



TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY

MODIFIED FORM 375-020-17
CONTRACTS ADMINISTRATION
THEA - 05/17

**BID BLANK
DESIGN BUILD MAJOR**

Let by: Tampa-Hillsborough Expressway Authority

Form 1

(Name of Bidder. Note: Void if used by any bidder other than one this Form issued to)

TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY (THEA) PROJECT NO.: _____

THEA CONTRACT NO.: _____

DATE BIDS DUE: _____

DATE OF AWARD: _____

DATE OF CONTRACT EXECUTION: _____

The total overall lump sum price for the Project shall consist of the sum of the individual lump sum prices for each of the following project segments based on the project stationing identified in the Concept Plans:

1. Signal Replacement Work Nebraska Ave/Twiggs St. Intersection FDOT Joint Project Agreement
437535-1-A8/58/68-01

AMOUNT: \$ _____

2. Remainder of Project Work

AMOUNT: \$ _____

TOTAL OVERALL AMOUNT: \$ _____

CONTRACT CALENDAR DAYS: _____ **% Small Business Enterprise Proposed:** _____

**PROPOSAL
FOR ABOVE PROJECT(S)**

The Bidder's Proposal must meet the requirements and design and construction criteria as stated in the THEA Request for Proposal. Materially unbalanced Bids are subject to rejection.

in _____ County(ies)

NOTE: Attach your Proposal Guaranty to this bid blank. All Extensions must be carried out. Any changes made in unit bid prices must be initialed by bidder.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

(Here In after called the "Principal") and _____

(Hereinafter called the "Surety"), a Corporation chartered and existing under the laws of the State of _____ with its principal offices in the City of _____ and authorized to do business in the State of Florida are held firmly bound unto the Tampa-Hillsborough County Expressway Authority, in the full and just sum of _____ Dollars (\$_____) good and lawful money of the United States of America, to be paid upon demand of the Tampa-Hillsborough County Expressway Authority, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally by these presents.

WHEREAS, the Principal is about to submit, or has submitted to the Tampa-Hillsborough County Expressway Authority, a proposal for the _____

WHEREAS, the Principal desires to file this bond in accordance with law, in lieu of a certified check or cashier's check otherwise required to accompany this Proposal.

"NOW, THEREFORE: The conditions of this obligation are such that if the Proposal is accepted, the Principal shall, within ten (10) days after the date of receipt of a written notice of Award of Contract, execute a contract in accordance with the Proposal and upon the terms, conditions and prices set forth therein in the form and manner required by the Tampa-Hillsborough County Expressway Authority and execute a sufficient and satisfactory Public Construction Bond, payable to the Tampa-Hillsborough County Expressway Authority and deliver documents which are condition to commencing the work... ". then this obligation to be void; otherwise to be and remain In full force and virtue in law; and the Surety shall, upon failure within the time specified above, immediately pay to the aforesaid Expressway Authority upon Demand the amount thereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

IN TESTIMONY THEREOF, the Principal and Surety have caused these presents to be duly signed and Sealed this _____ day of 20____.

Principal

(Seal)

BY: _____

Surety

(Seal)

BY: _____

Countersigned

CERTIFICATE AND AFFIDAVIT FOR SURETY BOND INSURER

TO: TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY

RE: REQUEST FOR PROPOSAL NO. O-00420

BIDDER: Name: _____

Address: _____

Telephone: _____

AMOUNT OF BOND: _____

SURETY BOND INSURER

Name: _____

Address: _____

Telephone: _____

Before me, the undersigned authority, personally appeared, _____
on this _____ day of _____, 20____ who hereby certifies
that, in accordance with Section 287.0935, Florida Statutes, the insurer named
above:

1. Is licensed to do business in the State of Florida;
2. Holds a certificate of authority authorizing it to write surety bonds in Florida;
3. Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is Issued;
4. Is otherwise in compliance with the provisions of the Florida Insurance Code; and
5. Holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304-9308 of Title 31 of the United States Code.

Signature of Officer of Surety Insure

STATE OF: _____

COUNTY OF: _____

THE FOREGOING INSTRUMENT was sworn to, subscribed and acknowledged before me this
_____ day of _____, 20____ by who is personally known to me or
_____ has produced _____ as identification and did take an oath.

(Notary, check appropriate blank; and if obtaining identification, fill in appropriate identification number.)

Notary Public

(Printed Name of Notary)

My Commission Expires:

Serial Number,
if any)

ANTICIPATED SBE PARTICIPATION STATEMENT

Project: _____

Project Number: _____

Prime Bidder Name: _____

Contract Dollar Amount: _____

Is the prime Bidder an SBE as described in the Authority's Policy adopted February 25, 2002?
(Yes___) (No___)

Expected amount of contract dollars to be subcontracted to SBE(s): \$_____

It is our intent to subcontract _____% of the contract dollars to SBE(s). Listed below are the proposed SBE sub bidders _____ (to the extent known, please indicate whether the company holds, Minority, Women or Disadvantaged Business Enterprise Status.):

<u>SBE(s) Name</u>	<u>Type of Work/Specialty</u>	<u>Dollar Amount/Percentage</u>	<u>Minority Status</u>
--------------------	-------------------------------	---------------------------------	------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Submitted by: _____

Title: _____

E-mail Address: _____

Telephone number: _____

Date: _____

[END OF FORM – ANTICIPATED SBE PARTICIPATION STATEMENT]

The Tampa-Hillsborough County Expressway Authority

Small Business Enterprise (SBE) Policy For Design and Construction Projects

(Adopted February 25, 2002)

1. Introduction

In recognition of difficulties encountered by Small Business Enterprises (hereinafter "SBEs) in the transportation construction contracting industry, the Tampa-Hillsborough County Expressway Authority ("Authority") hereby adopts this policy to provide mechanisms that will enhance contracting opportunities for SBEs on the Authority's design and construction contracts. This policy shall apply to design contracts in excess of \$250,000, and construction contracts in excess of \$1,000,000.00 (hereinafter also referred to as "Contracts " or "Design & Construction Contracts"), except that the provisions of the Sheltered Market Component covered by paragraph 4(e) hereof may involve contracts of any size and nature.

The Authority shall utilize race-neutral, ethnic-neutral and gender-neutral mechanisms to enhance contracting opportunities for SBEs on Authority Design and Construction Contracts.

2. Definition of SBE

An SBE means a business enterprise that has obtained the required registration or certification from any of the following governmental entities in any one of the categories listed below:

- Hillsborough County as a WMBE or SBE
- City of Tampa as a WMBE or SBE
- Florida Department of Transportation as a DBE
- State of Florida as an MBE as defined in section 288.703(2), Florida Statutes or as an SBE as defined in section 288.703(1), Florida Statutes
- Small Business Administration as an SBE or SBA 8(a)
- Other governmental entities in the Greater Tampa Bay Area as an SBE, MBE, DBE, or WMBE. (Greater Tampa Bay Area means Hillsborough, Pinellas, Polk, Pasco, and Manatee Counties)

3. SBE Outreach Liaison

The Authority shall designate an SBE Outreach Liaison to facilitate the participation of SBEs in Authority Design and Construction Contracts. The Outreach Liaison shall report directly to the Executive Director and shall manage and implement the SBE policy. The Outreach Liaison shall cooperate with firms seeking Authority contracts to assist them in identifying SBEs that are available to participate on the Project. The Authority may retain consultants, as needed, to assist in the SBE Outreach efforts.

4. Mechanisms for promoting Equal Opportunities in Contracting

a) Authority's Outreach: To the extent deemed appropriate and as may be required by regulation, the Authority shall include SBEs on solicitation mailing lists and solicit their participation in Design and Construction Contracts for which such businesses may be suited.

The Authority shall maintain a list of SBEs that have indicated an ability and willingness to participate in Authority projects and shall make the list available to firms seeking Design and Construction Contracts from the Authority for the purpose of encouraging participation from SBEs in Design and Construction Contracts.

The Authority may assist businesses, including SBEs, with learning how to do business with the Authority. The Authority may refer SBEs to available training programs that may improve the ability of SBEs to provide design and construction services to the Authority.

b) Outreach Plans For Prime Contractors and Firms: The Authority encourages all firms and contractors seeking Design and Construction Contracts to actively pursue obtaining bids and quotes from SBEs. The Authority shall require such firms and contractors to submit an SBE Outreach Action Plan that outlines their efforts in actively pursuing such bids and quotes.

c) Monitoring and Collection of Information: The Authority shall monitor utilization of SBEs on Design and Construction Contracts to determine the extent to which firms and contractors provide equal employment and contracting opportunities to SBEs.

The Authority shall collect information from firms serving as prime contractors on Design and Construction Contracts regarding their anticipated SBE participation on Authority Contracts. The information provided concerning anticipated SBE participation shall not become a mandatory part of the contract with the Authority. It shall be available to assist the Authority in tracking planned or estimated SBE utilization.

The Authority shall require firms serving as prime contractors on Design and Construction Contracts to provide a Bidders' Opportunity List that includes all subcontractors or consultants who submitted bids or quotes to the prime contractor or firm for the Authority Contract. The Authority will also require the prime contractors and firms to report actual payments, retainage, SBE status, and the work type of all SBE subcontractors.

The Authority shall require that information provided on SBEs be broken down into appropriate subcategories as established by the Authority.

d) Progress Payments: The Authority's Design and Construction Contracts may contain such special provisions for progress payments as deemed reasonably necessary to encourage SBE participation.

e) Sheltered Market Component: The Executive Director may recommend to the Board, from time to time, that certain contracts be made available only to SBEs. Such designated projects and/or contracts or portions of contracts shall be based on economic feasibility. The Executive Director may waive or modify bid bonds and performance and payment bonds under the Sheltered Market Component utilizing the same guidelines as subsection (f) below.

f) Waiver or Modification of Bonding: So long as consistent with, and within the limits established by State Law, the Executive Director may waive or modify bid bonds and performance and payment bonds normally required or accept alternative forms of security to the extent reasonably necessary to encourage participation from SBEs. An alternative form of security shall be in the form of cash, cashier's check, or irrevocable letter of credit, and shall be subject to the same conditions as the bond required for the contract. In reducing the level or types of bid bonds and performance and payment bonds normally required of SBEs, the Executive

Director should take precautions to ensure that the Authority and any third parties will be adequately protected.

5. Procedures and Annual Report to the Authority Board

The Executive Director shall develop procedures as necessary to implement these policies, and shall annually report to the Board concerning the awarding of design consultant and construction contracts to SBEs during the preceding fiscal year. To the extent practicable, the report required by this Section should include the total dollar value of awards made in the fiscal year to SBEs.

6. Compliance with Federal Regulations.

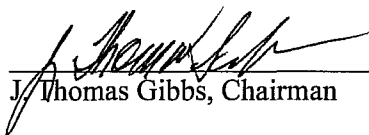
Where a Design or Construction Contract involves the expenditure of federal assistance or contract funds, the Executive Director or designated representative shall comply with any mandatory federal law and authorized regulations. The Executive Director shall modify the procedures as necessary to obtain federal approval, consistent with these policies, and shall bring recommendations for any required modification of these policies to the Board for consideration.

7. Contracts controlled by Executive Director

In addition to those contracts subject to the SBE Policy as set forth above, it is the intent of the Authority to authorize and encourage the Executive Director to consider opportunities to involve SBEs on those contracts that do not require Board approval but are solely within the Executive Director's authority.

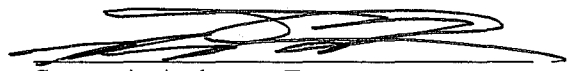
REVISED: March 29, 2004

TAMPA HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY



J. Thomas Gibbs, Chairman

Approved as to Form and Legal Sufficiency:



Steven A. Anderson, Esq.
Ruden McClosky Smith Schuster & Russell, P.A.
General Counsel

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDUM

Were Addenda issued on this Solicitation?

☐ Yes☐ No

Were Letter of Clarification issued on this Solicitation?

☐ Yes☐ No

I (We) hereby acknowledge receipt of the following Addendum/Addenda issued in reference to this solicitation by listing the Addenda by number, date and signing the form:

Addendum _____

Date: _____

Addendum _____

Date: _____

Addendum _____

Date: _____

Addendum _____

Date: _____

Letter of Clarification _____

Date: _____

Letter of Clarification _____

Date: _____

Letter of Clarification _____

Date: _____

Letter of Clarification _____

Date: _____

RESPONDENT:

By: _____
(AUTHORIZED SIGNATURE)_____
(Printed Name of Signer)_____
(Title of Signer)_____
(Date Signed)

CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS

This certification is required pursuant to *Florida Statute*, Section 287.135.

A company that, at the time of submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Cuba or Syria, is ineligible for, and may **not** proposal on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of \$1 million or more.

Bidder / Bidder Name: _____

Bidder /Bidder FID or EIN: _____

Address: _____

City: _____ State: _____ Zip: _____

I hereby warrant that I am duly authorized to sign and bind on behalf of the company listed above as the "Bidder/Bidder".

I hereby certify and affirm that the company listed above as the "Bidder/Bidder" is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to *Florida Statute* Section 215.473, or engaged in business operations in Cuba or Syria.

I understand pursuant to *Florida Statute*, Section 287.135, the submission of a false certification may subject the Bidder/Bidder to civil penalties, attorney's fees and/or costs.

BIDDER:

By: _____
Authorized Signature

Printed Name of Signer

Title of Signer

Date Signed

[END OF FORM ~ CERTIFICATION REGARDING SCRUTINIZED COMPANIES LIST]

PUBLIC ENTITY CRIMES STATEMENT**SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES**

1. This sworn statement is submitted to Tampa-Hillsborough County Expressway Authority
by _____
[print individual's name and title]
for _____
[print name of entity submitting sworn statement]
whose business address is _____
and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of the individual signing this
sworn statement: _____.)
2. I understand that a "public entity crime" as defined in a Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjunction of guilt in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1)(a), Florida Statutes, means:
 - i. A predecessor or successor of a person convicted of a public entity crime; or
 - ii. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which proposals or applies to proposal on contracts for the provision of goods or services let by a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on the information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **[indicate with a check mark which statement applies.]**
 _____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of

entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Signature

Date

State of _____
County of _____

PERSONNALLY APPEARED BEFORE ME, the undersigned authority,

_____ who, after first being sworn by me, affixed his/her signature in
[Name of individual signing]

the space provided above on this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

[Notary Seal]

[END OF FORM – PUBLIC ENTITY CRIMES STATEMENT]

DRUG-FREE WORKPLACE FORM

The undersigned firm, in accordance with Florida Status 287.087 hereby certifies that
_____ does:

Name of Business

1. Publish a statement of notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employees will abide by the terms of a statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Florida Statute 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction of, or require the satisfactory participation in a drug abuse assistance or rehabilitation program is such is available in the employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1 thru 5.

As the person authorized to sign this statement, I certify that this firm complies with the above requirements.

Firm's Signature

Date

CONFLICT OF INTEREST STATEMENT

Check one of the boxes below:

- ☐ To the best of our knowledge, the undersigned bidder has no potential conflict of interest due to any other clients, contracts, or property interest for this solicitation and project.

OR

- ☐ The undersigned bidder, by attachment to this form, submits information which **may** be a potential conflict of interest due to other clients, contracts or property interest for this solicitation and project.

BIDDER:

By: _____
Authorized Signature

Printed Name of Signer

Title of Signer

Date Signed

[END OF FORM – CONFLICT OF INTEREST STATEMENT]

DESIGN/BUILD AGREEMENT
between
TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY
and

This AGREEMENT is made and entered into effective this ____ day of _____, 2013 by and between the TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY, a body politic and corporate under and by virtue of the State of Florida, hereinafter referred to as "Authority" with an office address of 1104 East Twiggs Street, Suite 300, Tampa, FL 33602, and _____, a Florida corporation, authorized to conduct business in the State of Florida, with an office address of _____ hereinafter referred to as "Design/Builder".

Authority desires and Design/Builder agrees to perform all the design, permitting, survey, geotechnical investigation, maintenance of traffic, demolition, construction and other services necessary to design and construct the Project referred to as "_____, Project Number P_____" which is to provide _____ located in Tampa, Hillsborough County, Florida.

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, Authority and Design/Builder agree as follows:

ARTICLE 1

The Agreement and the Contract Documents

1.1 Definitions:

Contract Documents: "Contract Documents" means and includes the exhibits incorporated herein, the Design/Builder's and Surety's performance and payment bonds for the Project, the Design/Builder's Certificate of Insurance for the project, the MPO Alignment, the project schedule, the Detailed Design and all Design Documents prepared by Design/Builder and approved by the Authority, the Construction Documents and executed Change Orders, all of which are incorporated by reference and made a part of this Agreement.

Project: The design/build project to provide...

Work: The "Work" comprises the completed construction required by the Drawings and Specifications as accepted by Authority's representative.

Day: The term "day" shall mean calendar day unless otherwise specifically designated.

Concept Drawings: The term "Concept Drawings" shall mean the conceptual drawings by the Design/Builder which is the basis for this Project.

Design/Build –
THEA Project No.
THEA Contract No.

Authority's authorized representative or agent: Shall mean the Authority's Chief Operations Officer, or the Authority's General Consulting Engineer, or other representative designated by Authority, as applicable, unless otherwise identified.

- 1.2** Exhibits Incorporated: The documents listed below, hereto after known collectively as the "Contract Documents" are expressly agreed to be incorporated herein by reference, the same as though fully written herein or attached hereto, and made a part of without being limited thereto, this "Agreement" consists of the following:

Exhibit 1 - The full extent of documents as set forth and listed in the Table of Contents of the Request for Proposal (RFP) document (known as RFP No. P-_____) dated _____, including all forms, exhibits, attachments, and Letters of Clarification and Addendums issued thereto

- 1.3 Complete Agreement.** This Agreement represents the entire agreement between the Authority and the Design/Builder and supersedes all prior negotiations, representations, or agreements. When the Drawings and Specifications are complete and have been approved by the Authority, they shall become a part of the Agreement and Construction Documents. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by authorized representatives of both Authority and Design/Builder.
- 1.4 Contract Interpreted as a Whole.** The Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion shall be required.
- 1.5 Provision of all Things Required.** Anything that may be required, or reasonably implied or inferred by or from the Agreement or Contract Documents that make up the Contract, or any one or more of them, shall be provided by Design/Builder for the Lump Sum Price. Notwithstanding the foregoing, to the extent that any item is known by the Authority which may affect the costs of construction or time to complete construction for which the Authority fails to disclose, or where cooperation by the Authority is reasonably required to meet the intent of the Contract Documents and if the information is not disclosed or reasonable cooperation is not provided, this paragraph shall not be applicable.
- 1.6 Privity Only with Design/Builder.** Nothing contained in the Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Authority and any person except Design/Builder, and similarly, between Design/Builder and any person except Authority.
- 1.7 Agreed Interpretation of Contract Terms.** When a word, term, or phrase is used in the Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used solely for convenience.

- 1.8 Terms "Include" and "Days".** "Include," "includes," or "including," as used in the

Design/Build –
THEA Project No.
THEA Contract No.

Contract, shall be deemed in all cases to be followed by the phrase “without limitation.”
The term “days,” unless otherwise specified, shall mean calendar days.

- 1.9 Use of Singular and Plural.** Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.
- 1.10 Definition of Material Breaches Not Exhaustive.** The specification of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

ARTICLE 2

Design/Builder's Representations And Warranties

- 2.1 Specific Representations.** In order to induce Authority to execute this Agreement and recognizing that Authority is relying hereon, Design/Builder, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement, or implied by operation of law, makes the following express representations to Authority:
- (a) Design/Builder, on its own behalf or through contracts with others, is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, properly licensed in the state of Florida to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project.
 - (b) Unless otherwise expressly provided in this Agreement, Design/Builder will obtain and maintain all necessary licenses, permits (except permits related to the National Environmental Protection Act (NEPA) activities) or other authorizations necessary to allow Design/Builder to perform the Work for the Project until Design/Builder's duties have been fully satisfied;
 - (c) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of the Agreement;
 - (d) Design/Builder represents that all design services for the Project have been or will be managed by Lighthouse Engineering, Inc., pursuant to agreement between Design/Builder or its agents and said entity. Design/Builder further represents that Lighthouse Engineering, Inc. employs design professionals, duly licensed in the state of Florida and qualified to perform the Design Services required by this Agreement, and that all Design Services specified or contemplated in this Agreement will be performed by or at the specific direction of such design professionals;
 - (e) Prior to the execution of this Agreement, Design/Builder has visited and

Design/Build –
THEA Project No.
THEA Contract No.

inspected the entire Project site and relevant areas adjacent thereto and the local conditions under which the Project is to be designed, constructed and operated and Design/Builder has reviewed the site as necessary, to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Project site and areas adjacent thereto which may impact the performance of the Work and has taken those conditions into account in entering into the Agreement, provided, however, that Design Builder's acceptance herein applies to the extent that the Site conditions are unchanged in any material respect from those described in the RFP Document;

- (f) After the approval of the Schematic Design phase of the project, Design/Builder represents that it has made such independent inspections as it has determined, based on its extensive experience, to be reasonably necessary and prudent. The Lump Sum Price includes amounts which Design/Builder understands and agrees are sufficient to cover any reasonably foreseeable conditions (concealed, subsurface, or other). Consequently, should foreseeable concealed conditions encountered in the performance of the Work, whether surface or subsurface, be at variance with the conditions indicated by the Contract Documents or at variance with Design/Builder's expectations, Design/Builder agrees that no adjustment in the Lump Sum Price shall be made, and Design/Builder shall complete the Work, absorbing all such unexpected expense; provided, however that Design/Builder may seek an adjustment to the Lump Sum Price if the conditions (including conditions addressed in Paragraph 16.2) encountered in the performance of the Work are covered by and within risks expressly assumed by the Authority in this Agreement;
- (g) Design/Builder represents it has fully reviewed the Contract Documents of this Agreement. Based thereon, Design/Builder represents that it will prepare the Detailed Design to be fully consistent with the purposes, standards, and provisions set forth in said Contract Documents, and that the Project will be and is constructible in accordance with said documents and the Detailed Design;
- (h) The Design/Builder warrants that the Contract Time is a reasonable period for performing the Work, and that the Scheduled Completion Date provides a reasonable period of time for performing the Work;
- (i) The Design/Builder represents it has received, reviewed, compared, studied, and carefully examined all of the documents which make up the Contract, and with regard to any furnished by Authority has had any questions about them answered to its satisfaction, and finds such documents in all respects to be complete, accurate, adequate, consistent, coordinated, and sufficient for Design/Builder to complete its performance as set forth in the Contract Documents. Such review, comparison, study, and examination shall be a warranty that the Project can be finally designed and constructed in accordance with the Detailed Design to be completed by Design/Builder and to the quality level specified herein for the Lump Sum Price;
- (j) Design/Builder assumes full responsibility to Authority for the improper acts and omissions of its subcontractors or others employed or retained by Design/Builder in connection with the Project; and

- (k) Design/Builder shall prepare all documents and things required by the Contract, including the Detailed Design and Design Documents, and shall perform all Work in such a manner that they shall be accurate, complete, and for an amount not to exceed the Lump Sum Price or the fixed prices established, and that all such documents and things prepared and all Work performed by Design/Builder shall be sufficient to accomplish the purposes of the Project, as identified by Authority, and shall be in conformity and comply with all applicable law, codes, and regulations.

ARTICLE 3

Design Services Prior To Execution Of Agreement

- 3.1 Completed Tasks.** Prior to the execution of this Agreement, through the RFP process the Design/Builder has presented its conceptual design and project schedule to be further refined during the design process.
- 3.2 Further Design Services.** From the documents referenced in Paragraph 3.1, Design/Builder shall prepare Detailed Design documents for the Project pursuant to the provisions of Article 4 of this Agreement.

ARTICLE 4

Detailed Design

- 4.1 Time for Preparation.** By five (5) months from the date of execution of this Agreement, Design/Builder shall prepare and submit to Authority the complete Detailed Design.
- 4.2 Schematic Design.** Based on approved final alignment and any adjustments authorized by the Authority and agreed to by the Design/Builder, the Design/Builder shall prepare, for approval by the Authority schematic design documents consisting of, as a minimum, the following:
 - (a) Alternative trail alignments to meet Project limits;
 - (b) Investigation and verification of the existing conditions of the site to the extent required to accomplish the Project.
 - (c) Summation of the various building code, zoning issues and other jurisdictional constraints affecting the Project, including but not limited to, building height restrictions, building setbacks, fire flow requirements, structural requirements, etc.
 - (d) A preliminary estimate of construction cost based on current area, volume or other unit costs.
 - (e) Presentation of the schematic design and cost estimates to the Authority.
 - (f) Prior to starting the Design Development Phase of this Project, Authority and

Design/Build –
THEA Project No.
THEA Contract No.

Design/Builder shall mutually agree that the Project can be designed and built for the Lump Sum Price identified in Paragraph 9.1. Approved Schematic Design Documents shall be incorporated into this Agreement via change order including any agreed upon adjustments with respect to Project, schedule and/or construction budget. Either party may terminate this Agreement prior to the start of Design Development, as defined in Paragraph 4.3, without penalty, if it is determined by both parties that the Project cannot be designed and built for the Lump Sum Price identified in Paragraph 9.1. Under this condition, the Design/Builder will be compensated for work satisfactorily completed in accordance with the applicable schedule of values.

4.3 Design Development. Based on approved schematic design documents and any adjustments authorized by the Authority and agreed to by the Design/Builder, the Design/Builder shall prepare, for approval by the Authority design development documents consisting of, as a minimum, the following:

- (a) Drawings, to scale, showing design, amenities locations, utilities, landscaping, signage and other Project specific features as required.
- (b) Analyze the Project for the various building code, zoning issues and other jurisdictional constraints, make preliminary contacts with the appropriate Authorities having jurisdiction, and provide a summary of the code and zoning review analysis.
- (c) Review design development documents with Authority and others, as required, and revise documents as required.
- (d) An updated construction cost estimate, including a schedule of values.
- (e) Presentation of the design development documents to the Authority.
- (f) Prior to starting the Construction Phase of this Project, Authority and Design/Builder shall mutually agree that the Project can be designed and built for the Lump Sum Price identified in Paragraph 9.1. Approved Design Development Documents shall be incorporated into this Agreement via change order including any agreed upon adjustments with respect to Project, schedule and/or construction budget. Either party may terminate this Agreement prior to the start of Construction, as defined in Article 5, without penalty, if it is determined by both parties that the Project cannot be designed and built for the Lump Sum Price identified in Paragraph 9.1. Under this condition, the Design/Builder will be compensated for work satisfactorily completed in accordance with the applicable schedule of values.

4.4 Design Documents Defined. "Design Documents" means all the design documents provided by Design/Builder and approved by Authority pursuant to the Agreement, including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational for its intended purposes, as identified by Authority, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

- 4.5 Preparation of Project Site Information.** Design/Builder shall prepare, as necessary, surveys and topographic information needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvements as it relates to property lines.
- 4.6 Design Services Defined.** “Design Services” means any and all architectural, engineering, or design tasks or services required to be performed by Design/Builder for the completion of the Project, and all labor, materials, supervision, equipment, computers, documents, and other things necessary for the performance of such task or services.
- 4.7 Quality of Design Services.** Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of the Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology.
- 4.8 Compliance with Laws and Regulatory Requirements.** In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.
- 4.9 Duty to Correct Errors.** Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents.
- 4.10 Schedule of Design Services.** As a supplement to and consistent with the project schedule attached hereto and referenced in Paragraph 1.2, and to the extent not already a part of said project schedule, Design/Builder shall submit for Authority's approval a design schedule for the performance of Design/Builder's Design Services which shall include allowance for reasonable time required for Authority's review of submissions and for approvals of authorities having jurisdiction over the Project, and which shall describe in detail the break-down of the portions of the Detailed Design specified by Design/Builder in completing the entire Detailed Design, and the dates by which those specified portions of the Detailed Design will be completed. The design schedule, when approved by Authority, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder, at any time during the course of performing the Agreement, have any reason to believe that it will be unable to meet any completion date in accordance with the design schedule, it shall promptly notify Authority's Representative in writing. In such notice, Design/Builder shall state the reason for the delay, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the design schedule or the Contract Time. Subject to the provisions of Paragraph 12.7 of this Agreement, Authority shall review and approve, where appropriate, the design schedule, or any portion thereof.

Design/Build –
THEA Project No.
THEA Contract No.

The design schedule shall be incorporated into and be a part of the project schedule.

ARTICLE 5

Performance of Construction Work

- 5.1 General Intent.** Design/Builder shall perform all Work necessary to construct the Project in accordance with the Contract and to render the Project and all its components operational and functionally and legally usable for its intended purposes, as identified by Authority.
- 5.2 Work Defined.** “Work” shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project, including, without limitation, the following:
- (a) Construction of the whole and all parts of the Project in full and strict conformity with the Contract;
 - (b) The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
 - (c) The procurement and furnishing of all necessary state and local permit[s] (except permits related to the National Environmental Protection Act (NEPA) activities) and other permits required for the construction of the Project, and the payment of all applicable fees, provided, however, that the Design/Builder is not responsible for and will not be required to pay impact fees imposed by local taxing authorities to which the Authority is not subject;
 - (d) The creation and submission to Authority of detailed as-built drawings depicting all as-built construction;
 - (e) The furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder;
 - (f) The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 8 below.

ARTICLE 6

Authority’s Representative

- 6.1 Authority’s Representative.** The Authority’s Representative for the Project shall be the Chief Operations Officer or his designated representative. The Authority’s Representative can act for and on behalf of Authority unless otherwise specified herein. Authority’s Representative has full authority to act on behalf of and to the same extent as Authority.

ARTICLE 7

Time for Construction: The Contract Time

- 7.1 Commencement of Construction.** After Authority has approved the Design Documents for the Detailed Design, or specific portions thereof, Authority shall promptly notify Design/Builder in writing, by issuance of an applicable Notice to Proceed for Work, that Design/Builder should proceed with the Work or approved portions of the Work.
- 7.2 Time for Completion.** Design/Builder shall commence the Work when authorized by Authority under Paragraph 7.1, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later than five hundred and fifty (550) days from the effective date of this Agreement, or such other date as may by Change Order be designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Notice to Proceed and the Scheduled Completion Date is the "Contract Time." Design/Builder shall achieve Final Completion of the Work no later than seven hundred thirty (730) days from the effective date of this Agreement, or by such other date as may by Change Order be designated.
- 7.3 Liquidated Damages for Delay in Substantial Completion.**
- 7.3.1** Design/Builder shall be assessed in the amount of One Thousand Five Hundred and Thirty Two Dollars and Zero Cents (\$1,532.00) per day as liquidated damages for each day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date.
- 7.3.2** Any sums due and payable under this Paragraph 7.3 by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Authority, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Authority prior to Substantial Completion so long as Design/Builder's actions or inactions substantially caused the delay; provided, however, that if Design/Builder is in substantial compliance with the project schedule at the time of termination, no liquidated damages will be assessed against Design/Builder. All liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When Authority reasonably believes that Substantial Completion will be inexcusably delayed, Authority shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Authority to be adequate to recover liquidated damages applicable to such delays. Authority shall provide Design/Builder a ten (10) day notice of its intent to withhold liquidated damages and the amount of said liquidated damages to be withheld. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Authority has withheld payment, Authority shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

7.4 Liquidated Damages for Delay in Final Completion.

7.4.1 If Design/Builder fails to achieve Final Completion as required, Design/Builder will be assessed liquidated damages in the amount of Five Hundred Dollars and Zero Cents (\$500.00) for each day of unexcused delay in achieving Final Completion:

7.4.2 Any sums due and payable under this Paragraph 7.4 by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Authority, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Authority prior to Final Completion so long as Design/Builder's actions or inactions substantially caused the delay; provided, however, that if Design/Builder is in substantial compliance with the project schedule at the time of termination, no liquidated damages will be assessed against Design/Builder. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When Authority reasonably believes that Final Completion will be inexcusably delayed, Authority shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Authority to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Authority has withheld payment, Authority shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

7.5 Time is of the Essence. All limitations of time set forth herein are material and time is of the essence of the Agreement.

7.6 Authority's Approvals/Project Schedule. The attached project schedule identifies dates and durations for Authority's approvals and actions. Failure of the Authority to adhere to this schedule shall be cause for time extensions to the Contract Time provided Design/Builder complies with the provisions of Article 16 of this Agreement.

ARTICLE 8

Additional Duties and Responsibilities of Design/Builder

8.1 Design/Builder to Perform All Design Services and Work Required by the Contract. The intent of the Contract is to require complete, correct and timely execution of the Design Services and the Work. Any and all Design Services and Work that may be required, reasonably implied or reasonably inferred by the Contract, or any part of it, as necessary to fully comply with the Contract and produce the intended result, or as otherwise indicated by Authority as of the effective date of this Agreement consistent with the attachments to this Agreement described in Paragraph 1.2, shall be provided by Design/Builder without increase to the Lump Sum Price.

8.2 Strict Compliance with the Contract Documents. All Work performed by Design/Builder shall be in strict compliance with the Contract Documents, unless deviation from strict compliance has been approved by Authority. "Substantial compliance" is not strict compliance. Any Work not in strict compliance with the Contract

Documents is defective.

- 8.3 Supervision of the Work.** The Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort, Design/Builder bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of Design/Builder.
- 8.4 Warranty of Workmanship and Materials.** Design/Builder warrants and guarantees to Authority that all labor furnished to progress the Work under the Agreement will be competent to perform the tasks undertaken and is the best quality reasonably obtainable, that the product of such labor will yield only high quality results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Work will be of Any and all Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.
- 8.5 Commencement of Guarantee and Warranty Periods.** Special or specific guarantees and warranties, which are required by the Agreement to run for a fixed period of time, shall commence running on the date of Substantial Completion of all the Work.
- 8.6 Design Files.** MicroStation format is required for the delivery of all graphics design files to the Authority. All design files shall conform to the file naming convention and symbology standards adopted by the Florida Department of Transportation (FDOT) for electronic plans as specified in the FDOT Computer Aided Design and Drafting (CADD) Production Criteria Handbook. The data producer is solely responsible for any translation required to convert non-MicroStation graphics files to the MicroStation design file format (dgn) for delivery to the Authority, ensuring the correctness of translation of the graphics design files and adherence to the specifications contained in the FDOT CADD Production Criteria Handbook and the validity of the geometric elements. All translated design files shall conform to the file naming convention and symbology standards adopted by FDOT for electronic plans as specified in the FDOT CADD Production Criteria Handbook.
- 8.7 Design/Builder's Schedule of Construction.** Design/Builder, within fifteen (15) days after the commencement of any construction activities, shall submit to Authority, for its information, and comply with, Design/Builder's schedule of construction for completing the Work by the Scheduled Completion Date. The schedule of construction shall be a detailed critical path ("CPM") schedule in a form mutually agreeable to Authority and Design/Builder. The schedule of construction shall be updated at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such update shall be furnished to Authority. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Agreement. Design/Builder must utilize the most current version of Primavera for Windows or, with prior approval of Authority, comparable alternate scheduling software. Scheduling software must be capable of importing/exporting data without degradation to/from the most current version Primavera for Windows, including but not limited to, scheduling logic/sequencing, activities, durations, cost loading, etc. The scheduling software must support the following logic relationships: finish to start (FS), finish to finish (FF), start to start (SS)

Design/Build –
THEA Project No.
THEA Contract No.

and start to finish (SF) with support for lead/lag. The scheduling software must support resource and cost loading. The scheduling software should be capable of electronically exporting data to an external DOS compatible file in a standard application acceptable to the Authority. The storage media must be DOS compatible CD Rom or DVD as approved by Authority.

- 8.8 Record Copy of Contract Documents.** Design/Builder shall continuously maintain at the site, accessible by Authority, an updated copy of the Agreement, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, accessible by Authority, a copy of all shop drawings, product data, samples, and other submittals. Upon Substantial Completion of the Work, or upon Authority's request, all of the documents described in this Paragraph shall be finally updated and delivered to Authority and shall become the property of Authority.
- 8.9 Review and Approval of Submittals.** Design/Builder shall review, study, and approve, or take other necessary action upon all shop drawings, product data, samples, and other submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Agreement. All such submittals shall be reviewed and accepted by the appropriate design architect or engineer as applicable.
- 8.10 Authority's Option to Review Submittals.** Authority shall, in its discretion, have the right to review and approve submittals, and if Authority so elects, Design/Builder shall not perform any portion of the Work as to which Authority has required submittal and review until such Submittal has been approved by Authority's Representative. Approval by Authority, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Agreement nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Agreement. If Authority elects to review submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to perform a review of all submittals for general content and for apparent compliance with the Detailed Design before submission of same to Authority. Shop drawings and other submittals from Design/Builder do not constitute a part of the Contract, but such submittals are understood to provide further definition and specificity of materials and equipment to be incorporated into the Work; provided, however, that if Design/Builder submits shop drawings or submittals which are at variance with the Contract Documents including the Detailed Design documents approved by Authority, Design/Builder must designate such fact in writing on or with the shop drawing or submittal. Failure of the Authority to approve submittals in a timely fashion and to adhere to the schedule, shall be cause for time extensions to the Contract Time, provided Design/Builder meets the requirements of Article 16 hereof.
- 8.11 Procurement and Review of Warranties.** Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit to Authority, all warranties required by the Agreement. Design/Builder shall review all such warranties and shall certify to Authority that the warranties are in strict compliance with the requirements of the Contract.
- 8.12 Procurement of Operations and Maintenance Documentation.** Design/Builder

Design/Build –
THEA Project No.
THEA Contract No.

shall prepare or procure and shall transmit to Authority all documentation required by the Agreement regarding the operating and recommended maintenance programs relating to the various elements of the Work.

8.13 As-Built Drawings. Design/Builder shall prepare and provide to Authority a set of all as-built drawings that shall be complete, signed, sealed and, except as specifically noted, shall reflect performance of the Work in strict compliance with the requirements of the Agreement. As-built drawings shall incorporate subsequent information developed by and from any additional surveying performed by the Design/Builder and shall indicate final as-built elevations of key site conditions. As-built drawings shall be in the form of updated Detail Design drawings and submitted in DGN format compatible with Primavera generated document, including one plotted and printed full size set size 11" x 17".

8.14 Compliance with Labor Laws. Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Work and agrees to strictly comply with all its obligations as employer with respect to said personnel.

Design/Builder shall physically incorporate verbatim the U.S. Department of Transportation, Federal Highway Administration, Form FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts in all contracts and sub-contracts executed in relation to services performed on this Project.

8.15 Testing, Inspections, and Approvals. Authority is responsible for testing and inspections in accordance with Paragraph 12.11. Design/Builder shall provide, at its cost, whatever additional testing and/or inspections Design/Builder deems necessary for the completion of the Project and performance of the Work in accordance with this Agreement.

8.16 Applicable Laws. Design/Builder represents and warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including, without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Work to be performed under the Contract.

8.17 Compliance with Construction Regulations. Design/Builder shall perform the Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall, to the extent of any violation by Design/Builder hereunder, indemnify and hold Authority harmless from all loss, damages, and expense, including attorney's fees, resulting from any such violation or alleged violation.

8.18 Permits, Licenses and Notices. All plan review fees, construction and building permits, (except permits related to the National Environmental Protection Act (NEPA) activities) licenses and authorizations necessary for the construction of the Project shall be secured on behalf of Authority and paid for by Design/Builder, except as specified in this Agreement as detailed within Exhibit 1, RFP Document at Attachment 8, Project Requirements and Provisions for Work, Section 3.2. Design/Builder shall notify Authority's Representative when it has received said permits, licenses and

Design/Build –
THEA Project No.
THEA Contract No.

authorizations and upon receipt shall supply Authority with copies of same. The originals of said permits, licenses and authorizations shall be delivered to Authority upon completion of the Work, and receipt of such documents by Authority shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Work.

- 8.19 Site Safety and Security.** Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Authority's property and employees from injury or loss in connection with the performance of the Agreement. Design/Builder shall at all times safeguard and protect its own partially or completely finished Work and that of the adjacent property and all adjacent work from damage. Design/Builder shall protect Authority's equipment, apparatus, machinery, and other property and all adjacent work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Work. Design/Builder shall, upon execution of this Agreement, submit to Authority its Project Safety Manual, and shall operate in accordance with said Manual.
- 8.20 Repair of Collateral Damages.** Unless otherwise instructed by Authority, Design/Builder shall repair and return to original condition all streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Work, all without additional cost to Authority.
- 8.21 Cleaning the Site.** Design/Builder shall keep the site reasonably clean during performance of the Work. Upon Substantial Completion of the Work, Design/Builder shall thoroughly clean the Project site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.
- 8.22 Authority's Access to Work.** At all times relevant to the Agreement, Design/Builder shall provide access to the Work to Authority and its designees.
- 8.23 Decisions Regarding Aesthetic Effect.** Authority's decisions in matters relating to aesthetic effect shall be final and have no effect on the Lump Sum Price if consistent with the intent of the Detailed Design and the project budget unless the changes increase the price or time to complete the work.
- 8.24 Design/Builder to Remain an Independent Contractor.** In the performance of the Agreement, Design/Builder's status as an independent contractor shall not be modified or diminished by reason of any instructions issued by Authority or Authority's Representative to Design/Builder or any of Design/Builder's employees, subcontractors, or representatives.
- 8.25 Periodic Meetings and Updates.** Periodically, as agreed to by Authority and Design/Builder, or upon reasonable request of Authority, Design/Builder will attend meetings to update Authority on the progress of the Project and to answer any questions of Authority.

- 8.26 One-Year Walk Through.** One year from the date of Substantial Completion, on a date mutually agreed upon by Authority and Design/Builder, Design/Builder shall accompany Authority on a walk-through of the Project and shall be responsible to correct any items found deficient during such inspection.
- 8.27 Exclusion of Authority Liability for Design:** The Authority is not liable to Design/Builder or any other person or entity for any design deficiency in the Authority's Design Criteria Package or for any deficiency in design relied upon or used by Design/Builder or any of its subcontractors, vendors, designer, or its designer's sub-consultants, whether or not design used or relied upon was submitted for approval by the Authority and whether or not approved by the Authority for use on the project. Further, there is not and there shall not be any express or implied warranty by Authority as to design's constructability, availability of materials or availability of specific components of the project.
- 8.28 Royalties and Patents:** The Design/Builder shall pay all royalties and license fees for materials, methods, and systems incorporated in the work. The Design/Builder shall defend all suits or claims for infringement of any patent rights and shall save the Authority harmless from loss on account thereof except when a particular design, process or product is specified by the Authority. In such case the Design/Builder shall be responsible for such loss only if they has reason to believe that the design, process, or product so specified is an infringement of a patent, and fails to give such information promptly to the Authority.

ARTICLE 9

Lump Sum Price

- 9.1 Lump Sum Price.** Design/Builder agrees that the fixed price Authority shall pay to the Design/Builder for the completion of all Design Services and all Work described in the Contract Documents to complete the Project in accordance with the Detailed Design and the Design Documents, and the purposes of the Project, as identified by Authority, which includes overhead, profits and direct and indirect costs shall be the sum of One Million Two Hundred Fifty Thousand Dollars and no/100 dollars (\$1,250,000.000), (the "Lump Sum Price.") The Lump Sum Price shall not be modified unless all conditions precedent to a change in the Lump Sum Price have been satisfied, including the execution of a Change Order in accordance with the requirements of this Agreement.
- 9.2 Adjustments to Lump Sum Price.** In entering into this Agreement, Design/Builder understands and agrees that the Lump Sum Price can only be increased in limited circumstances, and in accordance with the provisions set forth in this Agreement, including but not limited to the Change Order procedures set forth in Article 15 and the Claims procedures set forth in Article 16. Subject to the provisions of this Agreement, the Lump Sum Price can be increased if:
- (a) Authority directs or agrees to a change in the Project that increases the cost of the Design Services or the Work;
 - (b) the Design/Builder encounters subsurface or concealed conditions at the Project

Design/Build –
THEA Project No.
THEA Contract No.

site, which meet the requirements of Paragraph 16.2 and that cause the Design/Builder to incur increased costs in the Design Services or the Work;

- (c) the Design/Builder encounters Hazardous Materials, complies with the provisions set forth therein, and incurs increased costs to the Design Services or the Work;
- (d) Design/Builder incurs unavoidable increased costs in performing Design Services or the Work as a direct result of changes, after the execution of this Agreement, in directly applicable laws, codes and ordinances, such as changes in life-safety building codes or zoning laws, legislatively enacted new categories of taxes (such as a gross receipts tax), and changes in environmental regulations which relate to the Project; or
- (e) Emergencies that meet the requirements of Paragraph 15.9, and that cause Design/Builder to incur increased costs in the Design Services or the Work. Except for the foregoing, Design/Builder agrees that the Design/Builder assumes all other risks which may cause increased costs to the Design Services or the Work. Notwithstanding the foregoing, acts of god, government shutdowns, labor strikes or other causes beyond the control of Design/Builder, shall entitle Design/Builder to an equitable adjustment to the contract price and time.

9.3 Taxes. Unless otherwise provided in this Agreement, the Lump Sum Price shall include all taxes that are or may be legally assessed or exacted during the construction of the Project.

ARTICLE 10

Payment of the Lump Sum Price

10.1 Payment Procedure. Authority shall pay the Lump Sum Price, as it may be adjusted by the operation of this Agreement, to Design/Builder in accordance with the procedures set forth in this Article 10.

10.2 Schedule of Values. Design/Builder shall prepare and present to the Authority the Design/Builder's schedule of values apportioning the Lump Sum Price among the different elements of the Project for purposes of periodic and final payment. Pursuant to this Paragraph, Design/Builder shall, within thirty (30) calendar days of the Notice to Proceed, submit to Authority a detailed schedule of values for Design Services and a preliminary schedule of values for construction services to be rendered in performance of the Work and shall within thirty (30) days of the authorized commencement of some construction activities in performance of the Work submit to Authority a detailed schedule of values for all construction activities related to the performance of the Work. The Design/Builder's schedules of values shall be presented in a format, with such reasonable detail as the Authority requests. Design/Builder shall not imbalance its schedule of values nor artificially inflate any element thereof. The violation of this provision by the Design/Builder shall constitute a material breach of this Agreement. The Design/Builder's schedule of values will be utilized for the Design/Builder's payment requests but shall only be so utilized after it has been acknowledged in writing by Authority. The schedule of values submitted by Design/Builder pursuant to this

Design/Build –
THEA Project No.
THEA Contract No.

Paragraph may from time to time be amended by Design/Builder, subject to the approval of Authority.

10.3 Submission of Payment Requests. On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Design/Builder may submit to the Authority a payment request for the period ending the last day of the prior month and shall include supporting information and documentation (i.e. SBE Report, Updated Schedule, Release of Liens, etc.) as may be required by the Authority based on the Work completed and materials stored on the site. Said payment request shall be The American Institute of Architects (AIA) Design/Build Pay Request Form, or similar document and shall include whatever supporting information as may be required by Authority. Therein, the Design/Builder may request payment as follows:

- (a) For work not subject to retainage: One hundred percent (100%) of that part of the Lump Sum Price allocated on the schedule of values to the following tasks performed by the Design/Builder's architect and engineers:
 - Programming
 - Schematic Design
 - Design Development
 - Construction Documents
 - Construction Administration tasks of shop drawing review and document interpretation.
- (b) For work subject to retainage: Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, The Authority will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%. Any reduction of retainage is at the sole discretion of the Authority and will only be considered upon Design/Builder providing a Consent of Surety agreeing to the reduction.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

10.4 Authority's Right to Inspect. As an additional condition precedent to payment under this Article 10, and including payment for Substantial Completion and on Final Completion, Authority may inspect Design/Builder's books and records which support and confirm all of the items set forth in the schedule of values and all other items described in any request for Payment by Design/Builder.

10.5 Warranty of Completed Work; Review of Payment Requests.

10.5.1 Each Payment Request shall be signed by the Design/Builder and shall constitute the Design/Builder's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the Contract, and that the Design/Builder knows of no reason why

Design/Build –
THEA Project No.
THEA Contract No.

payment should not be made as requested.

10.5.2 Thereafter, the Authority's Representative shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Authority's Representative shall approve in writing the amount, which is properly owing to the Design/Builder.

10.6 Conditions Precedent to Payment. In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any pay request that Design/Builder, if requested by Authority, have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement and that Design/Builder shall have furnished to Authority properly executed waivers of rights to claim against the Authority, in a form acceptable to Authority, from all Subcontractors, material men, Suppliers or others lien or other claim rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any claim rights relating thereto. The submission by the Design/Builder of a payment request also constitutes an affirmative representation and warranty that all work for which the Authority has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever.

10.7 Time for Payment. Subject to Authority's right of review and objection, the Authority shall make payment to the Design/Builder within twenty-one (21) days following receipt of the Design/Builder's submittal of a proper payment request.

10.8 Amount of Progress Payments. Authority shall pay the amount of each pay request properly due under this Agreement less such amounts, if any, owing by Design/Builder to Authority or which Authority shall have the right to withhold as authorized by this Agreement.

10.9 Title Passes upon Payment. Design/Builder warrants and represents that upon payment of any pay request submitted by Design/Builder, title to all Work covered by the pay request shall immediately pass to Authority.

10.10 Design/Builder's Use of Progress Payments. Upon receipt of any payment from Authority, Design/Builder shall promptly pay all Subcontractors, material men, laborers, and Suppliers such amounts as they are entitled for the Work covered by such payment.

10.11 Use of Joint Checks. If Authority becomes aware or is informed that Design/Builder has not paid a Subcontractor, material men, laborer, or Supplier as provided herein, Authority shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, material men, laborer, or Supplier as joint payees. Before issuing any joint checks hereunder, Authority shall provide five (5) days prior written notice to Design/Builder. Such joint check procedure, if employed by Authority, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Authority to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Authority and such person or entity.

Design/Build –
THEA Project No.
THEA Contract No.

10.12 Payment Not A Waiver of Acceptance. No payment to Design/Builder shall be interpreted or construed to constitute acceptance of any Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Work may not be detected (1) during any inspection by Authority, (2) prior to making of any payment to Design/Builder, or (3) before Authority's occupancy of the Project.

10.13 Withholding of Payment. Notwithstanding any withholding of payments hereunder, Authority shall timely pay to Design/Builder all amounts due Design/Builder under this Article which are not in dispute under this Paragraph. Authority shall have the right to refuse to make payment (and, if necessary, may demand the return of a portion or all of the amount previously paid to Design/Builder) in an amount then believed by Authority to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (a) The quality of a portion, or all, of Design/Builder's Work not being in strict accordance with the requirements of this Contract;
- (b) The quantity of Design/Builder's Work not being as represented in Design/Builder's pay request, or otherwise;
- (c) Design/Builder's rate of progress being such that, in Authority's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
- (d) Design/Builder's failure to use Contract funds, previously paid Design/Builder by Authority, to properly pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- (e) Evidence that the balance of the Work cannot be completed in accordance with the Agreement for the unpaid balance of the Lump Sum Price;
- (f) Claims made, or likely to be made, against Authority or its property because of acts or omissions of Design/Builder;
- (g) Loss caused by Design/Builder; or
- (h) Design/Builder's failure or refusal to perform any of its obligations to Authority. In the event that Authority makes written demand upon Design/Builder for amounts previously paid by Authority as contemplated in this Paragraph 10.13, Design/Builder shall promptly comply with such demands.

10.14 Unexcused Failure to Pay. If Authority, without justifiable cause or basis hereunder, fails to pay Design/Builder any amounts due and payable to Design/Builder within twenty-one (21) days after the date established herein for payment of such amounts, then Design/Builder may suspend its Design Services or, as applicable, the Work until payment is made, provided that Design/Builder first gives five (5) days' written notice to Authority of its intent.

ARTICLE 11

Substantial and Final Completion

- 11.1 Substantial Completion.** With respect to the Project, “Substantial Completion” means that stage in the progression of the Work, as approved by Authority in writing, when the Project is sufficiently complete in accordance with the Agreement that Authority can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. Authority reserves the right to occupy and use any part, portion, or system of the Project when such part, portion, or system is substantially completed. If Authority elects to occupy a part, portion, or system of the Project, that part, phase or system, shall be deemed substantially complete; provided that Authority shall first notify Design/Builder of Authority’s intent to occupy such part, portion, or system, and the Authority’s Representative shall thereupon promptly perform an inspection of the subject part, portion or system to determine that the work is in fact substantially complete, and shall prepare a punch list of remaining items to be completed to achieve final completion of the subject part, portion or system. The fact that some part, portion or system of the Project is deemed substantially complete under this Paragraph shall not result in the entire Project being deemed substantially complete, nor will such partial use or occupancy be determinative of Substantial Completion as defined in Paragraph 11.2.
- 11.2 Determination of Substantial Completion.** When Design/Builder considers Substantial Completion has been achieved for the Project, the Design/Builder shall notify the Authority in writing and shall furnish to the Authority a listing of those matters yet to be finished. The Authority or its designee will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Design/Builder’s work is substantially complete, the Authority will so notify the Design/Builder in writing and will therein set forth the date of Substantial Completion. If the Authority, through its inspection, fails to find that the Design/Builder’s work is substantially complete, the Authority shall notify the Design/Builder of such findings, indicating items that cause the Work to be incomplete or unsatisfactory for acceptance. By furnishing a list of incomplete or unsatisfactory items, the Authority does not warrant that the list is a total and complete list of all items necessary to achieve Substantial Completion. Upon completion or correction by the Design-Builder of all items necessary to achieve Substantial Completion, Authority shall repeat all, or any portion, of its Substantial Completion inspection as often as necessary until Substantial Completion is achieved. If Authority is required to perform more than three (3) Substantial Completion inspections, the Design/Builder shall bear the cost of each additional inspection, which cost may be deducted by the Authority from any payment then or thereafter due to the Design/Builder. Authority shall notify Design/Builder, in writing, prior to commencing any inspections for which it may deduct payment to the Design/Builder therefore. Guarantees and equipment warranties required by the Contract shall commence on the date of Substantial Completion.
- 11.3 Payment upon Substantial Completion.** Upon Substantial Completion of the Work, the Authority shall pay the Design/Builder an amount sufficient to increase total payments to the Design/Builder to ninety-five percent (95%) of the Lump Sum Price, as adjusted by the operation of this Agreement less any amounts attributable to liquidated damages, together with the reasonable costs as determined by the Authority for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims, which result from Design/Builder’s acts or omissions.

- 11.4 Final Completion Defined.** With respect to the Project, “Final Completion” means the completion of all Design Services and all Work required by, and in strict compliance with, the Agreement, as approved by Authority in writing, including the satisfactory completion or resolution of all deficiencies (punch list items) and Design/Builder’s provision to Authority of all documents and things required by the Agreement. “Final Completion” does not include services under maintenance service agreements and other services intended to continue beyond the Scheduled Completion Date.
- 11.5 Determination of Final Completion.** When Design/Builder considers the Project finally complete and the Design/Builder is ready for a final inspection, it shall notify the Authority in writing. Thereupon, the Authority will perform a final inspection of the Project.
- 11.6 Final Payment.** If the Authority confirms that the entire Project is complete in full accordance with the Contract and that the Design/Builder has performed all of its obligations to the Authority under the Contract, the Authority will furnish a final approval for payment certifying that the Project is complete and the Design/Builder is entitled to the remainder of the unpaid Lump Sum Price as adjusted by operation of this Agreement, less any amounts attributable to liquidated damages, together with the reasonable costs as determined by the Authority for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims, which result from Design/Builder’s acts or omissions. If the Authority is unable to issue its final approval for payment and is required to repeat its final inspection more than three (3) times, the Design/Builder shall bear the cost of each additional inspection, which cost may be deducted by the Authority from the Design/Builder’s final payment.
- 11.7 Conditions Precedent to Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, Design/Builder shall furnish Authority, in the form and manner required by Authority, the following:
- (a) An affidavit that all of Design/Builder’s obligations to Subcontractors, laborers, equipment or material Suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - (b) If required by Authority, separate releases or waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity with connection to the Project, or proof of payment such as receipts;
 - (c) Consent of surety to final payment;
 - (d) Complete as-built drawings and the record set of Contract Documents;
 - (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout; and
- 11.8 Acceptance of Final Payment a Waiver.** Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against Authority by

Design/Build –
THEA Project No.
THEA Contract No.

Design/Builder except for those claims previously made in writing against Authority by Design/Builder, pending at the time of final payment and specifically identified on Design/Builder's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 12

Authority's Duties, Obligations, and Responsibilities

- 12.1 Provide Project Information.** Authority shall provide Design/Builder with information regarding Authority's requirements for the Project including any desired or required design or construction schedule. By furnishing such information, Authority does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore.
- 12.2 Review of Documents.** Authority shall review any documents submitted by Design/Builder requiring Authority's decision, and shall render any required decisions pertaining thereto.
- 12.3 Provide Notice of Defects.** In the event Authority knows of any material fault or defect in the Work, nonconformance with the Agreement, or of any errors, omissions or inconsistencies in the Design Documents, then Authority shall give prompt notice thereof in writing to Design/Builder.
- 12.4 Access to the Site and the Work; Providing Information.** Authority shall provide Design/Builder access to the Project site and to the Work and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may request.
- 12.5 Cooperation to Secure Permits, Licenses, Approvals, and Authorizations.** Authority shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.
- 12.5.1 National Environmental Protection Act (NEPA).** All permitting related to NEPA activities shall be the responsibility of the Authority to prepare, submit and make payment of fees.
- 12.6 Timely Performance.** Authority shall perform the duties set forth in this Article 12 in a reasonably expeditious fashion and in accordance with the project schedule so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Work.
- 12.7 Authority's Reviews, Inspections, Approvals, and Payments Not a Waiver.** Authority's review, inspection, or approval of any Work, Design Documents, submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Authority's construction program and requirements. No review, inspection, or approval by Authority of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Agreement or the accuracy, adequacy, fitness, suitability, or

Design/Build –
THEA Project No.
THEA Contract No.

coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Agreement. Payment by Authority pursuant to the Agreement shall not constitute a waiver of any of Authority's rights under the Agreement or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Authority.

- 12.8 Delay or Forbearance Not a Waiver.** Authority's agreement not to exercise, or its delay or failure to exercise, any right under the Agreement or to require strict compliance with any obligation of Design/Builder under the Agreement shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.
- 12.9 Subsurface and Other Information Provided by Authority.** Authority shall furnish to Design/Builder, prior to the execution of this Agreement, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project.
- 12.10 Approvals and Easements.** Authority shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Work. Design/Builder shall render such assistance as Authority may request in obtaining such easements, certificates, and the like, including for example, assistance with drawings or legal descriptions and attendance at hearings if necessary.
- 12.11 Testing and Inspection.** Authority shall be responsible for testing and inspections required by sound professional practice and by governmental authorities having jurisdiction over the Project. Contractor will be responsible only for the cost of failed testing.
- 12.12 Right to Stop Work.** In the event Design/Builder fails or refuses to perform the Work in strict accordance with the Agreement, or is otherwise in breach of this Contract, Authority may, at its option, instruct Design/Builder to cease and desist from performing further Work, or any part thereof. Upon receipt of such instruction from Authority in writing specifying the reasons therefore, Design/Builder shall immediately cease and desist as instructed by Authority and shall not proceed further until the cause for Authority's instructions has been corrected, no longer exists, or Authority instructs that the Work may resume.
- 12.13 Authority's Right to Perform Work.** In the event Authority issues such instructions to stop Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Authority that the cause of such instructions will be eliminated or corrected, then Authority shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the reasonable costs incurred in performing such Work. The rights set forth in Paragraph 12.12 and this Paragraph 12.13 are in addition to, and without prejudice to, any other rights or remedies Authority may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

Design/Build –
THEA Project No.
THEA Contract No.

12.14 Authority Personnel. Authority shall provide to Design/Builder a listing of key project personnel of Authority working on the Project.

ARTICLE 13

Project Documentation

13.1 Maintenance of Project-Related Records. Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the “Project Records”) for a minimum period of three (3) years after Project Close Out and for any longer period of time as may be required by law or good management practice. “Project Close Out” shall mean upon the Authority’s final acceptance, auditing and vouchers.

13.2 Availability of Project-Related Records to Authority. All Project Records, which are in the possession of Design/Builder or Design/Builder’s Subcontractors, shall be made available to Authority for inspection and copying upon Authority’s request at any reasonable time. Additionally, such records shall be made available upon request by Authority to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 14

Personnel, Subcontractors and Suppliers

14.1 Subcontractor Defined. “Subcontractor” means an entity or person that has a direct contract with Design/Builder to perform a portion of the Work or the Design Services. For purposes of the Agreement, Subcontractors shall also include those furnishing equipment and materials fabricated especially for the Project.

14.2 Supplier Defined. “Supplier” means an entity or person providing only equipment or materials for the performance of the Work.

14.3 Naming of Subcontractors. At the time of the execution of this Agreement, Design/Builder shall provide to Authority in writing a list of those subcontractors who Design/Builder intends to use in the performance of the Work under the Contract. Prior to any construction, and on an ongoing basis in order to keep the information current, complete and accurate, Design/Builder must provide to Authority forms, as required by the applicable taxing authority(ies), showing dates, names, addresses, contracting parties, including all Subcontractors and Suppliers and all other relevant information required.

14.4 Terms of Subcontracts and Purchase Orders. All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Authority against Design/Builder herein, including those rights of Contract suspension, termination, and stop Work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract,

Design/Build –
THEA Project No.
THEA Contract No.

obligation or otherwise shall be created between Authority and any Subcontractor of Design/Builder and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

Design/Builder shall physically incorporate verbatim the U.S. Department of Transportation, Federal Highway Administration, Form FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts in all contracts and sub-contracts executed in relation to services performed on this Project.

14.5 Design/Builder Responsible for Acts of its Subcontractors. Should Design/Builder subcontract all or any part of the Work, such subcontracting of the Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants, as related to or affecting the performance of Design Services and the Work.

14.6 Personnel. Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Manager. Absent written instruction from Design/Builder to the contrary, the Project Manager shall be deemed to be Design/Builder's authorized representative and shall be authorized to receive and accept any and all communications from Authority. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

- Scott Pittman, P.E., Ajax Paving Industries of FL, LLC - Project Manager
- Brad Foran, PE, Lighthouse Engineering, Inc. - Design Project Manager
- Frank Foran, P.E., Lighthouse Engineering, Inc. – Design Quality Control/Assurance
- Mark Minich, Ajax Paving Industries of FL, LLC. – Constructability Review
- HP Engineering - Structures Design
- Joe Payne, PE, Lighthouse Engineering, Inc. - Lead Roadway/Civil Engineer
- Larry Moore, P.E., Tierra, - Geotechnical Design
- John Melendez, Arehna Engineering, Inc. – Transit Design
- Cumbey And Fair, Inc. – Peer Review
- CPH Engineers, Inc. – Peer Review
- Raghu Veturi, P.E., PTOE, CPH Engineers, Inc. – Signals Design
- James K. Winter, RLA, CLARB, CPH Engineers, Inc. – Landscape Architecture
- Hartley-Purdy Architecture, Inc. – Architect
- Thomas Liu, P.E. – Traffic Design
- Joe Minich, Ajax Paving Industries of FL, LLC. - Construction Project Manager
- Tom Daquanna, Ajax Paving Industries of FL, LLC. – Field Coordinator
- Ed Street, Ajax Paving Industries of FL, LLC. – Road Superintendent
- Mandy Kustra, Ajax Paving Industries of FL, LLC. – MOT Safety
- Brian Pittman, Ajax Paving Industries of FL, LLC. – Structures Superintendent

Design/Builder shall submit the names of other key supervisory personnel, and evidence of their competence, as such key supervisory personnel are appointed by Design/Builder. Evidence of the above-named personnel's competence, such as a resume, shall be provided to Authority prior to said personnel beginning performance of

Design/Build –
THEA Project No.
THEA Contract No.

the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Authority agrees to the contrary in writing or unless Authority requests removal of any such individual from the Project. Authority requests to remove any of the Design/Builder's personnel shall be in writing and shall contain substantive reasons therefore. In the event Authority requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Authority makes no objection, at no cost or penalty to Authority for delays or inefficiencies the change may cause. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Paragraph 14.6 as though such individuals had been listed above.

- 14.7 Removal of Subcontractors.** If, at any time during the course of the Project, Authority reasonably determines that the performance of any Subcontractor working on the Project is unsatisfactory, Authority's Representative shall notify Design/Builder of the same, and shall set forth the instances of unsatisfactory performance. Promptly on receipt of such notice, Design/Builder shall undertake to cure such unsatisfactory performance, or shall remove such Subcontractor from the Project and promptly replace such Subcontractor. Any cure of unsatisfactory performance or any replacement of a Subcontractor pursuant to this Paragraph shall be at no cost or penalty to Authority for any increased costs, delays or inefficiencies caused by such unsatisfactory performance, its cure, or by the replacement of a Subcontractor hereunder.

ARTICLE 15

Changes in the Project

- 15.1 Authority's Right to Order Changes.** The Authority, without invalidating the Agreement, may unilaterally order changes in the Project within the general scope of the Contract, consisting of additions, deletions or other revisions. All changes in the Project, which adjust the Lump Sum Price or the Contract Time, shall be authorized only by Change Order and Design/Builder specifically recognizes and acknowledges that methods available for adjustments to the Lump Sum Price set forth in Paragraph 15.3.
- 15.2 Change Order Defined.** "Change Order" means and includes a written order to the Design/Builder signed by the Authority and the Design/Builder and issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the Lump Sum Price or the Contract Time. Each adjustment in the Lump Sum Price resulting from a Change Order shall include all costs for said Change Order including Design/Builder's overhead and profit.
- 15.3 Adjustment to Lump Sum Price.** The increase or decrease in the Lump Sum Price resulting from a Change Order shall be determined in the following order of precedence:
- (a) First, by mutual agreement between the Authority and the Design/Builder as evidenced by (1) the change in the Lump Sum Price being set forth in a Change Order, (2) such change in the Lump Sum Price together with any

Design/Build –
THEA Project No.
THEA Contract No.

conditions or requirements relating thereto, being signed by both parties, and (3) the Design/Builder's execution of the Change Order;

- (b) Second, if no mutual agreement occurs between the Authority and Design/Builder, under Paragraph 15.3(a), the change in the Lump Sum Price, if any, shall be derived by determining the reasonable costs incurred or savings achieved, resulting from revisions in the Work, utilizing Florida Department of Transportation's, Historical Cost and Other Information for the Current 12 Month Moving Area Averages for Area 10, Design Builder shall properly itemize the costs or savings and shall submit sufficient substantiating data to permit evaluation and including a reasonable design fee to perform needed design work to implement the revisions in the Work;
- (c) Third, if the parties do not agree on the adjustment to the Lump Sum Price utilizing the methodology set forth in Paragraph 15.3(a) or 15.3(b), then the amount of the change in the Lump Sum Price shall be calculated by pricing the labor at the actual wage or hourly rates paid for doing the additional Design Services and the Work; if any, plus the actual cost of materials and equipment, if any; provided, however, that such "actual costs" must be reasonable. In addition Authority shall allow a total mark-up of no greater than fifteen percent (15%) for all overhead, all indirect costs, and profit to be added to the actual costs of labor, if any, and materials and equipment, if any, pro-rated between the Design/Builder and Subcontractors, if any, as the Design/Builder determines, and in no event shall include any consequential damages of the Design/Builder; or
- (d) Any such costs or savings shall be documented in the format and with such content and detail as is acceptable to the Authority.

15.4 Extension of Contract Time. Any extension of the Contract Time requested by Design/Builder for performance of any change in the Design Services or the Work ordered by Authority may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the Contract Time must be requested by Design/Builder pursuant to the terms and conditions of Article 16 of this Agreement. The failure of Design/Builder to provide notice in writing to Authority in accordance with Article 16 of this Agreement of any request for extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement to an extension of the Contract Time.

15.5 Effect of Executed Change Order. The execution of a Change Order by Design/Builder shall constitute conclusive evidence of Design/Builder's and Authority's agreement to the ordered changes in the Project, the Agreement as thus amended, the Lump Sum Price as thus amended and the Contract Time as thus amended. Design/Builder, by executing the Change Order, waives and releases any claim against Authority for additional time or compensation for matters relating to, arising out of, or resulting from the Design Services or the Work included within or directly affected by the executed Change Order.

15.6 Consent of Surety. Design/Builder shall notify and obtain the consent and approval of Design/Builder's surety with reference to all Change Orders if such notice, consent or approval is required by Authority, Design/Builder's surety or by law. Design/Builder's

Design/Build –
THEA Project No.
THEA Contract No.

execution of the Change Order shall constitute Design/Builder's warranty to Authority that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

15.7 Minor Changes in the Project. The Authority will have authority to order minor changes in the Work not involving an adjustment in the Lump Sum Price or an extension of the Contract Time and not inconsistent with the intent of the Detailed Design and Design Documents. Such Changes may be effected by written order and shall be binding on the Authority and the Design/Builder.

15.8 Emergencies. In any emergency affecting the safety of persons or property, the Design/Builder shall act, at Design/Builder's discretion, to prevent threatened damage, injury or loss. Any increase in the Lump Sum Price or extension of the Contract Time claimed by the Contractor on account of emergency work shall be determined as provided in this Article.

ARTICLE 16

Claims for Additional Cost or Time

16.1 Limitation on and Operation of Design/Builder Claims.

16.1.1 Design/Builder and Authority understand and agree that the Lump Sum Price cannot increase, unless Authority specifically orders a change to the Project pursuant to Article 15 of this Agreement, or unless Design/Builder encounters a condition or situation within the risk assumed by the Authority under Paragraph 9.2 of this Agreement. In the event Design/Builder believes it is entitled to make claims to increase the Lump Sum Price or to extend the Contract Time, such claims must be made in strict compliance with this Article 16.

16.1.2 The procedures of this Article relating to claims of the Design/Builder are understood to be a construction management tool of Authority. The use of the term "claim" in this Article does not constitute an error, omission, or inappropriate conduct by either party.

16.2 Claims for Reasonably Unforeseeable Subsurface or Concealed Conditions.

16.2.1 Under the provisions of this Agreement, including the representations and warranties of Design/Builder contained in Paragraphs 2.1(5) and (6), Design/Builder understands and agrees that the risk of increased costs in the Design Services and the Work caused by the conditions of the Project site, whether surface, subsurface, or other conditions which affect the site or the performance of Design Services or the Work have been transferred to and assumed by Design/Builder under this Agreement, and that such increased costs will be absorbed by Design/Builder, and that there will be no increase in the Lump Sum Price as a result of Design/Builder encountering such conditions and increased costs. Notwithstanding this general transference of the risk of such conditions, the parties agree that there are limited circumstances under which Design/Builder may be entitled to an increase in the Lump Sum Price due to conditions that are unknown, concealed, and unforeseeable conditions, as set forth in this Article.

Design/Build –
THEA Project No.
THEA Contract No.

16.2.2 If subsurface or otherwise concealed conditions are encountered at the Project site which are:

- (a) unknown to Design/Builder; and
- (b) not reasonably foreseeable or anticipated by Design/Builder in view of Design/Builder's representations and warranties contained in Article 2.
- (c) which are either:
 - (i) materially different from those indicated in any respective soils reports provided; or
 - (ii) materially different from those ordinarily found to exist and generally recognized and inherent in construction activities of the character provided for in the Contract at the specific locations where the differing conditions are encountered, then Design/Builder may seek an adjustment to the Lump Sum Price and/or an extension of the Contract Time, in accordance with the provisions of this Article 16, and provided that Design/Builder shall give notice to the Authority in writing before the conditions are disturbed and in no event later than seven (7) calendar days after Design/Builder discovers or observes the conditions.
 - (iii) Upon receipt of said notice, Authority shall investigate such conditions and make a determination as to whether the conditions meet the requirements set forth in Paragraph 16.2. Authority shall notify Design/Builder in writing within fourteen (14) days of its determination. If Authority determines that the conditions do not meet the requirements of Paragraph 16.2, Authority shall specify the reasons for that determination.

16.2.3 Examples of conditions that would not be reasonably foreseeable and thus may qualify for an adjustment in the Lump Sum Price, and/or an extension of the Contract Time include: buried vehicle bodies, which reasonably require Design/Builder to utilize equipment to remove said vehicles which was not contemplated by Design/Builder as necessary to perform the Work; burial or archeological finds; dump or garbage pits that contain more than fifty (50) cubic yards of refuse to be hauled off of the Project site; drain fields; storage tanks, voids or tunnels; or rock formations which require "jack hammering" or "blasting" to excavate or remove; and groundwater higher than three (3) feet below existing ground level, which cannot be diverted or removed through the use of four-inch (4") pumps on the Project site.

16.2.4 Examples of conditions that are reasonably foreseeable under the Contract, and do not qualify for an adjustment in either the Lump Sum Price and/or an extension of the Contract Time include: pull boxes, utility manholes and garbage pits containing less than fifty (50) cubic yards of material.

16.3 Conditions for Design/Builder Claims. Claims by the Design/Builder against the Authority are subject to the following terms and conditions:

- (a) All Design/Builder claims against the Authority shall be initiated by a written claim

Design/Build –
THEA Project No.
THEA Contract No.

submitted to the Authority's Representative. Such claim must be received by the Authority's Representative no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim, and must set forth in detail all known facts and circumstances supporting the claim and such claim must designate whether the claim affects the Design Services and Work;

- (b) The Design/Builder and the Authority shall continue their performance hereunder regardless of the existence of any claims submitted by the Design/Builder;
- (c) In the event the Design/Builder seeks to make a claim for an increase in the Lump Sum Price, as a condition precedent to any liability of the Authority therefore, the Design/Builder shall strictly comply with the requirements of Subparagraph 16.3(a) above, and such claim shall be made by the Design/Builder before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Design/Builder of any claim for additional compensation;
- (d) In connection with any claim by the Design/Builder against the Authority for an increase in the Lump Sum Price, any liability of the Authority shall be strictly limited to the actual costs incurred by the Design/Builder and a total mark-up of no greater than 15% for all overhead, all indirect costs, and profit of Design/Builder and its Subcontractors, suppliers, consultants and agents, and shall in no event include consequential damages of the Design/Builder. The Authority shall not be liable to the Design/Builder for claims of third parties, including Subcontractors, unless and until liability of the Design/Builder has been established therefore in a court of competent jurisdiction;
- (e) In the event the Design/Builder should be delayed in performing any task which at the time of the delay is then critical or which during the delay becomes or may become critical to the extent attributable to any act or omission by the Authority or someone acting in the Authority's behalf, or by Authority-authorized Change Orders, severe weather, tornados or tropical events as identified by the National Weather Service, unavoidable accidents beyond Design/Builder's control, fire, active interference by third parties with Design/Builder's duties on- site, or other acts of God, all relating to the Project site, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the Authority upon the written claim of the Design/Builder, in accordance with Subparagraph 16.3(a), as the Design/Builder's sole remedy. A task is critical within the meaning of this Subparagraph 16.3(e) if, and only if, said task is on the critical path of the project schedule so that a delay in performing such task will delay the Substantial or Final Completion of the Project. Any claim for an extension of time by the Design/Builder shall strictly comply with the requirements of Subparagraph 16.3(a) above. If the Design/Builder fails to make such claim as required in this Subparagraph 16.3(e), any claim for an extension of time shall be waived.
- (f) An extension of the Contract Time will be the Design/Builder's sole remedy for any delays of Design/Builder, whether or not delays are caused by Authority, Authority's Representative and whether or not such delays are foreseeable, unless delays are caused by acts of the Authority which constitute active

interference with Design/Builder's performance of the Work, and only to the extent such acts continue after the Design/Builder furnishes the Authority with written notice of such interference. In no other event shall the Design/Builder be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Authority's exercise of any of its rights or remedies under the Contract Documents, including, without limitation, ordering changes in the Work, direct suspension, or correction of the Work and, regardless of the extent or frequency of the Authority's exercise of such remedies, shall not be construed as active interference with the Design/Builder's performance of the Work.

- (g) If the Design/Builder submits a schedule or progress report indicating, or otherwise expressing an intention to achieve completion of the work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Authority to the Design/Builder for any failure of the Design/Builder to so complete the Work shall be created or implied. However, Authority agrees to reasonably cooperate with requests of Design/Builder to accelerate the Work.

ARTICLE 17

Uncovering and Correcting Work

- 17.1 Design/Builder Not to Cover Work Contrary to Requirements.** If any of the Work is covered, concealed or obscured contrary to the written request of Authority, or contrary to any provision of the Agreement, said Work shall, if required by Authority, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.
- 17.2 Authority's Right to Order Uncovering of Any Work.** If any of the Work is covered, concealed or obscured by Design/Builder in a manner consistent with its obligations under this Agreement, it shall, if required by Authority, be uncovered for inspection. If such Work conforms strictly with the Agreement, the cost of uncovering and proper replacement shall by Change Order be charged to Authority. If such Work does not strictly conform with the Agreement, Design/Builder shall pay the cost of uncovering and proper replacement.
- 17.3 Duty to Correct Rejected Work.** Design/Builder shall immediately proceed to correct Work rejected by Authority as defective or failing to conform to the Agreement. Design/Builder shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections made necessary thereby.
- 17.4 Duty to Correct Defective Work Discovered After Completion.** In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following beneficial occupancy or Final Completion, whichever occurs first, upon written direction from Authority. This obligation shall survive final payment by Authority and termination of the Agreement.

17.5 No Period of Limitation Established. Nothing contained in Paragraph 17.4 shall establish any period of limitation with respect to other obligations, which Design/Builder has under the Agreement. Establishment of the one-year time period in Paragraph 17.4 above relates only to the duty to Design/Builder to specifically correct the Work. The statute of limitations relating to construction and design applies.

17.6 Authority's Option to Accept Defective Work. Authority may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, and if the Design/Builder has refused to promptly remove and correct the defective work, the Lump Sum Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work. Authority shall be entitled to such reduction in the Lump Sum Price regardless of whether Authority has, in fact, removed and corrected such defective Work. If the unpaid balance of the Lump Sum Price, if any, is insufficient to compensate Authority for the acceptance of defective or nonconforming Work, Design/Builder shall, upon written demand from Authority, pay Authority such additional compensation for accepting defective or nonconforming Work.

ARTICLE 18

Suspension and Termination

18.1 Suspension of Performance. Authority may for any reason whatsoever suspend performance under the Contract. Authority shall give written notice of at least five (5) days of such suspension to Design/Builder specifying when such suspension is to become effective.

18.2 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Authority, Design/Builder shall incur no further expense or obligations in connection with the Agreement, and Design/Builder shall cease its performance. Design/Builder shall also, at Authority's direction, either suspend or assign to Authority any of its open or outstanding subcontracts or purchase orders.

18.3 Claim for Costs of Suspension. In the event Authority directs a suspension of performance under this Article 18, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Agreement, Authority shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- (a) Demobilization and remobilization, including such costs paid to Subcontractors;
- (b) Preserving and protecting Work in place;
- (c) Storage of material or equipment purchased for the Project, including insurance thereon; and
- (d) Performing in a later, different, or during a longer, time frame than that contemplated by this Contract.
- (e) The costs of rental equipment which may not be retendered during the period of suspension.

- (f) The cost of labor hired specifically for this job who cannot be placed on other projects but whose presence is reasonably required to complete the project upon recommencement.

18.4 Resumption of Work after Suspension. If Authority lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Agreement unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

18.4.1 Design/Builder reserves the right to change its personnel for the performance of the Work, to the extent such personnel are not reasonably available upon the resumption of the Work; provided that Authority may direct by Change Order that such personnel be retained on the Project. If Authority directs such retention, Authority shall pay Design/Builder the reasonable costs incurred by Design/Builder to keep and/or make such personnel available upon the resumption of the Work, including necessary stand-by costs.

18.5 Termination by Design/Builder for Prolonged Suspension of Performance. If performance of the Agreement is stopped for a period of ninety (90) consecutive days at the direction of Authority pursuant to Paragraph 18.1 or by an order of any court or other public authority, or as a result of any act of government, and provided that such suspension by Authority or public authority is through no fault of Design/Builder or any person or entity working directly or indirectly for Design/Builder, Design/Builder may, upon ten (10) days' written notice to Authority, terminate performance under the Agreement and recover from Authority on the terms and conditions and in the amounts provided in Paragraph 18.7 below.

18.6 Termination by Design/Builder for Cause. If Authority shall persistently or repeatedly fail to perform any material obligation to Design/Builder for a period of thirty (30) days after receiving written notice from Design/Builder of its intent to terminate hereunder, Design/Builder may terminate performance under the Agreement by written notice to Authority. In such event, Design/Builder shall be entitled to recover from Authority on the terms and conditions and in the amounts as though Authority had terminated Design/Builder's performance under the Agreement for convenience pursuant to Paragraph 18.7 below.

18.7 Termination by Authority for Convenience. Authority may, for any reason whatsoever, or without reason, terminate performance under the Agreement by Design/Builder for convenience. Authority shall give at least thirty (30) days prior written notice of such termination to Design/Builder specifying when termination becomes effective. Design/Builder shall incur no further obligations in connection with the Agreement and Design/Builder shall stop Design Services and the Work when such termination becomes effective. Design/Builder shall also, at Authority's direction, either terminate or assign to Authority outstanding purchase orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts. Authority may direct Design/Builder to assign Design/Builder's rights, title and interest under terminated orders or subcontracts to Authority or its designee. Design/Builder shall transfer title and deliver to Authority such completed or partially completed Design Documents, Work and materials, equipment, parts, fixtures,

information and appropriate contract rights as Design/Builder has.

18.8 Submission of Termination Claim and Compensation for Termination for Convenience. When terminated for convenience, Design/Builder shall be compensated as follows:

- (a) Design/Builder shall submit a termination claim to Authority specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Authority. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Authority shall pay Design/Builder an amount derived in accordance with Subparagraph (a) below;
- (b) Authority and Design/Builder may agree to the compensation, if any, due to Design/Builder hereunder;
- (c) Absent agreement to the amount due to Design/Builder, Authority shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:
 - (i) That portion of the Lump Sum Price representing the value of the Design Services and the Work, as reflected on the schedule of values, performed by Design/Builder prior to the date of termination, which is completed and accepted by Authority for which Design/Builder has not been previously paid;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Design Services and the Work, and in terminating Design/Builder's performance, plus a fair and reasonable allowance for direct job site overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if Authority can show that Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and
 - (iii) Reasonable costs of settling and paying costs and claims arising out of the termination of subcontractors or orders pursuant to Paragraph 18.7 above. These costs shall not include amounts paid in accordance with other provisions hereof.

In no event shall Design/Builder be entitled to recover anticipated profits or other consequential damages from Authority on account of a termination for convenience or an erroneous termination for cause, as described below. The total sum to be paid Design/Builder under this Paragraph shall not exceed the Lump Sum Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.9 Termination by Authority for Cause. If Design/Builder does not perform the Work, or

Design/Build –
THEA Project No.
THEA Contract No.

any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Agreement, then Authority may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Work by methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Work is finished.

18.10 Payments to Design/Builder after Termination for Cause. Upon a termination by Authority for cause, if the unpaid balance of the Lump Sum Price exceeds the cost of finishing the Work, including compensation for Authority's additional costs and expenses of every nature whatsoever made necessary thereby, such excess shall be paid to Design/Builder. If such costs exceed the unpaid balance, Design/Builder shall pay the difference to Authority. This obligation for payment shall survive the termination of the Agreement.

18.11 Scrutinized Companies. For Agreements \$1,000,000 and greater, if the Authority determines the Design/Builder submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Authority shall either terminate the Agreement after it has given the Design/Builder notice and an opportunity to demonstrate the Authority's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or maintain the Agreement if the conditions of Section 287.135(4), Florida Statutes are met.

ARTICLE 19

Ownership Of Documents

19.1 Documents Authority's Property. The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall become and be the sole property of Authority. Any documents furnished by Authority shall remain the property of Authority. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Authority for its records; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion of all of such documents on other projects without Authority's prior written authorization.

ARTICLE 20

Indemnification

20.1 Design/Builder Indemnification of Authority for Personal Injury or Damage to Tangible Property. Design/Builder shall indemnify and hold Authority and Authority's Representative harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and

Design/Build –
THEA Project No.
THEA Contract No.

expenses, in connection with Design/Builder's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by Design/Builder or anyone for whose acts Design/Builder may be liable.

20.2 Design/Builder Indemnification of Authority for Violations of Laws, Environmental Requirements and Licensing Requirements. Design/Builder shall indemnify and hold harmless Authority and its affiliates, officers, directors, and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or resulting from:

- (a) Any violation by Design/Builder, its Subcontractors, representatives, employees, and agents of any municipal, state or federal laws, rules, or regulations applicable to the performance of its obligations under the Agreement;
- (b) Environmental violations or contamination from hazardous substances, hazardous wastes and emissions or other substances or chemicals regulated by any applicable environmental laws or regulations and to the extent caused by any willful misconduct, negligent act or omission, or legal violation by Design/Builder, its Subcontractors, Suppliers, representatives, employees, or agents;
- (c) The failure of any of Design/Builder's employees, agents, representatives, Suppliers, or Subcontractors to obtain and maintain the required skills, licenses, certificates and permits mandated by applicable federal, state or local governing authorities with jurisdiction over construction, fabrication, environmental, health and safety matters of the Project.

20.3 Hazardous Materials. In the event Design/Builder discovers hazardous or contaminated materials, including but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive materials ("Hazardous Materials"), Design/Builder shall stop all Work in connection with such hazardous condition and in any area affected thereby, and notify Authority of the discovery of said condition. Design/Builder shall strictly comply with all laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over Design/Builder's Activities on the Project relating to Hazardous Materials. Design/Builder shall comply with all laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over the discovery of hazardous or contaminated material. Design/Builder shall secure the Work site to prevent access by unauthorized personnel. If Design/Builder fails to comply with this Paragraph 20.3 or contaminated, hazardous or suspected contaminated or hazardous material is knowingly transported (either on or off site) by Design/Builder without notice to Authority, Design/Builder shall be solely responsible for all costs and fines as a result of such failure or knowing transportation.

20.4 Design Professional Liability: Design/Builder (and Design/Builder's design sub-contractor(s)) shall indemnify and hold harmless the Authority, and its officers and

Design/Build –
THEA Project No.
THEA Contract No.

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 conduct of the Design/Builder's design professionals and other persons employed or utilized by the Design/Builder's design professional in the performance of the contract.

- 20.5 Patent or Copyright:** The Design/Builder shall indemnify and hold harmless, and defend the Authority and the Authority's Board of Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, claims, demands or actions at law or in equity, including court costs and attorneys' fees that may hereafter at any time be made or be brought by anyone arising out of any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by the Design/Builder during or after completion of the Work. These obligations shall survive acceptance of any goods, services, and/or performance and payment therefore by the Authority.

ARTICLE 21

Insurance

- 21.1 Required Coverage and Limits.** Design/Builder shall have and maintain the insurance described in Attachment 2, Insurance Requirements, Coverages and Limits as contained in **Exhibit 1, RFP Document** attached hereto and incorporated herein by reference provide the limits of coverage set forth in the aforementioned Attachment 2.
- 21.2 Proof of Insurance.** Design/Builder shall provide Authority with certificates of insurance naming Authority as an additional insured (except for professional liability insurance) or certified copies of the policies required by Authority, certifying that all insurance is in force, within ten (10) days after the Agreement becomes effective or on the date construction is commenced, whichever occurs first. Certificates of insurance evidencing the coverages required by the Agreement shall contain an endorsement requiring thirty (30) days' written notice to Authority prior to any cancellation or alteration of said coverage. Said coverage shall be written by an insurer properly licensed in Florida and having a Best's rating of A or A+ and shall be in a form reasonably acceptable to Authority. Insurance required by this Agreement must apply separately to each insured against whom a claim is made or suit is brought, except with respects to the limits of the company's liability. Said Certificate of Insurance shall be attached hereto and made a part hereof as **Exhibit 6**.
- 21.3 Increases in Coverage.** At the request of Authority, Design/Builder shall increase the above insurance limits or obtain additional coverage at Authority's expense.
- 21.4 Subrogation.** Authority and Design/Builder waive all rights against each other and against the respective consultants, subcontractors, agents and employees of the other for damages covered by **Exhibit 6**, Property Insurance except that neither waives any right to seek to recover from the other deductibles or other amounts required to be paid in self-insurance before such property coverage becomes effective and neither waives any right as they have to proceeds of such insurance held by Design/Builder. Further, Authority does not waive its subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the

Design/Build –
THEA Project No.
THEA Contract No.

Work. Authority and Design/Builder each shall require appropriate similar waivers from their consultants, subcontractors and agents.

DRAFT

ARTICLE 22

Surety Bonds

- 22.1 Performance Bond and Payment Bond.** Within ten (10) days of execution of this Agreement, Design/Builder must furnish separate performance and payment bonds to Authority. Each bond shall set forth a penal sum in an amount not less than the Lump Sum Price. Each bond furnished by Design/Builder shall incorporate by reference the terms of the Agreement as fully as though they were set forth verbatim in such bonds. In the event the Lump Sum Price is adjusted by Change Order executed by Design/Builder, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by Design/Builder shall be in form suitable to Authority and shall be executed by a surety, or sureties, properly licensed in Florida and having a Best's rating of A. Design/Builder recognizes and acknowledges that the performance bond must cover all services (design and construction) to be provided by the Design/Builder under this Agreement. Said Performance Bond shall be attached hereto and made a part hereof as **Exhibit 7**. Said Payment Bond shall be attached hereto and made a part hereof as **Exhibit 8**.

ARTICLE 23

Miscellaneous Provisions

- 23.1 Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Judicial Circuit of Hillsborough County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

The parties agree that in the event that it should become necessary for either party to employ an attorney to enforce any of its rights hereunder, the prevailing party shall be entitled to reimbursement of all costs and expenses, including attorney's fees and paralegal fees (at both trial and appellate court levels) which may reasonably be incurred or paid at any time or times by it in connection therewith.

- 23.2 Successors and Assigns.** Authority and Design/Builder bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Contract.
- 23.3 Assignment.** Design/Builder shall not assign the Agreement, or any part of the Agreement, without prior written consent of Authority.
- 23.4 Notices.** Any notice required to be given herein shall be deemed to have been given to the other party if (1) given by first class mail, registered or express mail, courier service, or hand delivery; or (2) by fax, provided that such notice is also confirmed by first class

Design/Build –
THEA Project No.
THEA Contract No.

mail, registered or express mail, courier service, or hand delivery to the following addresses:

FOR AUTHORITY:

FOR DESIGN/BUILDER:

All notices shall be effective upon receipt.

- 23.5 Publicity.** No information relative to the existence or the details of the Design Services or the Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Authority's prior written consent.
- 23.6 Severability.** In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.
- 23.7 Audit Right.** Authority shall have the right to audit the books, records, and accounts of Design/Builder that are related to this Project. Design/Builder shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.
- 23.8 Retention of Record.** Design/Builder shall preserve and make available, at reasonable times for examination and audit by Authority, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statue.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after Project Close Out of this Agreement. "Project Close Out" shall mean upon the Authority's final acceptance, auditing and vouchers. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Authority to be applicable to Design/Builder's records, Design/Builder shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Design/Builder. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Authority's disallowance and recovery of any payment upon such entry.

a minimum period of three (3) years after Project Close Out and for any longer period of time as may be required by law or good management practice. "Project Close Out" shall mean upon the Authority's final acceptance, auditing and vouchers.

23.9 Nondiscrimination, Equal Employment Opportunity, and Americans with

Design/Build –
THEA Project No.
THEA Contract No.

Disabilities Act. Design//Builder shall not unlawfully discriminate against any person in its operation and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the American with Disabilities Act (ADA) In the course of providing any services funded in whole or in part by Authority, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

- 23.9.1** Design/Builder's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.
- 23.9.2** Design/Builder shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability In employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Design/Builder shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: Employment, upgrading demotion, transfer, recruitment or recruitment advertising, layoff, terminal, rates of pay, other forms of compensation, terms and conditions of employment, training (Including apprenticeship), and accessibility.
- 23.9.3** Design/Builder shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 23.9.4** Design/Builder shall in all solicitations or advertisements for employees placed by or on behalf of Design/Builder state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin, or state that Design/Builder is an "Equal Opportunity Employer".
- 23.9.5** Design/Builder agrees to and shall post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of these Equal Employment Opportunity Clauses.

23.10 Small Business Enterprise Program (SBE).

- 23.10.1** The Authority has adopted a Small Business Enterprises Policy for the purpose of increasing contracting and procurement opportunities for SBE's. A copy of the SBE Policy is appended to the General Provisions.
- 23.10.2** Design/Builder understands that each SBE firm utilized on the Project must be certified by an agency acceptable to the Authority under its SBE Policy. Any proposed

Design/Build –
THEA Project No.
THEA Contract No.

changes of participants from that listed on “SBE Form B” shall be approved by the Authority.

23.10.3 By executing this Agreement, the Design/Builder covenants and agrees that it shall use its good faith efforts to ensure that SBE's have the maximum opportunity to compete and perform subcontracts to achieve the participation goal. Design/Builder has submitted “SBE Form B”, which is its “Anticipated SBE Participation Statement” and “SBE Form C”, which is its “SBE Outreach Action Plan” for including SBE Firms on the project. Failure of the Design/Builder to achieve the SBE participation committed to on “SBE Form B” may be a material breach of the Agreement.

23.10.4 In the event the Design/Builder is found to be in non-compliance with the Authority's SBE Policy, or fails to perform good faith efforts to include SBE Firms on the project to meet or exceed Design/Builder's commitment as submitted with its bid on “SBE Form B”, “Anticipated SBE Participation Statement”, the Authority may impose sanctions against the Design/Builder including, but not limited to:

- (i) Withholding payments to the Design/Builder under the Contract until the Design/Builder remedies the “Anticipated SBE Participation Statement” deficiency.
- (ii) Termination of the Contract.
- (iii) Debarment of the Design/Builder from bidding on future Authority projects.

23.10.5 The Design/Builder understands that it is the responsibility of the Authority to monitor Design/Builder's compliance with the SBE Policy. In that regard, the Design/Builder agrees to furnish monthly reports, using “SBE Form D”, to the Authority on the progress of its SBE participation.

23.11 Public Entity Crimes Act. Design/Builder represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, Design/Builder or other provider and 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 Authority, may not submit a bid on a contract with Authority for the construction or repair of a public building or public work, may not submit bids on leases of real property to Authority, may not be awarded or perform work as a contractor, supplier, subcontractor, or Design/Builder under a contract with Authority and may not transact any business with Authority in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Authority's competitive procurement activities.

23.11.1 In addition to the foregoing, Design/Builder further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the

Design/Build –
THEA Project No.
THEA Contract No.

amount of money involved or whether Design/Builder has been placed on the convicted vendor list.

- 23.12 Truth-in-Negotiation.** Signature of this Agreement by Design/Builder shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the Authority determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.
- 23.13 Drug-Free Workplace.** It is a requirement of the Authority that it enter into contracts only with firms that certify the establishment of a drug-free work place. Execution of this Agreement by Design/Builder shall also serve, as Design/Builder's required certification that it either has or that it will establish a drug-free work place.
- 23.14 Independent Contractor.** Design/Builder is an independent contractor under this Agreement and services provided by Design/Builder shall be subject to the supervision of Design/Builder. In providing the services, Design/Builder or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the Authority. The parties expressly acknowledge that it is not their intent to create any rights obligations in any third person or entity under this Agreement.
- 23.15 Contingency Fee.** Design/Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design/Builder, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Design/Builder, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Authority shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.
- 23.16 Waiver of Breach and Materiality.** Failure by Authority to enhance any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 23.17 Design/Builder's Record Retention.** Design/Builder and its sub-contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the Authority and the agencies funding grant funds for three (3) years after "Project Close Out" shall mean upon the Authority's final acceptance, auditing and vouchers.

Design/Build –
THEA Project No.
THEA Contract No.

23.18 Severability. If any provision of the Contract Documents shall be held invalid, it is intent of the Parties that it shall be deemed severable and that the remaining contract continues in full force and effect.

23.19 Public Records. All documents, papers, letters, or other material associated with the Project are subject to the applicable provisions of Chapter 119, Florida Statutes.

23.20 E-Verify System. Design/Builder shall utilize the U.S. Department of Homeland Security's E-Verify System (www.uscis.gov) in accordance with the terms governing use of the system to confirm the employment eligibility of:

- (a) All persons employed by the Consultant during the term of the Contract to perform employment duties within Florida; and
- (b) All persons, including subcontractors, assigned by the Consultant to perform work pursuant to this Agreement with the Authority.

23.20.1 Design/Builder shall provide proof of registration in the E-Verify system to the Authority upon execution of this Agreement.

23.21 Project Federal Funded. Design/Builder acknowledges this Project is federally funded through a TIGER grant from the Federal Highway Administration (FHWA) and as such is subject to FHWA oversight. Design/Builder agrees to comply with all grant funding requirements that may apply for this Project. These requirements may include, but are not limited to, paying prevailing wages, submitting certified payroll forms, opening Design/Builder's files and records to auditing and other requirements that may apply with local, state or federal grant agencies that may be providing funding for this Project.

ARTICLE 24

Dispute Resolution

24.1 Disputes. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the Authority Board shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under the Contract by reason of the prosecution and fulfillment of the services described and the character, quality, amount and value thereof. The Board's decision upon all claims, questions and disputes shall be final, subject to Design/Builder's right to seek judicial review of any Board decision.

24.2 Work Continuance and Payment. Unless otherwise agreed in writing, the Design/Builder shall continue the Work and maintain the approved schedules during any dispute proceedings. If the Design/Builder continues to perform, the Authority shall continue to make payments in accordance with this Agreement.

24.3 Multiparty Proceeding. The parties agree that all parties necessary to resolve a dispute shall be parties to the same dispute proceeding.

[REMAINDER OF THIS PAGE LEFT BLANK]

Design/Build –
THEA Project No.
THEA Contract No.

IN WITNESS WHEREOF, each party is signing this Agreement on the date stated below that party's signature.

**TAMPA-HILLSBOROUGH COUNTY
EXPRESSWAY AUTHORITY**

By: _____

Attest: _____
Joseph Waggoner, Executive Director

Date: _____

Date: _____

Signed, sealed and delivered in the presence of:

Witnesses:

(Printed name)_____

(Printed name)_____

Authorization as to availability of funds: Approved as to form, content and legality:

Date: _____

Date: _____

(Design/Builder must indicate whether Corporation, Partnership, Company or Individual).

The person signing shall in his/her own handwriting, sign the Company's name, his/her own name and his/her title. Where the person signing for a corporation is other than the President or Vice President, he/she must by affidavit, show his/her authority to bind.

By: _____

Date: _____

Signed, sealed and delivered in the presence of:

Witnesses:

(Printed name)_____

(Design/Builder's Seal)

(Printed name)_____