLE 26. – LANDS OF WORK

26.1. County shall provide, as may be indicated in the Contract, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands as are designated by County for the use of Design/Build Firm.

26.2. Design/Build Firm shall obtain, at Design/Build Firm's own expense and without liability to County, any additional rights to land and access thereto that may be required for temporary construction facilities, temporary easements, or for storage of materials. Design/Build Firm shall furnish to County copies of written permission obtained by Design/Build Firm from the owners of such land.

ARTICLE 27. – LOCATION AND DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES

27.1. Utility lines in the Project area have been shown in the Contract Documents. However, County does not represent or warrant that all lines are shown, or that the ones indicated are in their true location. Design/Build Firm must identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. Design/Build Firm will not be entitled to any additional payment due to discrepancies between actual location of utilities and Contract Documents location of utilities.

27.2. Design/Build Firm shall notify each utility company with facilities in the Project site, at least thirty (30) days prior to the start of construction, to arrange for positive underground location, relocation, or support of its utility where that utility may be in conflict with or endangered by the Work. The cost of relocation of water mains or other utilities for the convenience of Design/Build Firm shall be paid by Design/Build Firm. All charges by utility companies for temporary support of its utilities shall be paid for by Design/Build Firm. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. Design/Build Firm will not be entitled to any additional payment or extension of time for utility relocations, regardless of reason for relocation.

27.3. Design/Build Firm shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. Design/Build Firm shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. Design/Build Firm will not be entitled to any additional compensation or extension of time for any delay associated with utility relocation or support.

27.4. Design/Build Firm shall protect all overhead, surface, or underground structures and utilities from damage or displacement. Design/Build Firm will promptly and completely repair all damage to such structures within a reasonable time. All damaged utilities must be replaced or fully repaired to the satisfaction of the utility owner. All repairs are to be inspected by the utility owner prior to backfilling. County reserves the right to remedy such damage by making such repairs or causing such repairs to be made at the expense of Design/Build Firm. County's expense in causing such repairs shall be deducted from Design/Build Firm's next Application for Payment.

ARTICLE 28. – PAYMENT BY COUNTY FOR TESTS

Except when otherwise specified in the Contract Documents, the expense of all tests shall be borne by County and be performed by a testing firm selected by County. Design/Build Firm is responsible for reimbursement to County the costs of any required test in which the tested Work fails. For road construction projects, the procedure for making tests required by County will be in conformance with the most recent edition of the State of Florida, Department of Transportation Standard Specifications for Road and Bridge Construction.

ARTICLE 29. – FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

29.1. The entire responsibility for establishing and maintaining line and grade in the field lies with Design/Build Firm. Design/Build Firm shall maintain an accurate and precise record of the location and elevation of all pipelines, conduits, structures, maintenance access structures, handholes, fittings and the like, and shall prepare record or "as-built" drawings of the same, which must be sealed by a Professional Surveyor. Design/Build Firm shall deliver these records in good order to Design Criteria Professional as the Work is completed. The cost of all such field layout and recording work is included in the bid prices for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Design Criteria Professional prior to, and as a condition of, final payment.

29.2. Design/Build Firm shall maintain in a safe place at the Project site one record copy of all drawings, plans, specifications, addenda, written amendments, change orders, field 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 shall be available at all times to Design Criteria Professional for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples, and shop drawings shall be delivered to the Contract Administrator.

29.3. Prior to, and as a condition precedent to Final Payment, Design/Build Firm shall submit to County Design/Build Firm's record drawings or as-built drawings acceptable to Design Criteria Professional.

ARTICLE 30. – SAFETY AND PROTECTION

30.1. Design/Build Firm shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. Design/Build Firm shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

30.1.1. All employees on the work site and other persons who may be affected thereby;

30.1.2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

30.1.3. Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

30.2. Design/Build Firm shall comply with all Applicable Law of any public body having jurisdiction for the safety of persons or property or to protect person or property from damage, injury, or loss, and Design/Build Firm shall erect and maintain all necessary safeguards for such safety and protection. Design/Build Firm shall notify owners of adjacent property and utilities when performance of the Work may affect them. All damage, injury, or loss to any property referred to in subsections 30.1.2 and 30.1.3 above, caused directly or indirectly, in whole or in part, by Design/Build Firm, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be repaired or remedied by Design/Build Firm. Design/Build Firm's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Design Criteria Professional has issued a notice to County and Design/Build Firm that the Work is acceptable except as otherwise provided in Section 4.8.

30.3. Design/Build Firm shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be Design/Build Firm's superintendent unless otherwise designated in writing by Design/Build Firm to County.

ARTICLE 31. – FINAL BILL OF MATERIALS

Design/Build Firm shall be required to submit to County and Design Criteria Professional a final bill of materials with unit costs for each bid item for supply of materials installed. This shall be an itemized list of all materials with a unit cost for each material, and the total cost shall be determined on the basis of the unit costs established for each Contract item.

ARTICLE 32. – CLEAN UP; COUNTY'S RIGHT TO CLEAN UP

Design/Build Firm shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Design/Build Firm shall

remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Design/Build Firm fails to clean up during the performance of the Work or at the completion of the Work, County may do so and the cost thereof shall be charged to Design/Build Firm. If a dispute arises between Design/Build Firm and separate contractors of County as to their responsibility for cleaning up, County may clean up and charge the cost thereof to the contractors responsible as Design Criteria Professional shall determine to be appropriate and equitable.

ARTICLE 33. – HURRICANE PRECAUTIONS

33.1. During such periods of time as are designated by the National Weather Services as being a hurricane watch or warning, Design/Build Firm, at no cost to County, shall take all precautions necessary to secure the Project site from any damage that may be caused by all threatened storm events, regardless of whether County or Design Criteria Professional has given notice of same.

33.2. Compliance with any specific hurricane watch or warning precautions will not constitute additional work.

33.3. Suspension of the Work caused by a threatened or actual storm event, regardless of whether County has directed such suspension, will entitle Design/Build Firm to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

ARTICLE 34. – REMOVAL OF EQUIPMENT

In case of termination of the Contract before completion for any cause whatsoever, Design/ Build Firm, if notified to do so by County, shall promptly remove any part or all of Design/ Build Firm's equipment and supplies from the property of County, failing which County shall have the right to remove such equipment and supplies at the expense of Design/ Build Firm.

ARTICLE 35. – MISCELLANEOUS

35.1. Rights in Documents and Work. Any and all documents, data, studies, surveys, drawings, maps, models, photographs, materials, specifications, plans, reports, or other work created, prepared, provided by Design/Build Firm in connection with this Contract, in their native file format, whether finished or unfinished ("Documents and Work"), shall be owned by County, and Design/Build Firm hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. All Documents and Work shall be delivered by Design/Build Firm to the Contract Administrator within fifteen (15) days after the receipt of the written notice of termination or upon completion of the Project. If applicable, County may withhold any payments then due to Design/Build Firm until Design/Build Firm complies with the provisions of this section.

35.2. Audit Rights and Retention of Records. Design/Build Firm and all Subcontractors shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Contract or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Design/Build Firm expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this article may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time for the duration of this Contract and for a period of three years after the expiration or termination of this Contract (or longer if required by Applicable Law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Design/Build Firm's employees, Subcontractors, vendors, or other labor.

County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. County reserves the right to conduct such audit or review at Design/Build Firm's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Design/Build Firm agrees to provide adequate and appropriate workspace for such review. Design/Build Firm shall provide County with reasonable access to Design/Build Firm's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract. Design/Build Firm shall make all Contract Records available electronically in common file formats or via remote access if, and to the extent, requested by County.

35.2.1. Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Contract. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Contract, whether by Design/Build Firm or Subcontractors, or otherwise necessary to adequately permit evaluation and verification of any or all of the following:

- a) Compliance with Contract
- b) Compliance with the Code (including County's code of ethics)
- c) Compliance with Contract provisions regarding the pricing of Change Orders
- d) Accuracy of Design/Build Firm representations regarding the pricing of invoices

- e) Accuracy of Design/Build Firm representations related to claims submitted by Design/Build Firm including Subcontractors, or any of its other payees.

In addition to the normal documentation Design/Build Firm typically furnishes to County, in order to facilitate efficient use of County resources when reviewing or auditing Design/Build Firm's billings and related reimbursable cost records, Design/Build Firm agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

Type of Record	File format
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, Subcontractor invoices, payment to Subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed Change Orders issued to Subcontractors	.pdf
Copies of all documentation supporting reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

35.2.2. Design/Build Firm shall, by written contract, require all Subcontractors to agree to the requirements and obligations of this section.

35.2.3. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment reliant upon such entry.

35.2.4. If an audit inspection or examination in accordance with this section reveals overpricing or overcharges to County of any nature by Design/Build Firm or its Subcontractors in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, Design/Build Firm shall pay the reasonable cost of County's audit. Any adjustments or payments due as a result of any such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Design/Build Firm.

35.3. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Contract is as a Party to this Contract and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of all applicable law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Contract, and shall not be attributable in any manner to County as a party to this Contract.

35.4. Public Records. Notwithstanding any other provisions in this Contract, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Contract. If Design/Build Firm is acting on behalf of County as provided in Section 119.0701, Florida Statutes, Design/Build Firm shall:

35.4.1. Keep and maintain public records required by County to perform the Work under this Contract;

35.4.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 112, Florida Statutes, or as otherwise provided by Applicable Law;

35.4.3. Ensure that public records that are exempt or confidential and exempt from public records requirements are not disclosed except as authorized by applicable law for the duration of this Contract and after completion or termination of this Contract if the records are not transferred to County; and

35.4.4. Upon completion or termination of this Contract, transfer to County, at no cost, all public records in possession of Design/Build Firm or keep and maintain public records required by County to perform the Work. If Design/Build Firm transfers the records to County, Design/Build Firm shall destroy any duplicate public records that are exempt or confidential and exempt. If the Design/Build Firm keeps and maintains public records, Design/Build Firm shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Design/Build Firm to comply with the provisions of this section shall constitute a material breach of this Contract entitling County to exercise any remedy provided in this Contract or under Applicable Law, all of such remedies being cumulative.

If Design/Build Firm receives a request for public records regarding this Contract, Design/Build Firm must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Design/Build Firm must separately submit and conspicuously label as "RESTRICTED MATERIAL – DO NOT PRODUCE" any material (a) that Design/Build Firm contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Design/Build Firm asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, "Restricted Material"). In addition, Design/Build Firm must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Design/Build Firm must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Design/Build Firm as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Design/Build Firm, or the claimed exemption is waived. Any failure by Design/Build Firm to strictly comply with the requirements of this section shall constitute Design/Build Firm's waiver of County's obligation to treat the records as Restricted Material. Design/Build Firm must indemnify and hold harmless County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

IF DESIGN/BUILD FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DESIGN/BUILD FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-6059, ATON@BROWARD.ORG, 1600 N.W. 30TH AVENUE, POMPANO BEACH, FL 33069.

35.5. Subconsultants. Design/Build Firm shall utilize the Subconsultants identified in the proposal that were a material part of the selection of Design/Build Firm to provide the Work for this Project. Design/Build Firm shall obtain written approval of the Contract Administrator before changing or modifying the list of Subconsultants submitted by Design/Build Firm. The list of Subconsultants is provided on Exhibit D, Schedule of Subconsultant Participation, attached hereto and made a part hereof.

35.6. Assignment. Neither this Contract nor any interest herein or proceeds hereof shall be assigned, transferred, or encumbered without the written consent of the other Party, and Design/Build Firm shall not subcontract any portion of the Work required by this Contract except as otherwise authorized in this Contract. Any attempted assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, and shall constitute a breach of this Contract. County reserves the right to condition its approval of any assignment, transfer,

encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

35.7. Counterparts and Multiple Originals. This Contract may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

35.8. Prior Agreements. The Contract is the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Contract or the Contract Documents are contained in this Contract or the Contract Documents.

35.9. Amendments. Unless otherwise expressly authorized herein, no modification, amendment, or alteration of any portion of this Contract shall be effective unless contained in a written document executed with the same or similar formality as this Contract by duly authorized representatives of County and Design/Build Firm.

35.10. Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Contract, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Anh Ton, P.E., Director
Highway Bridge and Maintenance Division
1600 Blount Road
Pompano Beach, FL 33069
Email: aton@broward.org

FOR DESIGN/BUILD FIRM:

35.11. Interpretation. The titles and headings in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract. All personal pronouns shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and

"hereinafter" refer to this Contract as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article, such reference is to the section or article as a whole, including the subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

35.12. Design/Build Firm's Staff.

35.12.1. Design/Build Firm will provide the key staff identified in their proposal for Project if said key staff are in Design/Build Firm's employment.

35.12.2. Design/Build Firm will obtain seven (7) calendar days prior written approval of the Contract Administrator to change key staff. Design/Build Firm shall provide the Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. The Contract Administrator will be reasonable in evaluating key staff qualifications.

35.12.3. If the Contract Administrator desires to remove any of Design/Build Firm's staff, the Contract Administrator shall first meet with Design/Build Firm and provide reasonable justification for said removal.

35.13. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Design/Build Firm certifies that it has and will maintain a drug-free workplace program throughout the duration of this Contract.

35.14. Independent Contractor. Design/Build Firm is an independent contractor under this Contract. Work provided by Design/Build Firm (and all Subcontractors) pursuant to this Contract shall be subject to the supervision of Design/Build Firm. In providing such Work, neither Design/Build Firm nor its agents shall act as officers, employees, or agents of County. This Contract shall not constitute or make the Parties a partnership or joint venture.

35.15. Third-Party Beneficiaries. Neither Design/Build Firm nor County intends to primarily or directly benefit a third party by entering into this Contract. Therefore, the Parties agree that there are no third-party beneficiaries to this Contract (other than Design/Build Architect/Engineer to the extent this Contract expressly provides any specific rights or remedies).

35.16. Conflicts. Neither Design/Build Firm nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Design/Build Firm's loyal and conscientious exercise of judgment related to its performance under this Contract. For the duration of this Contract, none of Design/Build Firm's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Design/Build Firm is not a party, unless compelled by

legal process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Design/Build Firm or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Design/Build Firm is permitted pursuant to this Contract to utilize Subcontractors to perform any Work required by this Contract, Design/Build Firm shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Design/Build Firm.

35.17. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Contract was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Contract and is, therefore, a material term.

35.18. Compliance with Laws. Design/Build Firm and the Work must comply with all Applicable Law, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

35.19. Severability. If any part of this Contract is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Contract and the balance of this Contract shall remain in full force and effect.

35.20. Joint Preparation. This Contract has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

35.21. Priority of Provisions.

35.21.1. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document, attachment or exhibit attached hereto or referenced or incorporated herein, and any provision of Articles 1 through 35, the provisions contained in Articles 1 through 35 shall prevail and be given effect.

35.21.2. In the event of a conflict among the Contract Documents, Design/Build Firm shall provide the latest, more stringent, and more technical requirement(s), including, but not limited to, the requirements setting forth the better quality or greater quantity.

35.22. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for such litigation shall be exclusively in such state courts, forsaking any other jurisdiction that either Party may claim by virtue of its residency or other jurisdictional device. **EACH PARTY HEREBY EACH EXPRESSLY**

WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION. DESIGN/BUILD FIRM, PURSUANT TO ARTICLE 25, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS SECTION.

35.23. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Contract by reference. The attached Exhibits are incorporated into and made a part of this Contract.

35.24. Taxes. Design/Build Firm shall pay all applicable sales, consumer, use, and other taxes required by Applicable Law. Design/Build Firm is responsible for reviewing the pertinent state statutes involving state taxes and complying with all their requirements. County shall not be responsible for any taxes that are required at the time of this Contract's execution.

35.25. Payable Interest.

35.25.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable to pay any interest to Design/Build Firm for any reason, whether as prejudgment interest or for any other purpose, and Design/Build Firm waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Contract.

35.25.2. Rate of Interest. If the preceding section is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Contract, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

35.26. Domestic Partnership Requirement. Unless this Contract is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, of the Code ("Act"), or will be paid with State-appropriated funds, Design/Build Firm certifies and represents that it will comply with the provisions of the Act, and the contract language referenced in the Act is deemed incorporated in this Contract as though fully set forth in this section. The failure of Design/Build Firm to comply shall be a material breach of this Contract, entitling County to pursue any and all remedies provided under applicable law including, but not limited to (1) retaining all monies due or to become due Design/Build Firm until Design/Build Firm complies; (2) termination of the Contract; and (3) suspension or debarment of Design/Build Firm from doing business with County.

[DELETE IF NOT APPLICABLE (Not a covered Contract, or if there is State funding involved)]

35.27. Workforce Investment Program. This Contract constitutes a "Covered Contract" under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 ("Workforce Investment Program").

35.27.1. Design/Build Firm affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Contract (whether those vacancies are with Design/Build Firm or Subcontractors) exclusively with CareerSource Broward for at least five (5) business days and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Contract.

35.27.2. Until at least one (1) year after the conclusion of this Contract, Design/Build Firm shall maintain and make available to County upon request all records documenting Design/Build Firm's compliance with the requirements of the Workforce Investment Program and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the expiration or termination of this Contract.

35.27.3. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Contract.

35.28. Additional Security Requirements. Design/Build Firm certifies and represents that it will comply with the applicable [REDACTED] Security Requirements attached hereto and incorporated herein as Exhibit [REDACTED].

35.29. Polystyrene Food Service Articles. Design/Build Firm shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

35.30. Fiscal Year. The continuation of this Contract beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of transportation surtax funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

Any portion of this project budgeted by County to be funded by proceeds from the transportation surtax levied pursuant to Section 212.055(1), Florida Statutes ("Surtax Funded Work") shall be paid exclusively from and is subject to the availability of proceeds from the transportation surtax, and County shall not have any obligation to provide nor shall County provide any funding from County's general revenue or any other County source for Surtax Funded Work. Funding for Surtax

Funded Work shall be utilized only for the purposes permitted under Section 212.055(1), Florida Statutes.

35.31. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Contract, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Contract.

35.32. Public Art and Design Prohibition. The Public Art and Design Program, Section 1-88, Broward County Code of Ordinances, is not an eligible expense under Section 212.055, Florida Statutes, and is not applicable to this Project.

35.33. Preference for State Residents. If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project fifty (50) percent or more of the cost of the Project is to be paid from state-appropriated funds, County must comply with the requirements of Section 255.099(1), Florida Statutes.

35.34. Certificates of Qualification. An entity or affiliate who has had its FDOT issued certificate of qualification suspended, revoked, denied or have further been determined by FDOT to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with County.

35.35. Code of Conduct. County has established, and will maintain, a written code or standard of conduct applicable to its officers, employees, board members or agents, and those individuals' relatives, that prohibits their involvement in the selection, award, or administration of any contract in connection with the Project if they have a present or potential financial or other significant interest therein and prohibits the acceptance of any gratuity, favor, or other thing of monetary value from any person interested or involved in the performance of work on the Project.

35.36. Unauthorized Aliens. County shall consider the employment by Design/Build Firm of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Design/Build Firm knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Contract.

35.37. Resolution of Conflicts. The Florida's Turnpike Enterprise's Executive Director is hereby authorized and empowered to decide all difficulties, disputes, and conflicts involving traffic safety, construction, maintenance of traffic, and maintenance within the FDOT's right-of-way that may occur in connection with the performance of this Contract. The Florida's Turnpike Enterprise's Executive Director's decision upon all questions, difficulties and disputes shall be final and conclusive upon the parties hereto.

35.38. Prohibited Interests. No member, officer, or employee of County or of the locality during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

35.39. Design/Build Firm must insert Sections 13.11, 13.14, 13.16, 19.1.3, 35.2, 35.34, 35.35, 35.36, 35.37, and 35.38 into each of its subcontracts.

(The remainder of this page is intentionally blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Contract on the respective dates under each signature: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and _____, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor/Vice-Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Gavin Rynard (Date)
Assistant County Attorney

By _____
Nathaniel A. Klitsberg (Date)
Transportation Surtax General Counsel

CONTRACT BETWEEN BROWARD COUNTY AND _____ FOR THE FOR THE
DESIGN/BUILD SHERIDAN ST BRIDGE OVER FL TURNPIKE (RFP/CONTRACT NO.
_____)

Design/Build Firm

ATTEST: [Insert Name of Design/Build Firm]

Secretary

By _____
Authorized Signer

(Print Name)

(Print Name and Title)

(Seal)

____ day of _____, 20____.

OR

WITNESS:

Signature

Print Name

Exhibit List

EXHIBIT A	SCOPE OF WORK ATTACHMENT 1: DESIGN CRITERIA PACKAGE
EXHIBIT B	PROJECT SCHEDULE
EXHIBIT C	MINIMUM INSURANCE REQUIREMENTS
EXHIBIT D	SCHEDULE OF SUBCONSULTANT PARTICIPATION
EXHIBIT E	DBE SUBCONSULTANTS AND LETTERS OF INTENT
EXHIBIT F	PRICING COMPONENTS/SCHEDULE OF VALUES

EXHIBIT A
SCOPE OF WORK

...

Attachment 1: Design Criteria Package

Draft

EXHIBIT B
PROJECT SCHEDULE

Draft

EXHIBIT C
MINIMUM INSURANCE REQUIREMENTS
[USE FORM PROVIDED BY RISK, NOT CONSULTANT]

Draft

EXHIBIT D
SCHEDULE OF SUBCONSULTANT PARTICIPATION

<u>No.</u>	<u>Subconsultant's Name</u>	<u>Discipline</u>
-------------------	------------------------------------	--------------------------

Draft

EXHIBIT E
DBE SUBCONSULTANTS AND LETTERS OF INTENT

Draft

EXHIBIT F
PRICING COMPONENTS/SCHEDULE OF VALUES

Draft