DESIGN/BUILD AGREEMENT
PART 1

BETWEEN

SEMINOLE TRIBE OF FLORIDA
a Federally Recognized Indian Tribe Under 25 U.S.C. §5123
("OWNER")

AND

_____
a _____
("DESIGN/BUILDER")

FOR

_____ (_____)
_____ **SEMINOLE INDIAN RESERVATION**
("Project")

SAMPLE

THIS AGREEMENT (the "Agreement") is made, entered into and effective as of the date of the last signature of this Agreement ("Effective Date") by and between the SEMINOLE TRIBE OF FLORIDA, a federally recognized Indian Tribe under 25 U.S.C. §5123 ("OWNER") and _____, a _____ ("DESIGN/BUILDER").

PART 1 OF AGREEMENT – PRELIMINARY DESIGN AND BUDGET

A. Identification information

OWNER:
SEMINOLE TRIBE OF FLORIDA,
A FEDERALLY RECOGNIZED INDIAN
TRIBE UNDER 25 U.S.C §5123

DESIGN/BUILDER:

OWNER ADDRESS:
6300 STIRLING ROAD,
HOLLYWOOD FLORIDA 33024
PHONE: (954) 966-6300

DESIGN/BUILDER ADDRESS:

OWNER REPRESENTATIVE:
_____
DIRECTOR OF THE CONSTRUCTION
MANAGEMENT DEPARTMENT
5700 GRIFFIN ROAD
DAVIE, FLORIDA 33314
PHONE: (954) 966-6300
E-MAIL:

DESIGN/BUILDER REPRESENTATIVE:

PROJECT NAME:
_____

ENGINEER NAME AND ADDRESS:

PROJECT LOCATION:
_____ SEMINOLE INDIAN
RESERVATION

SAMPLE

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Project is the design and total construction for which DESIGN/BUILDER is responsible under Part 1, including all professional design services and construction services required to complete such design and construction.

1.1.2 The Work comprises the completed construction designed under the Project and includes all labor, materials, equipment, permitting and other services necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.3 Capitalized terms which are not defined herein shall have their meaning as set forth in Part 2 of the Agreement; however, Part 2 shall not otherwise be in force and effect unless and until it is executed by OWNER and DESIGN/BUILDER in no provisions thereof (other than necessary definitions) shall be applicable between the parties until then.

1.2 OWNERSHIP AND USE OF DOCUMENTS

Any drawings, specifications and other documents furnished by DESIGN/BUILDER, or any design professionals retained by DESIGN/BUILDER shall be the property of OWNER. CONTRACTOR will provide all drawings, specifications, and documents, including electronic versions, produced as a part of the Work under this Agreement upon written request of OWNER. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

SAMPLE

ARTICLE 2
DESIGN/BUILDER

2.1 SERVICES AND RESPONSIBILITIES

Design services shall be performed by qualified and duly licensed in the State of Florida design professionals selected and paid by DESIGN/BUILDER. The professional obligations of such persons shall be undertaken and performed in the interest of DESIGN/BUILDER and OWNER. Construction services shall be performed by qualified licensed construction contractors, selected, and paid by DESIGN/BUILDER and acting in the interests of DESIGN/BUILDER and OWNER. All such contractors and suppliers are subject to the prior approval of OWNER.

2.2 BASIC SERVICES

2.2.1 DESIGN/BUILDER's Basic Services as more fully described below include the tasks associated in Attachment A and Attachment B, attached hereto and incorporated herein by reference ("Basic Services").

2.2.2 DESIGN/BUILDER shall review with OWNER, OWNER's program and Conceptual Design pursuant to **Attachment A Exhibit 1 - Conceptual Plan** to ascertain requirements of the Project and shall review such requirements with OWNER.

2.2.3 DESIGN/BUILDER shall provide, after consultation with OWNER, a preliminary evaluation of the program and Project budget.

2.2.4 DESIGN/BUILDER shall review with OWNER alternative approaches to design and construction of the Project.

2.2.5 DESIGN/BUILDER shall provide a list of subconsultants and professionals that will furnish services under the terms of this Agreement on **Exhibit E**. DESIGN/BUILDER shall furnish services of licensed design professionals, geotechnical engineers, and other consultants when such services are required or deemed necessary by OWNER. Such services may include, as required, applicable test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, and other operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

2.2.6 DESIGN/BUILDER shall submit to OWNER a proposal (the "Proposal") including the completed Design Documents, a statement of the proposed Project sum including such alternative Project cost structures as OWNER may request, including but not limited to cost of the Work, DESIGN/BUILDER's fee, and Guaranteed Maximum Price (GMP).

The Proposal shall also include the deliverables as stated in **Attachment A** and all other information necessary to complete Part 2 of the Agreement. If the Proposal is accepted by OWNER, the parties hereto shall then execute Part 2. Modifications to the Proposal before execution of Part 2 shall be recorded in writing as an addendum and be identified in the Contract Documents of Part 2.

SAMPLE

ARTICLE 3
OWNER

3.1 OWNER's Representative for purposes of this Agreement shall be the Director of the Construction Management Department of the Seminole Tribe of Florida (as the person with such title may change from time to time), unless and until OWNER advises DESIGN/BUILDER in writing that a different person shall assume the responsibilities of OWNER's Representative, at which time the person so designated shall become OWNER's Representative for purposes of this Agreement.

3.2 OWNER shall provide information regarding requirements for the Project, including but not limited to OWNER's design objectives, constraints, and criteria.

3.3 While any budget received from OWNER prior to the commencement of Basic Services shall not constitute a fixed limit of construction cost (unless such limit has been agreed to in writing by DESIGN/BUILDER), the budget is a material term of the agreement and must not be disregarded.

3.4 OWNER or its authorized Project representative shall examine the documents submitted by DESIGN/BUILDER and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of design and construction.

3.5 OWNER shall cooperate with DESIGN/BUILDER in identifying required permits, licenses, and inspections, and shall take appropriate action with reasonable promptness.

3.6 Prior to commencement of Basic Services, OWNER shall furnish a legal description and a land survey of the site, reflecting known information. DESIGN/BUILDER shall be entitled to rely upon them, except to the extent that DESIGN/BUILDER is aware that any of same are incorrect.

3.7 OWNER shall furnish required information and shall render decisions with reasonable promptness to avoid delay in the orderly progress of DESIGN/BUILDER's services.

ARTICLE 4
TIME

4.1 DESIGN/BUILDER has the professional background, skill, and qualifications, as well as the technical expertise necessary to provide the professional services required by OWNER for the Project and shall complete the same in the time provided herein.

4.2 DESIGN/BUILDER shall complete Basic Services, as found in Article 2 of this Agreement, in **_____ ( ) calendar days** from the date of commencement stated in a Notice to Proceed issued to DESIGN/BUILDER, subject to authorized adjustments and to delays not caused by DESIGN/BUILDER.

4.3 Liquidated Damages will be applicable at _____ ***Dollars and Zero Cents ($)*** for each calendar day that DESIGN/BUILDER is late in completion of the Basic Services. Such damages shall be credited against the last payment due to Design/Builder under this Part 1 of the Agreement or, if the damages exceed the amount of the last payment, then the balance shall be applied against the first payment(s) due under Part 2 of the Agreement (if applicable) until fully credited to OWNER. DESIGN/BUILDER acknowledges that delayed performance will damage OWNER, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in this Agreement are not intended to be a penalty and are solely intended to compensate for damages.

ARTICLE 5
COMPENSATION AND PAYMENT

5.1 OWNER shall compensate DESIGN/BUILDER for Basic Services a sum not-to-exceed _____ ($), inclusive of _____ services for _____ up to _____ ($) and allowable reimbursable expenses in the amount of _____ ($) as detailed on Exhibit A-1 and Exhibit B-1.

SAMPLE

5.2 As a condition precedent to payment, DESIGN/BUILDER must submit to OWNER an itemized application for payment with accompanying backup attachments for the Work completed ("Application for Payment"). OWNER shall be under no obligation to pay any amounts under this Agreement, until receipt, review, and approval of the same.

5.3 The Application for Payment shall be accompanied by an unconditional waivers and releases of any claim for payment excluding unpaid retainage from DESIGN/BUILDER for Work done and materials furnished under the current Application for Payment in such form as may be required by OWNER, and an unconditional waivers and releases of any claim for payment excluding unpaid retainage from all subcontractors and subconsultants for Work done and materials furnished under the prior month's Application for Payment in such form as may be required by OWNER.

5.4 Provided that the Application for Payment complies with the foregoing and approved by OWNER, OWNER shall remit payment to DESIGN/BUILDER no later than thirty (30) calendar days after approval of the application.

ARTICLE 6
INDEMNITY AND INSURANCE

SAMPLE

6.1 DESIGN/BUILDER shall purchase and maintain errors and omissions insurance coverage and/or other insurance as specified in **Exhibit C** by carriers licensed to do business in the State of Florida. The errors and omissions insurance shall provide coverage for any negligence or any liability arising from DESIGN/BUILDER's errors, omissions, or negligent acts. DESIGN/BUILDER shall provide evidence that such insurance shall include "tail coverage" or otherwise remain in force for the applicable statute of limitations period for such Project. DESIGN/BUILDER shall notify OWNER thirty (30) calendar days prior to any material change or cancellation of such insurance. Such insurance shall provide coverage not less than the limits specified in Exhibit C. At any time, OWNER may request that DESIGN/BUILDER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit C. If so requested and if commercially available, DESIGN/BUILDER shall obtain, and shall require DESIGN/BUILDER's contractors or consultants to obtain such additional insurance coverage, increased limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit C will be supplemented to incorporate these requirements.

6.2 To the fullest extent permitted by law, DESIGN/BUILDER, on behalf of itself and its employees, shall indemnify and hold harmless OWNER for any liability, loss, injury, death, damages, actions, expenses and claims against OWNER or incurred by OWNER arising as the result of the fault, breach of contract, or negligence of DESIGN/BUILDER or its subcontractor or subconsultants relating to any of the Basic Services to be provided by DESIGN/BUILDER under this Agreement. Such indemnity shall include reimbursement to OWNER for the amount of all reasonable expenses, including attorney's fees, paid, or incurred for the defense against any suit or claim asserted against OWNER on account of any such damage, injury, death or claim or incurred in the enforcement of the indemnity contained herein. DESIGN/BUILDER further agrees to indemnify, defend, and hold harmless OWNER from any and all claims, losses, demands, attorneys' fees, costs and damages, including claims from third parties that OWNER may suffer

as a result of any personal injury, property damage, and/or economic loss arising out of this Agreement.

ARTICLE 7
TERMINATION OF THE AGREEMENT

7.1 Upon seven (7) calendar days written notice, OWNER or DESIGN/BUILDER shall have right to cancel and terminate Part 1 of the Agreement should the other party fail to substantially perform its obligations in accordance with the terms and conditions of the Agreement, through no fault of the party initiating the termination.

7.2 Upon seven (7) calendar days' written notice, OWNER shall have the right to cancel and terminate Part 1 of the Agreement at any time whether or not a default exists hereunder, and OWNER shall incur no liability to DESIGN/BUILDER or any other person by reason of such cancellation except that OWNER shall pay to DESIGN/BUILDER full payment for all Basic Services (including any services performed by DESIGN/BUILDER's contractors or subconsultants, as well as any services performed by DESIGN/BUILDER itself) fully performed by DESIGN/BUILDER up to the date of such termination plus all Reimbursable Expenses incurred based upon a progress-based method of calculation. DESIGN/BUILDER shall not be entitled to compensation for incomplete work or lost profit.

7.3 In the event of any termination of this Agreement, DESIGN/BUILDER shall forthwith deliver to OWNER all papers, materials and other properties held by DESIGN/BUILDER relating to the Project or this Agreement for which OWNER is making, or has made, payment. In addition, DESIGN/BUILDER will assist OWNER in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary for the orderly, non-disruptive business continuation of OWNER and the Project. OWNER may use the work product of DESIGN/BUILDER to complete the Project.

ARTICLE 8
ACTS OF GOD AND FORCE MAJEURE

8.1 Unless otherwise stated herein, time is of the essence for the performance of all obligations under the terms and conditions of this Agreement; provided, however, that neither OWNER nor DESIGN/BUILDER shall be liable for failure to perform their respective obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), or a Force Majeure such as war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither an Act of God nor a Force Majeure shall, itself, shall be grounds to terminate this Agreement.

8.2 If OWNER or DESIGN/BUILDER asserts Force Majeure as an excuse for failure to perform any of their respective obligations under this Agreement, the nonperforming party must prove, in the absence of a written stipulation between the parties, that the nonperforming party took reasonable steps to minimize delay and to mitigate damages caused by foreseeable events,

SAMPLE

and that the nonperforming party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described herein as a Force Majeure.

ARTICLE 9
DISPUTE RESOLUTION

9.1 Nothing in this Agreement shall be deemed or construed on the part of OWNER or DESIGN/BUILDER as an intent or obligation to arbitrate any matter or dispute whatsoever, nor shall this Agreement, or any part of this Agreement, be read or interpreted as a consent to suit or a submission to the jurisdiction of any court by either party.

9.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be subject to voluntary mediation which may be initiated by either party upon ten (10) calendar days' written notice to the other party. All mediation proceedings shall be held at the administrative offices of the Seminole Tribe of Florida within the confines of Broward County in the State of Florida. Selection of a mediator shall be subject to mutual agreement of the parties. Should the parties be unable to agree to a mediator, or otherwise prefer, the mediator shall be selected by a neutral third party. The parties and the mediator shall maintain strict confidentiality with respect to any mediation proceeding. Nothing that transpires during the mediation proceeding is intended in any way to affect the rights or prejudice the position of any of the parties to the dispute in any later litigation or proceeding. The mediator is authorized to end the mediation whenever further efforts at mediation would not contribute to a solution of the dispute between the parties. A written report of the mediation process will not be prepared by the mediator. There shall be no record, electronic or otherwise, of the mediation proceeding, other than the internal records of the parties, which are agreed to be the confidential and privileged records of the respective party creating and holding same. The mediator's fee or time charge rate will be established at the time of selection or appointment. All expenses of the mediation, including required traveling and other expenses of the mediator, shall be shared equally by the parties, unless they agree otherwise. Neither party shall institute litigation while the mediation proceeding is pending; however, a party may withdraw at any time from the mediation proceeding. Any written settlement agreement of the parties that emerges from mediation shall be final and binding once fully executed, and the contents of which shall be maintained in strict confidentiality. The mediation proceeding shall be deemed terminated if, and when: (a) the parties have not executed a written settlement agreement within forty-five (45) calendar days following conclusion of the mediation formal meeting (which deadline may be extended by mutual agreement), or (b) either party serves on the other party and on the mediator a written notice of withdrawal from the proceeding. The mediator shall apply all applicable laws in conducting the mediation proceedings, and in assessing the respective positions of each party to the mediation in an effort to bring about a voluntary resolution of the dispute. Nothing contained herein is intended to constitute consent on the part of OWNER or DESIGN/BUILDER to participate in any legal proceeding regarding any claim, controversy, or dispute arising out of or relating to this Agreement or to any alleged breach thereof, and nothing contained herein shall be construed as consent on the part of either OWNER or DESIGN/BUILDER to submit to the jurisdiction of any tribunal for that purpose.

SAMPLE

ARTICLE 10
EXHIBITS AND ATTACHMENTS TO THE AGREEMENT

10.1 Part 1 of the Agreement consists of the Exhibits and described below which are listed, attached, and incorporated into the Agreement:

EXHIBITS	DESCRIPTION	ATTACHED
Appendix 1	Appendix 1 to the Design Build Agreement (Part 1)	
A - 1	Compensation and Basis for Payment (Part 1)	
B - 1	Schedule for Performance of Services (Part 1)	
C	Insurance Requirements and Certificate of Insurance	
D-1	Bonds – ability to obtain Performance and Payment Bonds	
E	Subconsultants & Subcontractors Under Design/Builder's Basic Services Fee and Persons Assigned by Design/Builder to Project	
F	Proposed Exceptions to the Design/Build Agreement	
G	Licenses/Registrations	

ATTACHMENTS	DESCRIPTION	ATTACHED
A	Scope of Services	
B	General Conditions to Design/Build Agreement	

10.2 If any Exhibit, Addendum or Appendix (each an "Instrument") is attached to the Agreement but is not referenced in the Agreement or other identified Exhibit, the non-referenced Instrument shall be applied in accordance with its own terms. To the extent that any provision of an Attachment or Instrument is inconsistent with any other provision of this Agreement, the Attachment or Instrument will control. To the extent that any Attachment or Instrument is in conflict with another Attachment or Instrument, the priority will be the Attachment or Instrument which contains more specificity or imposes a higher standard upon DESIGN/BUILDER, as the case may be, with respect to the item of inconsistency.

SAMPLE

ARTICLE 11
NOTICE

11.1 All notices or other communications provided for by this Agreement shall be in writing. Notice shall be deemed properly delivered by the mailing of such notices to the parties entitled thereto, via certified mail, return receipt requested, postage prepaid, or via express delivery such as by Federal Express, UPS, or any like commercial express delivery company which provides a delivery receipt as evidence of delivery to the parties at the following addresses (or to such address designated in writing by one (1) party to the other):

OWNER: _____
Director of the _____ Department
5700 Griffin Road
Davie, Florida 33314
Phone: (954) 894-1060
E-mail:

DESIGN/BUILDER:

ARTICLE 12
ATTORNEY'S FEES AND WAIVER

12.1 The prevailing party in any litigation brought under this Agreement shall be entitled to reimbursement from the other of all reasonable costs incurred in connection therewith, including attorneys' fees, all pre-trial, appellate, post-judgment, bankruptcy, and other proceedings. The right to recover attorneys' fees shall also include any attorneys' fees incurred in establishing the amount of such fees.

12.2 EACH OF THE UNDERSIGNED HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BETWEEN OR AMONG THEM, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL CAUSE OR CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS, CROSSCLAIMS, THIRD PARTY CLAIMS AND INTERVENOR'S CLAIMS, REGARDLESS OF THE CAUSE OR CAUSES OF ACTION, DEFENSES OR COUNTERCLAIMS ALLEGED OR THE RELIEF SOUGHT BY ANY PARTY, ALL TO THE EXTENT BASED ON OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 The Agreement shall be governed by the applicable law of United States of America, the Seminole Tribe of Florida, the State of Florida, or other applicable authority, applied in that order.

13.2 Heading, tables, and the like are included and intended solely for purposes of convenience and reference only, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any provision of this Agreement.

13.3 The Agreement shall be binding on successors, assigns, and legal representatives of OWNER or DESIGN/BUILDER. Neither party shall assign, sublet, or transfer an interest in this Part 1 of the Agreement without the written consent of the other.

13.4 This Agreement represents the entirety of Part 1 of the Agreement between OWNER and DESIGN/BUILDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and DESIGN/BUILDER. No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver and accepted and agreed to by both parties.

SAMPLE

13.5 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Signatures transmitted by facsimile or electronic means, shall be deemed the same as an original.

13.6 If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly to its maximum lawful scope; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

13.7 The parties understand, acknowledge and agree that neither party intends to confer upon any person or entity not a party to this Agreement any enforceable or other right, remedy, benefit or entitlement and the parties further deny and disclaim the existence of any intended third-party beneficiary with enforceable rights of any kind in connection with this Agreement. Nothing in this Agreement, whether expressed or implied, is intended to confer upon any person other than the parties hereto and their respective heirs, representatives, successors and permitted assigns, any right or remedies under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the liability of any other party hereto, nor shall any provision hereof give any entity any right of subrogation against or action over any party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the respective dates set forth below at Hollywood Seminole Indian Reservation, Broward County, Florida.

SAMPLE

OWNER:
SEMINOLE TRIBE OF FLORIDA

By: _____
Name: Peter Hahn
Title: Treasurer
Date: _____

By: _____
Name: Derek Koger, MPA
Title: Executive Director of Tribal Community Development
Date: _____

DESIGN/BUILDER:
_____

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX - 1
TO

DESIGN/BUILD AGREEMENT (PART 1)

BETWEEN

SEMINOLE TRIBE OF FLORIDA

AND

[CONTRACTOR NAME]

This Appendix is a part of the above-referenced Design/Build Agreement ("Agreement"). Any and all capitalized terms used herein and not expressly defined herein shall have their meaning as set forth in the Agreement.

Design/Builder hereby expressly acknowledges and agrees that all of the documents attached to this Appendix (collectively, the "Attachments") shall be applicable in all respects to the Project and, accordingly, Design/Builder shall comply timely and completely with all of the provisions thereof applicable to Design/Builder, failing which Design/Builder shall be in default under the Agreement. The provisions applicable to Design/Builder include but are not limited to those that refer to a "contractor", "vendor", "subaward", "subcontract", subrecipient" and the like. Design/Builder acknowledges that certain of the Attachments contain references and/or links to additional information and websites that may contain further requirements affecting the Project and all of such additional requirements are incorporated into this Appendix as if fully set forth herein. Design/Builder also acknowledges that it has had a sufficient opportunity to review all of the Attachments and the various requirements described or referenced therein and ask any questions regarding same and has received satisfactory responses thereto from Owner or others. Design/Builder expressly hereby waives any right to claim that it was unaware or did not understand the implications of any of the requirements set forth or referenced in the Attachments and hereby indemnifies and holds harmless Owner from and against any and all losses, damages, expenses and claims which Owner may incur as the result of a failure of Design/Builder to comply with such requirements.

The Attachments start on the next page. Owner and Design/Builder hereby place their respective initials confirming their agreement to the foregoing provisions of this Appendix.

Owner: _____ Design/Builder: _____

SAMPLE

EXHIBIT A-1
COMPENSATION AND BASIS FOR PAYMENT (PART 1)

Part 1 of the Agreement shall be completed and compensated pursuant to Article 9 of the Agreement, in the total not-to-exceed fee, inclusive of expenses, and in accordance with the table below.

Task	**Fees ($)**
•	
•	
•	
•	
Expenses	
TOTAL	

Attachment(s):
Detailed Estimate for Part 1

SAMPLE

EXHIBIT B - 1
SCHEDULE FOR PERFORMANCE OF SERVICES (PART 1)

The Part 1 services shall be completed within [Enter Days Written (Numeric)] calendar days.

Upon the commencement date indicated on the written Notice to Proceed (NTP), for Part 1 the schedule will commence as follows:

Task	**Calendar Days per Task**	**Cumulative Calendar Days to completion from NTP for Part 1**
	TOTAL	

SAMPLE

EXHIBIT C
INSURANCE REQUIREMENTS AND CERTIFICATE OF INSURANCE

This Contract includes the requirement that the OWNER be named as additional insured and with Waiver of Subrogation, for the Comprehensive General Liability policy by policy endorsement(s).

Attachment(s):

Insurance Requirements
Insurance Certificate

SAMPLE

DESIGN BUILD INSURANCE REQUIRMENTS

SEMINOLE TRIBE OF FLORIDA INSURANCE REQUIREMENTS FOR CONSTRUCTION, MAINTENANCE AND REPAIR

CONSTRUCTION CONTRACT S OVER $1,000,000 UP TO $5,000,000

SAMPLE

The Service Provider (hereafter called Contractor) shall procure and maintain for the duration of the contract the following required insurance, with insurers' financially acceptable and lawfully authorized to do business in the state where the work or operations will be performed. Such coverage shall protect Contractor and Owner, The Seminole Tribe of Florida, hereafter referred to as the Tribe, against claims arising from sickness, disease, death or injury to persons, and/or physical damage to tangible property, including loss of use, which arise from the performance of the work hereunder by or on behalf of the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

Contractor's insurance coverage shall include the following minimum limits and coverage:

1. Commercial General Liability insurance on an occurrence coverage form, at least as broad as the *Insurance Services Office Commercial General Liability Policy form CG 0001 ©*, current edition. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, contractual liability or construction defects. In addition to procuring and maintaining this insurance during the duration of the contract, Contractor agrees to continue to procure and maintain products and completed operations liability insurance coverage for a minimum of three years after the date the contract is completed or terminated.

2. Automobile Liability insurance covering liability arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of the Contractor. The coverage shall be at least as broad as the *Insurance Services Office Business Automobile Policy form CA 0001 ©*, current edition.

3. Workers' Compensation and Employer's Liability insurance as is required by statute or law, or as may be available on a voluntary basis.

4. Contractors Pollution Liability insurance – required only if contractor's scope of services include the remediation, treatment, storage or disposal of waste or hazardous materials on or about the project site. Such coverage shall include:
    - bodily injury, sickness, disease, death or mental anguish or shock sustained by any person;
    - property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
    - defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
    - products and completed operations

Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement of contractor's operations, plus an additional period of three years after operations have been completed.

For losses that arise from the insured facility accepting waste or hazardous materials generated under this contract, coverage shall apply to both sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.

5. Professional Liability insurance – required only if contractor's scope of services include architectural, engineering, professional consulting or construction management. Such policy shall cover wrongful acts made by or on behalf of the Professional. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement of professional services rendered to the Tribe, plus an additional period of three years after such services have been rendered to the Tribe.

SAMPLE

Minimum Limits of Insurance

Contractor shall maintain the following minimum limits of insurance (unless higher limits required by law or statute):

1. Commercial General Liability (including umbrella or excess liability): $2,000,000 per occurrence, bodily injury and property damage liability; $4,000,000 Aggregate per offense, personal and advertising injury liability; $4,000,000 products and completed operations policy aggregate and $4,000,000 general aggregate applicable to claims other than products and completed operations. In addition to procuring and maintaining this insurance during the duration of the contract, vendor agrees to continue to procure and maintain products and completed operations liability insurance coverage for a minimum of three years after the contract has been completed or terminated. If the annual contract value exceeds $500,000, the general aggregate limit shall apply separately to the Tribe's project.
2. Automobile Liability: $1,000,000/$2,000,000 combined bodily injury and property damage liability per accident for bodily injury and property damage.
3. Employer's Liability: $500,000 per accident for bodily injury by accident or disease, including $500,000 disease aggregate.
4. Contractors Pollution Liability: $1,000,000 per incident /$2,000,000 Aggregate
5. Pollution Legal Liability:

Hazardous Waste Disposal Facilities	$2,000,000 per incident / $4,000,000 annual aggregate
All Other Disposal Facilities	$1,000,000 per incident /$2,000,000 aggregate

6. Professional Liability: $1,000,000 each wrongful act if Professional's contract with the Tribe exceeds $1,000,000, the each wrongful act limit shall apply separately to this project.

Deductibles and Self-insured Retentions

The funding of deductibles and self-insured retentions maintained by Contractor shall be the sole responsibility of Contractor, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving the Tribe as an additional insured. Any self-insured retentions in excess of $50,000 must be declared to and approved by the Tribe.

Other Insurance Provisions

SAMPLE

The required insurance shall contain the following additional provisions:

1. ADDITIONAL INSURED – The Tribe shall be included as an additional insured by endorsement on Contractor's Commercial General Liability and Contractor's Pollution Liability policies, if applicable, as respects claims or liabilities arising from, or connected with Contractor's work, operations and completed operations, including claims arising from the Tribe's general supervision (if any) of Contractor's work or operations. The additional insured endorsements shall be at least as broad as the current editions of the Insurance Services Offices forms CG 2010 and CG 2037. The contractor shall provide the Tribe with status as an additional insured under CG 2010 during the course of construction, and under CG 2037 for completed operations for three years after project completion. If Contractor or Contractor's agents, subcontractors or employees bring vehicles on the project site, the Tribe shall additionally be included as an additional insured under Contractor's automobile liability policy as respects liability arising from autos used by or on behalf of Contractor.

2. WAIVER OF SUBROGATION - Contractor will provide a Waiver of Subrogation Endorsement to the Tribe, in favor of the Tribe.

PRIMARY COVERAGE - Contractor's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by the Tribe shall be excess of and non-contributory with Contractor's insurance.

3. PROPERTY INSURANCE - Property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract documents Section 9.10 FINAL COMPLETION AND FINAL PAYMENT or until no person or entity other than the Owner has an insurable interest in the property required by Section 11.4 PROPERTY INSURANCE to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors as co-insureds in the Project. The Contractor shall be responsible for the Builder's Risk Policy of Insurance, including all deductibles. General Contractor is to provide Evidence of Builder's Risk Insurance ten days prior to commencement of Project.

Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm,

SAMPLE

falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Architect's and Contractor's services and expenses required as a result of such loss.

X/RISK MANAGEMENT/CONSTRUCTION INSURANCE REQUIREMNTS FOR CONTRACTOR PROJECT TO 5m JS 8-8-12

SAMPLE

EXHIBIT D-1
BONDS

Attachment(s):

Ability to Obtain Performance and Payment Bonds

SAMPLE

EXHIBIT E
SUBCONSULTANTS & SUBCONTRACTORS UNDER DESIGN/BUILDER'S BASIC SERVICES FEE AND PERSONS ASSIGNED BY DESIGN/BUILDER TO PROJECT

DISCIPLINE	SUBCONSULTANT/SUBCONTRACTOR VENDOR FIRM
Other _____	

SAMPLE

EXHIBIT F
PROPOSED EXCEPTIONS TO THE DESIGN/BUILD AGREEMENT

Instructions: Mark the appropriate choice below and sign this exhibit.

_____ Firm accepts the Design/Build Agreement without exception.

OR

_____ Firm proposes exceptions or modifications to the Design/Build Agreement. Firm must submit proposed revisions to the Design/Build Agreement that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.

Firm:

Company: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Unless written exceptions to the Design/Build Agreement are included, Vendors accept the provisions as presented therein without revision.

SAMPLE

[Project Name/Number] (D/B)
[Contractor]

EXHIBIT F

CONTRACTOR'S EXCEPTIONS FORM

Section	Exception/Comment	Comment Source (WAP or STOF)	TCD Review Comment	Complete	Legal Comments

SAMPLE

EXHIBIT G
LICENSES/REGISTRATIONS

Attachment(s):

- Certificate of Authority to do Business in the State of Florida – Occupational License
- Florida Department of Business and Professional Regulation – License(s), Certifications(s), and/or Registration(s)

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GENERAL CONDITIONS TO

DESIGN/BUILD AGREEMENT

The following General Conditions are incorporated into the Design/Build Agreement between **THE SEMINOLE TRIBE OF FLORIDA** and **DESIGN/BUILDER** which is a two-part Agreement plus Exhibits, an Addendum (if applicable) and an Appendix (if applicable)**.**

PREAMBLE

Design/Builder is hereby placed on notice that any Work not meeting the highest quality standards in accordance with industry practice will be rejected. Therefore, Design/Builder should select subcontractors and sub-subcontractors with a proven reputation for work of the highest standards.

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS.

1.1.1 The Design/Build Agreement (the "Agreement" or the "Agreement") consists of the Agreement Documents and represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a "Modification" (defined below). The Agreement Documents shall not be construed to create a contractual relationship of any kind (a) between Owner and a "Subcontractor" (defined below") or "Sub-subcontractor" (defined below) or (b) between any persons or entities other than Owner and Design/Builder.

1.1.2 The Agreement Documents consist of (a) the Design/Build Agreement with a Part I and a Part II, (b) all Exhibits, (c) an Addendum (if applicable), (d) an Appendix (if applicable) and (e) all other documents listed in the Agreement and modifications issued after execution of the Agreement. Unless specifically enumerated in the Agreement, the Agreement Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, instructions to bidders, sample forms, Design/Builder's bid or portions of addenda relating to bidding requirements).

1.1.3 The "Drawings" are the graphic and pictorial portions of the Agreement Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.4 A "Modification" is (a) a written amendment to the Agreement signed by both parties, (b) a "Change Order," (c) a "Construction Change Directive", (d) a written order for a minor change in the Work issued by the Owner (e) a timely received Request for Project Change, or (f) a directive to perform work which is not specifically identified in the Agreement Documents but which is necessary to achieve completion in a workmanlike manner.

SAMPLE

1.1.5 The “Project” is the total construction of the Work performed under the Agreement Documents and which may include construction by the Owner or by separate contractors retained by Owner.

1.1.6 The “Specifications” are that portion of the Agreement Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.2 EXECUTION, CORRELATION AND INTENT.

1.2.1 Execution of the Agreement by Design/Builder is a representation that Design/Builder has visited the Project Site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Agreement Documents.

1.2.2 The intent of the Agreement Documents is to describe a functionally complete facility, and it is intended that Design/Builder shall furnish all labor, materials, tools, equipment, supervision, and other items necessary for the proper execution and completion of the Work in accordance therewith, including all Work incidental to or reasonably inferable from the Agreement Documents as being necessary to produce the intended results (unless it is specifically indicated in the Agreement Documents that such Work is to be performed by others), and to complete the Work in a satisfactory manner, ready for use, occupancy and operation by Owner. The Agreement Documents are complementary, and what is required by one shall be as binding as if required by all. Omissions from the Agreement Documents or the mis-description of details of Work which are manifestly necessary to carry out the intent of the Agreement Documents, or which are customarily performed, shall not relieve Design/Builder from performing such omitted Work or mis-described details of the Work, which shall be performed as if fully and correctly set forth and described in the Agreement Documents.

1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Design/Builder in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Should Design/Builder discover any inconsistency in the Drawings, or between the Drawings and the Specifications, Design/Builder shall advise the Owner of such inconsistency in writing within five (5) days of discovery thereof, failing which Design/Builder shall be liable for any and all increased costs of the Work arising from such inconsistency and shall not be entitled to any reimbursement from Owner for such increased costs. Design/Builder is responsible for coordination of all the work among Design/Builder’s own forces, subcontractors, and vendors.

1.2.4 Unless otherwise stated in the Agreement Documents, words, which have, well known technical or construction industry meanings are used in the Agreement Documents in accordance with such recognized meanings. Stated dimensions shall take precedence over scaled dimensions and large-scale Drawings shall take precedence over small-scale Drawings. Where a typical or representative detail is shown on Drawings, such details shall constitute the standard of workmanship and materials throughout the corresponding portions of the Work. Where necessary, Design/Builder shall adapt its detail for use in said corresponding portions of the Work in a manner that is satisfactory to the Owner. In the event of conflicts or discrepancies among the Agreement Documents, interpretations will be based on the following priorities:

SAMPLE

(a) The greatest obligation to the Design/Builder, or (b) In the case of an inconsistency between Drawings and Specifications or within any Agreement Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation.

1.3 OWNERSHIP AND USE OF THE DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS.

All Drawings, Specifications and copies thereof furnished by the Design/Builder are and shall remain the property of the Owner, subject to Design/Builder's reserved rights with respect to standard details and payment for same as set forth in this Agreement. Such documents shall not be used on any other project without the prior consent of Owner. With the exception of one (1) Agreement set for each party to the Agreement, such documents are to be returned or suitably accounted for to Owner on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyright or other reserved rights. Drawings issued by the Design/Builder concerning clarifications, proposed changes (in the form of "bulletins," or clouding on revised drawings) or changes will be in the form of a reproducible print of each such drawing. Design/Builder shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work.

Design/Builder, its employees and all other persons involved in the Work, whether on Site or not, shall retain in confidence and shall not, without Owner's prior written authorization, copy or disclose to any third party any information of a confidential nature obtained from Owner, whether obtained directly or deduced from other confidential information.

1.4 CAPITALIZATION.

Terms capitalized in these General Conditions include those that are (a) specifically defined, (b) the titles of numbered articles and identified references to Sections, Sub-sections and Clauses in the Agreement Documents, or (c) the titles of documents published by the American Institute of Architects.

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ARTICLE 2

OWNER

2.1 DEFINITION.

Owner is the Seminole Tribe of Florida. The Construction Manager, if any, shall not have authority to bind Owner. The Owner's Representative shall be the Director of the Construction Management Department and may be substituted by written notice from the Owner.

2.2 INFORMATION AND SERVICES REQUIRED OF OWNER.

2.2.1 Owner shall furnish information or services under Owner's control with reasonable promptness to avoid delay in orderly progress of the work.

2.2.2 Unless otherwise provided in the Agreement Documents, Owner will furnish, free of charge, such copies of Drawings and Specifications as are reasonably required by Design/Builder for execution of the Work. Any additional copies required by

Design/Builder's Subcontractors, for bid packages, or for other purposes will be reproduced by Design/Builder.

2.3 OWNER'S RIGHT TO STOP THE WORK.

If Design/Builder fails to correct Work which is not in accordance with the requirements of the Agreement Documents as required by Section 12.2 or fails to carry out Work in accordance with the Agreement Documents, Owner, by written order signed by Owner's Representative, may order Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other person or entity. This Owner's right shall be in addition to and not in restriction or derogation of Owner's rights under Article 12 hereof, nor shall the exercise of this right by Owner relieve Design/Builder of any of its responsibilities and obligations pursuant to the Agreement Documents. If suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if the Work were continued, Owner may suspend the Work by written notice to Design/Builder. If Design/Builder, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, Design/Builder shall immediately notify Owner of such belief and describe with particularity the reasons therefor.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK.

If Design/Builder defaults or neglects to carry out the Work in accordance with the Agreement Documents and fails within a five (5) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may immediately and without prejudice to other remedies Owner may have, correct such deficiencies. Owner shall have the right, but not the obligation, to use Design/Builder's subcontractors in executing such Work. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter owed to Design/Builder the cost of correcting such deficiencies, including compensation for the Design/Builder's Additional Services and expenses made necessary by such default, neglect or failure. If payments then or thereafter owed to Design/Builder are not sufficient to cover such amounts, Design/Builder shall pay the difference to Owner upon demand. The rights stated in this Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Agreement Documents or at law or in equity.

ARTICLE 3
DESIGN/BUILDER

3.1 DEFINITION.

Design/Builder is the entity identified as such in the Agreement and is referred to throughout the Agreement Documents as if singular in number. The term "Design/Builder" means Design/Builder or Design/Builder's authorized representative. Design/Builder is responsible for insuring that the Work of the Subcontractors is being performed in accordance with the Agreement Documents, and will guard Owner against defects and deficiencies in the Work of the Subcontractors.

3.2 Intentionally Omitted.

SAMPLE

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.3.1 Design/Builder shall supervise and direct the Work, using Design/Builder‘s best skill and attention. Design/Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Agreement Documents give other specific instructions concerning these matters.

3.3.2 Design/Builder shall be responsible to Owner for acts and omissions of Design/Builder’s employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Design/Builder or claiming by, through or under Design/Builder and for any damages, losses, costs and expenses resulting from such acts or omissions.

3.3.3 Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Agreement Documents by tests inspections or approvals required or performed by persons other than Design/Builder.

3.3.4 Design/Builder shall be responsible for inspection of portions of Work already performed under this Agreement to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 If any of the Work is required to be inspected or approved by any applicable public or tribal authority, Design/Builder shall cause such inspection to be performed or such approval to be obtained. No inspections performed or failed to be performed by Owner hereunder shall be a waiver of any of Design/Builder’s obligations hereunder or shall be construed as an approval or acceptance of the Work or any part thereof.

3.4 LABOR AND MATERIALS.

3.4.1 Unless otherwise provided in the Agreement Documents, Design/Builder shall provide and pay for labor, supervision, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Design/Builder shall check all materials and labor entering into the Work and shall keep fully detailed accounts thereof.

3.4.2 Design/Builder shall enforce strict discipline and good order among Design/Builder’s employees and other persons carrying out the Agreement. Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them and will not allow them in areas of the Project Site outside the Work area. Design/Builder acknowledges that the highest standard of discipline and order must be maintained recognizing the ongoing operations of the Project Site as a first-class casino/hotel.

3.4.3 Design/Builder (a) shall assure that its employees and Subcontractors work in harmony and do not interfere with Owner or Owner’s other Design/Builders and (b) shall use its best efforts to avoid any work stoppage, picketing, labor disruption or dispute involving the employees, Design/Builders, subcontractors, laborers, or materialmen of Owner or any tenant or occupant of the Project Site and any unreasonable interference with the business of Owner or any tenant or occupant of the Project Site. In the event of

SAMPLE

a labor dispute, Design/Builder shall not be entitled to any increase in the compensation provided for pursuant to the Agreement Documents.

3.5 WARRANTY.

Design/Builder warrants to Owner that materials and equipment furnished under the Agreement will be new and of specified and good quality unless otherwise required by the Agreement Documents; that the Work will be free from defects for a period of twelve months from final completion, or twelve months from Owner occupancy, whichever first occurs, and that the Work will conform with the requirements of the Agreement Documents. Work not conforming to these requirements, including substitutions not properly approved, may be considered defective. Design/Builder's warranty excludes damage or defect caused by abuse, improper or insufficient maintenance or improper Owner operation. If required by the Owner, Design/ Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This Warranty is not limited by the provisions of Section 12.2.

3.6 Intentionally Omitted.

3.7 PERMITS, FEES AND NOTICES.

3.7.1 Unless otherwise provided in the Agreement Documents, Design/Builder shall secure and pay for the applicable building permit and other permits and applicable governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded. Design/Builder shall also keep Owner informed of any changes in approvals obtained or permits required for the Project.

3.7.2 Design/Builder shall comply with and give notices required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is Design/Builder's responsibility to prepare and diligently review the Agreement Documents for compliance in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. If Design/Builder observes that portions of the Agreement Documents are at variance therewith, Design/Builder shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate Modification. Design/Builder shall promptly correct the problem giving rise to the notice to the satisfaction of the governing body and shall procure the discharge or cancellation of any notice of violation issued by the applicable building department or any other applicable governmental authority arising from the Work.

3.8 ALLOWANCES.

3.8.1 Design/Builder shall include in the "Guaranteed Maximum Price" all allowances stated in the Agreement Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Design/Builder shall not be required to employ persons or entities against which Design/Builder makes reasonable objection.

3.8.2 Unless otherwise provided in the Agreement Documents:

SAMPLE

(a) Materials and equipment under an allowance shall be selected promptly by Owner to avoid delay in the Work.

(b) Allowances shall cover the cost to Design/Builder of materials and equipment delivered at the Project Site, all permits and fees, and all required taxes, less applicable trade discounts.

(c) Design/Builder's costs for unloading and handling at the Project Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Agreement Sum and not in the allowances.

(d) Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2(b), and (2) changes in Design/Builder's costs under Clause 3.8.2(c).

3.9 SUPERINTENDENT AND PROJECT MANAGER.

Design/Builder shall employ a competent "Superintendent," "Project Manager" and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The Project Manager shall represent Design/Builder, and communications given to the Project Manager shall be as binding as if given to Design/Builder. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The list of all supervisory personnel, including the Project Manager and Superintendent that Design/Builder intends to use for the Project and a chain of command organizational chart shall be submitted to Owner for its approval. Design/Builder shall not engage or change supervisory personnel or utilize an organization and chain of command other than as approved by Owner in writing. The Superintendent and Project Manager shall be submitted to the approval of Owner, and Design/Builder shall not replace the Superintendent or the Project Manager without the prior written consent of Owner. The Superintendent and Project Manager shall each have a minimum of seven years' experience in the construction of a facilities similar to the Project.

3.10 DESIGN/BUILDER'S CONSTRUCTION SCHEDULES.

3.10.1 Design/Builder, promptly after being awarded the Agreement, shall prepare and submit for Owner's approval Design/Builder's construction schedule for the Work (the "Construction Schedule") which consists of the Agreement Completion Date and the Project Schedule. The Schedule shall be a critical path network, not to exceed time limits current under the Agreement Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Agreement Documents, and shall provide for expeditious and practicable execution of the Work. The Owner shall own all float in the Construction Schedule.

3.10.2 Design/Builder shall prepare and submit to Owner within thirty (30) days after the date of this Agreement and thereafter keep current, for Owner's approval, a schedule of submittals coordinated with Design/Builder's Schedule and which allows the Owner reasonable time to review submittals.

3.10.3 Design/Builder shall conform to the most recent Schedules.

SAMPLE

3.10.4 Design/Builder shall prepare at least a monthly progress report in a form and in detail satisfactory to Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new Schedule, as well as the number of man-days worked for each category of labor and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated current Project Schedule, and a listing and the status of all Change Orders, Modifications, bulleting and other relevant documents.

3.10.5 Design/Builder also shall prepare, not later than thirty (30) days after the Agreement is awarded, a materials report which shall include a complete list of suppliers and fabricators, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item to be purchased.

3.10.6 Design/Builder shall hold weekly progress meetings at the Project Site, or at such other time and frequency as Owner requests. Progress of the Work shall be reported in detail with reference to construction Schedules. Each interested Subcontractor shall have in attendance a competent representative to report the condition of its Work and to receive information. At or before each such weekly progress meeting, Design/Builder shall deliver to Owner copies of Design/Builder's daily logs for the prior week's activities. Design/Builder is obliged to maintain a daily log listing for each day worked: all progress of the Work, all perceived problems/defects/delays, all inspections made with name of inspector(s), all results of inspections made known, the number of Design/Builder and subcontractor personnel present, and whether there was precipitation or other problematic weather.

SAMPLE

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE.

Design/Builder shall maintain at the Project Site for Owner one (1) record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. A final set of "As Built" Drawings shall be prepared by Design/Builder which indicates the foregoing information and all deviations or changes from the in the design documents. These As-Built Drawings shall be delivered to Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

3.12.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by Design/Builder or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings shall show the design, dimension, connections and other details necessary to insure that the Shop Drawings accurately interpret the Agreement Documents and shall also show adjoining Work in such detail as required to provide proper connections with said adjoining Work.

3.12.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Design/Builder or any Subcontractor, manufacturer, supplier or distributor to illustrate materials or equipment for some portion of the Work. Design/Builder shall submit Product Data to Owner when necessary or required by Owner to explain fully apparatus or equipment required by the Work. The Product Data shall be treated as Shop Drawings.

Manufacturers' catalogue numbers alone are not acceptable as sufficient information or compliance with this requirement.

3.12.3 "Samples" are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples shall be submitted by Design/Builder to Owner and shall be accompanied by a letter of transmittal. Design/Builder shall number all transmittals. Data and/or manufacturers' certificates shall be referenced and forwarded with the letter of transmittal. Samples without accompanying test data or certificates will be returned without action. In the event that a range of variations in textures, graining, color or other characteristics may be anticipated in finished materials, assemblies or elements of the Work, a sufficient number of Samples of such materials or product shall be submitted to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval of full range Samples shall be subject to rejection. Samples shall be submitted from the same source that shall actually supply the Project. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics. Samples of materials or products that are normally furnished in containers or packages that bear descriptive labels and/or application or installation instructions shall be submitted with such labels and/or instructions.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Agreement Documents. Their purpose is to demonstrate for those applicable portions of the Work the details and manner of performance the Design/Builder proposes to use to conform to (and not change) the design concept expressed in the Agreement Documents.

3.12.5 Design/Builder shall obtain, review, approve and submit to the Owner's Representative, Shop Drawings, Product Data, Samples and similar submittals for the Work with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors retained by Owner.

3.12.6 Design/Builder shall not perform any portion of the Work for which Shop Drawings, Product Data, Samples or similar submittals are appropriate until the respective submittal has been approved by Owner. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Design/Builder represents that: Design/Builder has determined and verified materials, field measurements and field construction criteria related thereto; that it has checked to insure that Work contiguous with and having bearing on the Work shown on the Shop Drawings is accurately and clearly shown; that the equipment will fit into the assigned spaces; and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement Documents. Design/Builder shall number transmittals consecutively and indicate the file number of the original submittal on any re-submittal. Each shop Drawing or sample and letter of transmittal shall contain the following information:

(a) The name of the Project.

(b) The name of the Design/Builder.

(c) The name of the firm or organization and person or persons preparing the Shop Drawings.

SAMPLE

(d) The date of submittal.

(e) The number of Shop Drawings and the number and date of each revision, if any.

(f) The applicable section of the Specifications.

(g) The applicable number of the Agreement Drawing and detail.

(h) The name of Subcontractor and/or supplier, manufacturer, fabricator or processor.

(i) The trade designation and the grade or quality of the material or product.

(j) The specific identification of each sample.

3.12.8 Design/Builder shall not be relieved of responsibility for deviations from requirements of the Agreement Documents by approval of Shop Drawings, Product Data, Samples or similar submittals unless Design/Builder has specifically informed Owner in writing of such deviation at the time of submittal and Owner has given written approval to the specific deviation. Design/Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Owner's approval thereof.

3.12.9 Design/Builder shall call out and conspicuously identify, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals.

3.12.10 Informational submittals upon which Owner is not expected to take responsive action may be so identified.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Agreement Documents, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.12 Following the Owner's review of each Shop Drawing, Product Data and Sample submission, the Owner will retain a copy and return the reviewed submission to the Design/Builder with a stamp and signature affixed thereto annotated as follows:

(a) **"APPROVED"** means approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be in accordance with the requirements of the Agreement Documents. Final acceptance of the Work shall be contingent upon such compliance.

(b) **"APPROVED AS NOTED – RESUBMISSION NOT REQUIRED," "REVIEWED, NO EXCEPTIONS,"** or **"REVIEWED, EXCEPTIONS NOTED"** means, unless otherwise noted on the Drawings, approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the submittal and in accordance with the requirements of the Agreement Documents. Final acceptance of the Work shall be contingent upon such compliance.

SAMPLE

(c) **"NOT APPROVED – MAKE CORRECTIONS AND RESUBMIT"** or **"RE-SUBMITTAL REQUIRED"** means submittal shall be corrected to comply with the annotations/corrections on the submittal, and then resubmitted to the Owner. No Work based on such submittals shall be constructed, fabricated or manufactured until re-submittal is approved.

(d) **"REJECTED – DO NOT RESUBMIT"** or **"REJECTED"** means that major deviations from the requirements of the Agreement Documents exists in the submittal. No Work based on such submittals shall be constructed, fabricated or manufactured. Design/Builder shall review the submittal in compliance with annotations and pursuant to all requirements of the Agreement Documents and shall resubmit the submittal for approval.

3.13 USE OF PROJECT SITE.

Design/Builder shall confine operations at the Project Site to areas permitted by applicable law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the Project Site with materials or equipment.

3.14 CUTTING AND PATCHING.

3.14.1 Design/Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Design/Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Design/Builder shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor, such consent shall not be unreasonably withheld. Design/Builder, if required by Specifications and Drawings, shall make connections to materials or equipment furnished, set, and/or installed by other contractors. No Work connecting to such materials or equipment provided by other contractors shall be done without giving such contractors a reasonable length of time to complete their Work or until permission to proceed has been obtained from Owner. Design/Builder shall secure the shop detail Drawings from other contractors for such of their Work as is to be built into its Work, or to which it must make connection, and shall also measure for Owner any discrepancy or unsuitability relative to its own Work. Each contractor shall provide all openings and chases in its own Work, necessary for the installation of process equipment, and shall fill in around the same afterwards, if required.

3.15 CLEANING UP.

3.15.1 Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, Design/Builder shall remove from and about the Project waste materials, rubbish, Design/Builder's and Subcontractor's tools, construction equipment, machinery and surplus materials. In addition to general broom cleaning, Design/Builder shall perform, or insure performance of, the following final cleaning for all trades, at completion of the Work:

(a) Remove temporary protections;

SAMPLE

(b) Remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work;

(c) Remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;

(d) Clean tubs, toilets and other mixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged new condition;

(e) Clean all metal finishes in accordance with recommendations of the manufacturer and accepted industry standards;

(f) Clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen; and,

(g) Thoroughly clean all interior glass and mirror surfaces.

3.15.2 If Design/Builder fails to clean up as provided in the Agreement Documents, Owner may do so and the cost thereof shall be charged to Design/Builder who shall pay such costs either by deductive Change Order or immediately upon demand, at the election of Owner.

3.16 ACCESS TO WORK.

Design/Builder shall provide Owner, Owner's lenders and invitees access to the Work in preparation and progress to wherever located.

3.17 ROYALTIES AND PATENTS.

Design/Builder shall pay all royalties and license fees. Design/Builder shall defend suits or claims for infringement of patent rights and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents. However, if Design/Builder has reason to believe that the required design, process or product is an infringement of a patent, Design/Builder shall be responsible for such loss unless such information is promptly furnished to Owner.

SAMPLE

ARTICLE 4
ADMINISTRATION OF THE AGREEMENT

4.1 ADMINISTRATION OF THE AGREEMENT.

4.1.1 Design/Builder will be present on the Project Site daily during each stage of construction and will be intimately familiar with the progress and quality of the completed Work so as to determine if the Work is being performed in a manner such that the Work, when completed, will be in accordance with the Agreement Documents. On the basis of its on-site observations and supervision, Design/Builder will keep the Owner informed of progress of the Work, and will guard the Owner against defects and deficiencies in the Work.

4.1.2 Design/Builder will have control or charge of and be responsible for all construction means, methods, techniques, sequences or procedures, and for safety precautions and

programs in connection with the Work. Design/Builder will conduct safety meetings not less than monthly. Design/Builder will be responsible for its failure(s) to carry out the Work in accordance with the Agreement Documents. Design/Builder will have control over or charge of and be responsible for acts or omissions of Subcontractors, Sub-subcontractors or their agents or employees, or of any other persons performing portions of the Work.

4.1.3 Communications by subcontractors, material suppliers or vendors with the Owner shall be through Design/Builder. Communications by and with separate contractors retained by Owner shall be through Owner. Owner may communicate directly with any Subcontractors or suppliers.

4.1.4 Intentionally Omitted.

4.1.5 Owner will have authority to reject Work that does not conform to the Agreement Documents. Whenever Owner considers it necessary and advisable, Owner will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of Owner nor a decision made by Owner to exercise or not to exercise such authority shall give rise to a duty or responsibility of Owner to Design/Builder, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work. Design/Builder does not have any “You didn’t catch me” defense.

4.1.6 The Design/Builder will initially interpret matters concerning performance under and requirements of the Agreement Documents on written request of Owner. The Design/Builder’s response to such requests will be made with reasonable promptness and within any agreed time limits.

4.1.7 Interpretations of the Design/Builder will be consistent with the intent of the Agreement Documents and will be in writing or in the form of Drawings. Notwithstanding the foregoing, such initial interpretations shall not be binding upon Owner unless Owner agrees therewith in writing.

4.2 CLAIMS AND DISPUTES.

4.2.1 A “Claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term “Claim” also includes other disputes and matters in question between Owner and Design/Builder arising out of or relating to the Agreement. Claims must be in writing and timely made. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.2.2 Claims by Design/Builder must be made within ten (10) days after occurrence of the event giving rise to such Claim. An additional Claim made after the initial Claim has been effected by Change Order will not be considered unless (a) based upon different facts from those giving rise to the initial Claim, and (b) submitted in a timely manner.

4.2.3 Pending final resolution of a Claim, unless otherwise agreed in writing, Design/Builder shall proceed diligently with performance of the Agreement and Owner shall continue to make payments of undisputed amounts in accordance with the Agreement Documents.

4.2.4 If Design/Builder wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work.

SAMPLE

Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

4.2.5 If abnormal adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by date substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the abnormal weather conditions had an adverse effect on the scheduled construction.

4.2.6 If either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITIONS.

5.1.1 A "Subcontractor" is a person or entity who has a direct Agreement with Design/Builder to perform a portion of the Work (including, but not limited to, design functions) for the Project. The term "Subcontractor" is referred to throughout the Agreement Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate prime contractor retained by Owner or subcontractors of a separate prime contractor.

5.1.2 A "Sub-subcontractor" is a person or entity who has a direct or indirect Agreement with a Subcontractor to perform a portion of the Work (including, but not limited to, design functions) for the Project. The term "Sub-subcontractor" is referred to throughout the Agreement Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBAGREEMENTS AND OTHER AGREEMENTS FOR PORTIONS OF THE WORK.

5.2.1 To the extent a Subcontractor is not selected pursuant to the provisions of Part I or Part II of the Agreement, Design/Builder shall comply with the following.

5.2.1.1 Design/Builder, as soon as practicable after award of the Agreement, shall furnish in writing to Owner the names of persons or entities (including those who are to furnish design documents, materials or equipment fabricated to a special design) proposed for each principal portion of the Work and provide a copy of the Subcontractor's bid or proposal. Owner will promptly reply to Design/Builder in writing to advise whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity.

5.2.1.2 Design/Builder shall not contract with a proposed person or entity to whom Owner has made reasonable objection. Design/Builder shall not be required to contract with anyone to whom Design/Builder has made reasonable objection.

SAMPLE

5.2.1.3 If Owner has reasonable objection to a person or entity proposed by Design/Builder, Design/Builder shall propose another to whom Owner has no reasonable objection. The Agreement Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Agreement Sum shall be allowed for such change unless Design/Builder has acted responsively within five (5) days in submitting names required.

5.2.2 Design/Builder shall not change a Subcontractor, person or entity previously selected if Owner makes reasonable objection to such change. Owner may require Design/Builder to change any Subcontractor previously approved and Owner shall be responsible for any increase in the cost of the Work occasioned by such Owner required change if, and only if, Owner's objection to such Subcontractor is not reasonable.

5.3 SUBCONTRACTOR RELATIONS.

5.3.1 By appropriate written agreement, Design/Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design/Builder by terms of the Agreement Documents, and to assume toward Design/Builder all the obligations and responsibilities which Design/Builder, by these Documents, assumes toward Owner. Each Subcontract shall identify Owner as an intended third party beneficiary of the Subcontract, shall preserve and protect the rights of Owner under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Subcontract, the benefit of all rights, remedies and redress against Design/Builder, that Design/Builder, by the Agreement Documents, has against Owner. Design/Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Design/Builder shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Agreement Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.2 Without limiting the generality of Section 5.3.1, any part of the Work performed for Design/Builder by a Subcontractor or its Sub-subcontractor shall be pursuant to a written Subcontract between Design/Builder and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of Subcontract satisfactory to Owner in all respects. Each such Subcontract shall, where the context so requires, contain provisions that:

(a) Waive all rights the contracting parties may have against one another or that the Subcontractor may have against Owner for damages caused by fire or other perils covered by the insurance described in the Agreement Documents;

(b) Require the Subcontractor to carry and maintain insurance coverage in accordance with the Agreement Documents, or to participate in an Owner Controlled Insurance Program if selected by Owner, and to file certificates of any such coverage with Design/Builder;

(c) Require the Subcontractor to submit certificates and waivers of claims for work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;

SAMPLE

(d) Require submission by Design/Builder or Subcontractor, as the case may be, of an Application for Payment in a form approved by Owner, together with clearly defined invoices and billings supporting all such applications under each Subcontract;

(e) Require each Subcontractor to furnish to Design/Builder in a timely fashion all information necessary for the preparation and submission of the reports required herein;

(f) Require that each Subcontractor accept an assignment of said Subcontract to the Owner and continue to perform under its Subcontract in the event the Design/Builder is terminated with no increase in price;

(g) Provide that such Subcontract (and any Sub-subcontracts entered into by such Subcontractor) shall be assignable to Owner or Owner's designee as set forth in the Agreement; and

(h) Provide that the Owner is an intended third party beneficiary of the subcontract/sub-subcontract, and that any and all warranties contained in a Subcontract or Sub-subcontract shall run to the benefit of and be enforceable by Owner.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

Each Subcontract for a portion of the Work is assigned by Design/Builder to Owner provided that: (a) the assignment is effective only after termination of the Agreement by Owner and only for those Subcontracts that Owner accepts by notifying the Subcontractor in writing; and (b) the assignment is subject to the prior rights of Design/Builder's surety, if any.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE DESIGN/BUILDERS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.

6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site under conditions of the Agreement. Owner also reserves the right to contract separately with respect to any tenant improvement work on whatever terms Owner deems appropriate. If Design/Builder claims that delay or Additional Cost is involved because of such action by Owner, Design/Builder shall make such Claim in accordance with the Agreement Documents. Design/Builder shall notify Owner if any such independent action will in any way compromise Design/Builder's ability to meet Design/Builder's responsibilities under this Agreement. Design/Builder shall fully cooperate with Owner's separate contractors, and such separate contractors and Owner shall also fully cooperate with Design/Builder. In addition to the above rights, Owner also reserves the right to purchase materials, supplies and equipment related to the Project under the ODP Program procedures.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Design/Builder" in the Agreement Documents in each case shall mean the Design/Builder who executes each separate Owner-Design/Builder Agreement or contractor, as applicable depending upon the specific functions to be performed.

SAMPLE

6.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Design/Builder who shall cooperate with them. Design/Builder shall cooperate and participate with other separate contractors and Owner.

6.1.4 In case of disagreement or disputes regarding the scheduling of Work by other contractors or unnecessary interference to the Work caused by lack of cooperation between other contractors and Design/Builder, Design/Builder shall fully cooperate to resolve any disputes with or between other contractors. In case of disagreements or disputes between two or more contractors, Owner shall be consulted and its decisions as to proper methods for coordinating the Work shall be final, binding and not reviewable. Design/Builder shall provide access to the Work so as to fully cooperate with Owner and other contractors in the performance of their Work.

6.2 MUTUAL RESPONSIBILITY.

6.2.1 Design/Builder shall afford Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Design/Builder's construction and operations with them as required by the Agreement Documents.

6.2.2 If part of Design/Builder's Work depends on proper execution or results from operations by Owner or a separate contractor, Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design/Builder to so report shall constitute an acceptance of Owner's or separate contractors' completed or partially completed construction as fit and proper to receive the Design/Builder's Work, except as to defects not then reasonably discoverable.

6.2.3 Design/Builder shall promptly remedy damage wrongfully caused by Design/Builder to completed or partially completed construction or to property of Owner or separate contractors.

6.2.4 Should Design/Builder delay or cause damage to the Work or property of any separate contractor, Design/Builder shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues Owner on account of any delay or damage alleged to have been caused by Design/Builder, Owner shall notify Design/Builder who shall indemnify and defend such proceedings at Design/Builder's sole expense.

6.3 OWNER'S RIGHT TO CLEAN UP.

If a dispute arises among Design/Builder, separate contractors and Owner as to the responsibility under their respective Agreements for maintaining the premises and surrounding area free from waste materials and rubbish as described in Article 3, Owner may clean up and allocate the cost among those responsible as Owner determines to be just.

SAMPLE

ARTICLE 7
CHANGES IN THE WORK

7.1 CHANGES.

7.1.1 Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by timely accepted Request for Project Change (RPC), Change Order, "Construction Change Directive" or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Agreement Documents. Owner reserves the right to make any changes, deletions or additions, in whole or in part in the plans, Specifications, and manner of performance of the Work, including acceleration of the Work that it may deem desirable. Design/Builder agrees to immediately, when directed in writing by Owner, perform the Work diligently and without delay.

7.1.2 Upon the receipt of a design change by revised drawing or bulletin, the Design/Builder shall review the change and within five (5) calendar days submit a Request for Project Change (RPC) to the Owner, which RPC shall give an estimate of the cost impact of the design change(s). The cost estimate is not binding, but should be the Design/Builder's best reasonable estimate at the time. Once the Owner has accepted an RPC, the Design/Builder is permitted to perform the work with the final reasonable cost thereof to be determined by Owner and Design/Builder. If Owner does not approve an RPC within 24 hours of submission it shall be deemed to be denied or disapproved. If a RPC is denied or disapproved, any Work performed by Design/Builder pursuant to the RPC shall be at Design/Builder's own cost. In no event shall work done pursuant to an accepted RPC result in anything more than a reasonable cost. Design/Builder shall seek to have an RPC converted to a Change order as quickly as reasonably and prudently possible.

7.1.3 A Change Order shall be based upon agreement between Owner and Design/Builder, a Construction Change Directive or any order for a minor change in the Work may be issued by Owner alone. Both are required to be in writing and signed.

7.1.4 Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

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

7.2 CHANGE ORDERS.

7.2.1 A "Change Order" is a written instrument prepared by Design/Builder and signed by Owner and Design/Builder stating their agreement upon all of the following:

(a) A Change in the Work;

(b) The amount of the adjustment in the Agreement Sum, if any; and/or

SAMPLE

(c) The extent of the adjustment in the Agreement Time, if any.

7.2.2 Methods used in determining adjustments to the Agreement Sum may include those listed in Section 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES.

7.3.1 A "Construction Change Directive" is a written order signed by Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Agreement Sum or Agreement Time, or both. Owner may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

7.3.2 Construction Change Directives may be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Agreement Sum, the adjustment shall be based on one of the following methods:

(a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating date to permit evaluations;

(b) Unit prices stated in the Agreement Documents or subsequently agreed upon;

(c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. Any such proposals from Subcontractors shall not include any amounts for overhead and profit in excess of an aggregate of ten percent (10%) of the cost of such Subcontractor's Work; or

(d) As provided in Section 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, Design/Builder shall promptly proceed with the change in the Work involved and advise Owner of Design/Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

7.3.5 A Construction Change Directive signed by Design/Builder indicates the agreement of Design/Builder therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall then become a Change Order.

7.3.6 If Design/Builder does not respond within seven (7) calendar days or disagrees with the method for adjustment in the Agreement Sum, the method and the adjustment shall be determined by Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Agreement Sum, an allowance for overhead and profit as set forth below. In such case, and also under Clause 7.3.3, Design/Builder shall keep and present, in such form as Owner may prescribe an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Agreement Documents, costs for the purpose of this Section 7.3.6 shall be limited to the following items, further limited by the GMP:

SAMPLE

(a) Labor.

(1) Actual Wages – labor hours, rate and extension by craft and class, but excluding premium pay unless addressed in the Change Directive, paid to all employees directly engaged in the work below general foreman level.

(2) Labor Burden – for each craft and class to be reimbursed at actual cost.

(b) Subsistence and/or Mileage – if required in union agreements.

(c) Materials – all materials incorporated in the Work at Design/Builder's net cost.

(d) Overhead – only those direct jobsite costs (not including any general overhead or profit) directly attributable to the change are to be included in the cost of the change, subject to Owner's prior approval.

(e) Premium Time – actual premium cost paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance, and union fringe benefits if required by union agreements.

(f) Freight – actual freight of materials used based on actual invoices.

(g) Equipment Rental – total compensation for equipment shall be as follows:

(1) Design/Builder's net invoice cost. However, the maximum amount Owner will be obligated to pay will not exceed that amount detailed under this Article.

(2) Transportation cost for equipment will be paid only if it is allocable to a specific change.

(h) Subcontractor Cost – shall be reimbursed in the same manner prescribed for Design/Builder; except the Subcontractor shall be entitled to no more than five percent (5%) profit on labor (excluding premium overtime costs and overhead) and on materials provided, however, that the total overhead and profit at the aggregate of the Design/Builder level and all Subcontractor tiers shall not exceed ten percent (10%) of the actual costs of labor (excluding premium overtime costs and overhead) and materials for such Work.

(i) Directed Overtime – When Owner authorizes and directs Design/Builder to work overtime on Agreement Work, for reasons that are not Design/Builder's responsibility, Owner shall pay the premium labor costs. No overhead and profit shall be applied to the labor premium.

(j) Other Direct Costs – verifiable Design/Builder costs for labor, equipment, and materials incorporated into the Work, along with Subcontractor direct costs. Direct costs specifically excluding, without limitation, non-verifiable costs such as job site overhead, Design/Builder consumables, small tools (less than Five Hundred Dollars ($500.00) in value), support vehicles, equipment and labor which cannot be attributed directly to one piece of equipment or to one item of the Work.

7.3.7 Pending final determination of cost to Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by Design/Builder to Owner for a deletion or change, which results in a net decrease in the

SAMPLE

Agreement Sum, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 When Owner and Design/Builder agree concerning the adjustments in the Agreement Sum and Agreement Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

ARTICLE 8
TIME

8.1 DEFINITIONS.

8.1.1 Unless otherwise provided, "Agreement Time" is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

8.1.2 The "Date of Commencement" of the Work is the date established in Part I of Agreement.

8.1.3 The "Date of Substantial Completion" is the date certified by the Design/Builder in accordance with Section 9.8, and when the Owner may use the improvements for their intended use.

8.1.4 Unless otherwise specifically defined, "day" means calendar day.

8.2 PROGRESS AND COMPLETION.

8.2.1 Time limits stated in the Agreement Documents are of the essence of the Agreement. Design/Builder is firmly obligated to meet the stipulated completion date or dates for its Work, as adjusted in accordance with the terms of this Agreement. By executing the Agreement, Design/Builder confirms that the Agreement Time is a reasonable period for performing the Work.

8.2.2 Design/Builder shall not knowingly, except by written agreement or instruction by Owner, prematurely commence operations on the Project Site or elsewhere prior to the effective date of insurance required under this Agreement to be furnished by Design/Builder. The Date of Commencement of the Work shall not be changed by the effective date of such insurance. The start time for the Agreement shall be established by a notice to proceed issued by Owner.

8.2.3 Design/Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time. Design/Builder shall utilize such additional labor, premium time, equipment and materials, as necessary, in order to meet any interim milestone dates set forth in the Agreement and the date of Substantial Completion.

8.2.4 Design/Builder expressly waives any claim for delay. In the event that Owner chooses to waive this provision in writing, then delay damages are liquidated at the sum of $200 per day until substantial completion.

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ARTICLE 9
PAYMENTS AND COMPLETION

9.1 AGREEMENT SUM.

9.1.1 The "Agreement Sum" is stated in the Agreement and, including authorized adjustments, is the total amount of reasonable and necessary charges, plus Design/Builder's fee, payable by Owner to Design/Builder for performance of the Work under the Agreement Documents, limited by the Guaranteed Maximum Price, if applicable.

9.1.2 Notwithstanding anything to the contrary contained in the Agreement Documents, Owner may withhold any payment to Design/Builder hereunder for the Work of Design/Builder or for the Work of any Subcontractor or Sub-subcontractor if and for so long as such party is in material breach of any of its obligations hereunder for the work of Design/Builder or under a Subcontract, as the case may be, or otherwise is in default under any of the Agreement Documents; provided, however, that any such holdback shall be limited to an amount sufficient, in the reasonable opinion of Owner, to cure any such fault or failure of performance by Design/Builder or by such Subcontractor or Sub-subcontractor, as the case may be, together with any administrative costs and expenses resulting therefrom.

9.2 SCHEDULE OF VALUES.

Before the first Application for Payment, Design/Builder shall submit to Owner any adjustment to the Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. The GMP Schedule with any adjustment approved by Owner, shall be used as a basis for reviewing Design/Builder's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT.

9.3.1 On or before the 20th day of each calendar month (the "Submittal Date"), Design/Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the Schedule of Values; although dated as of the Submittal Date, the Application for Payment shall be prepared from actual results as of the date which is five (5) days prior thereto and projected results through the Submittal Date. Each Application for Payment shall be prepared in both "hard copy" and via electronic media and shall be in a form acceptable to Owner. Such application shall be sworn to or affirmed under oath and supported by such data substantiating Design/Builder's right to payment as Owner may require, e.g., copies of requisitions from Subcontractors and material suppliers. Such application shall include Design/Builder's unconditional lien release for all Work performed through the preceding payment in the form attached as an Exhibit to the Agreement, a lien release for all Work performed through the Submittal Date conditioned on receipt of payment, the Monthly Report in the form attached to the Agreement as an Exhibit and such other documentation as may be required elsewhere under this Exhibit or the Agreement. Failure to provide any required information and documentation may result in the application not being processed until the missing items are provided.

(a) Such application may include requests for payment for changes in the Work that have been properly authorized by Construction Change Directive and/or included in Change Orders.

SAMPLE

(b) Such applications may not include requests for payment of amounts that Design/Builder does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason. Design/Builder shall reject or modify the requisition of a Subcontractor for any of the following reasons, unless Design/Builder and Owner agree that notwithstanding the existence of a reason for such action by Design/Builder, it is nonetheless advisable to process the requisition:

(1) Work not performed in accordance with the Agreement Documents and not remedied;

(2) Claims filed against the Project, Project Site or Subcontractor;

(3) Failure of Subcontractor to make payments to its agents, employees, or Sub-subcontractors for labor, material, or equipment;

(4) Damage to person or property caused by Subcontractor's activities;

(5) Delays in the prosecution of any portion of the Work caused by Subcontractor;

(6) Failure of Subcontractor to submit the required release and waiver;

(7) Back charges; or

(8) Any other cause as directed by Owner.

Owner shall retain ten percent (10%) of any portion of the value of each Application for Payment as approved by Owner, unless Owner consents in writing to a different percentage.

9.3.2 Payments may be made on account of materials and/or equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. If approved in advance by Owner, payment may similarly be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Payment for materials and/or equipment stored on or off the Project Site shall be conditioned upon compliance by Design/Builder with procedures satisfactory to Owner to establish the Owner's title to such materials and equipment and to protect Owner's interest, which shall include applicable insurance, storage and transportation to the Project Site for such materials and equipment stored off the Project Site. Design/Builder shall submit, within thirty (30) days after the date of commencement of the Work, and thereafter as Owner requires, schedules of materials and equipment for each category or Subcontract for which Application for Payment under this Section is made, which schedule shall include items, quantities, value or unit prices with extensions and the month in which Application for Payment with respect thereto is expected to occur. Schedules will be updated on a monthly basis and submitted as an attachment to Design/Builder's Applications for Payment. Owner must approve a payment schedule for each item to be invoiced prior to submittal of the invoice. Requests for such payments shall be delivered to Owner for approval by the fifth (5th) day of each month for inclusion into the following month's payment estimate and shall include the following:

(a) A verification of a conveyance of title for the material or apparatus without encumbrances.

SAMPLE

(b) A copy of the supplier invoices verifying material costs.

(c) A "Certificate of Compliance" from the supplier verifying that the material or apparatus quality and quantity is in accordance with the technical requirements.

(d) Location of the material with designed clear access when location is other than Owner's property. If the property is privately owned, Design/Builder shall list Owner as a second party to the storage lease or other negotiated agreement between Design/Builder and property owners.

(e) Insurance coverage acceptable to Owner.

Prior payments for materials and equipment shall be subtracted proportionately from the payment for completed Work as the material or equipment is incorporated into the Work in whole or in part.

9.3.3 Design/Builder warrants that title to all Work (including all materials, whether or not then incorporated or installed into the Project, subject to the right of Owner to reject same for failure to conform to the standards of any or all of the Agreement Documents) covered by an Application for Payment will pass to Owner no later than the time of payment, free of liens and security interests. Design/Builder further warrants that upon submittal of an Application for Payment (a) all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Design/Builder's knowledge, information and belief, are free and clear of liens, claims, security interests or encumbrances in favor of Design/Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work, and (b) all Work performed to date is free of any error, omission, negligent or willful act of Design/Builder or its agents, employees or Consultants, in connection with the Project.

9.3.4 Notwithstanding anything in the foregoing subsections of this Section 9.3 to the contrary, and consistent with other provisions of this Exhibit and the Agreement, an Application for Payment shall not include a request for payment with respect to the cost of any materials, supplies or equipment ordered directly by Owner under the ODP Program; as to such items, an Application for Payment may only pertain to the installation costs thereof and then only to the extent that payment is for operations completed in accordance with the Schedule of Values.

SAMPLE

9.4 CERTIFICATES FOR PAYMENT.

9.4.1 The Owner will, within seven (7) working days after receipt of Design/Builder's Application for Payment, either process the proposed Certificate for Payment, or notify Design/Builder in writing of the Owner's reasons for withholding payment in whole or in part as provided in Section 9.5.1.

9.4.2 An acceptance of Design/Builder's Application for Payment will not be a representation that the Owner has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (b) reviewed construction means, methods, techniques, sequences or procedures, (c) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate the Design/Builder's right to payment, or (d) made examination to ascertain how or for what purpose Design/Builder has used money previously paid on account of the Agreement Sum. Payment does not indicate acceptance of faulty or defective work.

9.5 DECISION TO WITHHOLD APPROVAL OF PAYMENT APPLICATION.

9.5.1 The Owner may decide not to approve payment and may withhold a proposed Payment in whole or in part, to the extent reasonably necessary to protect Owner as provided below. If Design/Builder and the Owner cannot agree on a revised amount, the Owner will promptly issue a proposed approved Application for Payment for the amount for which the Owner is able to approve. The Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect Owner from loss because of:

(a) Defective Work not remedied;

(b) Third party claims filed or reasonable evidence indicating probable filing of such claims;

(c) Failure of Design/Builder to make payments properly to Subcontractors or for labor, materials or equipment;

(d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;

(e) Damage to Owner or another Design/Builder;

(f) Reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

(g) Persistent failure to carry out the Work in accordance with the Agreement Documents or any error, omission, negligent or willful act of Design/Builder or its agents, employees or consultants, in connection with the Project.

(h) Evidence from periodic audits of Design/Builder's financial records that the Project has been overbilled.

9.5.2 When the above reasons for withholding approval for payment are removed, the approval will be made for amounts previously withheld. If Design/Builder disputes any determination by the Owner with regard to a proposed approval for an Application for Payment, Design/Builder shall nevertheless expeditiously continue to prosecute the Work. Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Agreement Documents provided that Owner has specified to Design/Builder Owner's reason for such withholding. In any of the events described in Section 9.5.1, Owner shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims, to complete the Work or to compensate Owner for any loss suffered by reason of Design/Builder.

9.6 PAYMENTS BY OWNER AND DESIGN/BUILDER.

9.6.1 On or before thirty (30) days after Owner's receipt of Design/Builder's Certificate for Payment, Owner shall make payment to Design/Builder of the amount specified therein unless Owner objects to any portion thereof as provided above, in which case Owner shall make payment of the balance and give notice to Design/Builder of the amounts withheld

SAMPLE

and the reasons for such withholding. Such payment by Owner shall not constitute approval or acceptance of any work in the Application for Payment. No partial payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates, or relieve Design/Builder of any of its obligations with respect thereto. Owner shall not be required to make any payment until Owner has received a release of liens and claims for payment from Design/Builder, and from all Subcontractors/Vendors for the portion of the Work covered by such payments.

9.6.2 Design/Builder shall make payment to all Subcontractors/Vendors within seven (7) business days of receipt of requisitioned funds and shall provide Owner evidence of such payments upon request. Design/Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner. If required by Owner, Design/Builder shall send to Owner copies of receipts from the Subcontractors for the payment made to them by Design/Builder. Design/Builder shall in no event, however, stop the Work during the pendency of a bona fide dispute between Owner and Design/Builder or any Subcontractor.

9.6.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Agreement Documents.

9.7 FAILURE OF PAYMENT.

If Owner does not pay Design/Builder within thirty (30) days after Owner's receipt of an approved Application for Payment to which Owner does not make written objection as provided in Section 9.6.1, then Design/Builder may, upon seven (7) additional days' written notice to Owner, stop the Work until payments of the amount owing has been received.

9.8 SUBSTANTIAL COMPLETION.

9.8.1 "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Agreement Documents so Owner can occupy or utilize the Work for its intended use. In addition to the foregoing, the Work or any designated portion thereof shall not be considered to have reached the stage of Substantial Completion unless all of the following conditions have been satisfied: (a) such Work has been fully completed with the exception of minor "punch-list" items which do not interfere with Owner's use and enjoyment of the completed Work as an operating first-class establishment; (b) temporary certificates of use and occupancy have been obtained from all necessary governmental authorities; (c) all HVAC systems are fully functioning and have been accepted by Owner; and (d) all life safety systems are fully functioning and have been accepted by Owner and approved by applicable governmental authorities.

9.8.2 When Design/Builder considers that the Work, or a portion thereof which Owner agrees to accept separately (if any), is substantially completed, Design/Builder shall prepare and submit to Owner a comprehensive list of items to be completed or corrected. Design/Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Design/Builder to complete all Work in accordance with the Agreement Documents. Upon receipt of Design/Builder's list, the Owner will make an inspection to determine whether the Work or designed portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on Design/Builder's list, which is not in accordance with the requirements of the Agreement Documents, Design/Builder shall complete or correct

SAMPLE

such item upon notification by the Owner. Design/Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Design/Builder will prepare for Owner's review a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Design/Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Design/Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designed portion thereof unless otherwise provided in the final approved Certificate of Substantial Completion, and except as to latent defects and matters specified in any punch-list delivered with respect to the Project or a portion thereof.

9.9 PARTIAL OCCUPANCY OR USE.

9.9.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage if in Owner's judgment it is advisable to do so. Such partial occupancy or use may commence whether or not the portion is substantially complete. When Design/Builder considers a portion substantially complete, Design/Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2.

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

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

9.10 FINAL COMPLETION AND FINAL PAYMENT.

9.10.1 Following the Design/Builder's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, acceptance thereof by Owner and Design/Builder's completion of the Work, Design/Builder shall forward to Owner a written notice that the Work is ready for final inspection and acceptance, and shall also forward to Owner a final Project Application for Payment. Final completion of Work shall not be deemed to have occurred until Owner, in its judgment, shall have received satisfactory evidence that:

(a) All Work, including all punch-list items, have been fully and satisfactorily completed in a good and workmanlike manner, in strict conformance with the Agreement Documents and in full compliance with all applicable legal requirements; and

(b) Design/Builder has performed all of its Work as required to obtain all final certificates of approval relating to the Work and the contemplated uses of the Project, including, without limitation, all necessary permanent certificates of occupancy, public assembly permits, other operational permits and certificates of any applicable Board of Fire Underwriters or any successor thereto, and all such permits and certificates shall have been issued and delivered to Owner.

SAMPLE

(c) Design/Builder has submitted a final accounting and Owner's accountants substantiate the accuracy of the Design/Builder's final accounting as provided in the Agreement.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until Design/Builder submits to Owner (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Agreement Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner, (c) a written statement that Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Agreement Documents, (d) consent of surety, if any, to final payment, (e) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement to the extent and in such form as may be designated by Owner and (f) a final release of claims from Design/Builder conditioned upon final payment, and (g)such other documents as Owner may require, including assignments of warranties and guarantees, instruction manuals, "as-built" Drawings and certifications. If a Subcontractor refuses to furnish a release or waiver required by Owner, Design/Builder may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Design/Builder shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 Acceptance of final payment by Design/Builder, a Subcontractor or material supplier shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. All obligations of the Design/Builder, including without limitation, those establishing warranty obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment, and shall survive the Agreement. Design/Builder's obligation to perform the Work and complete the Project in accordance with the Agreement Documents shall be absolute. Neither approval of any partial or final payment by Owner, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Design/Builder under the Agreement Documents, nor any use or occupancy of the Project or any part thereof by Owner, nor any act of acceptance by Owner, nor any failure to do so, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Agreement Documents. The following notarized statement shall be on the final request for payment submitted by Design/Builder after completion of the Work:

"In consideration for Owner paying the above invoice together with the other invoices on this Agreement previously submitted by Design/Builder to Owner, the aggregate amount totaling one hundred percent (100%), the undersigned agrees to release and discharge Owner of and from all claims and demands for extra labor or material furnished for or in connection with the Work, which is the subject matter of said Agreement; and also agrees to hold harmless and indemnify said Owner from and against any and all delay claims, claims of mechanics or material suppliers and from and against any and all delay for material furnished and provided and Work and labor done and performed upon the Work which is the subject matter of said Agreement."

SAMPLE

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS.

10.1.1 Design/Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. All Work shall be performed in strict compliance with the requirements of the applicable federal, state, and Tribal safety and health laws and programs. Owner will not be responsible in any way for providing a safe place for the performance of the Work by Design/Builder, any Subcontractor or Sub-subcontractor, or any of their respective agents or employees.

10.1.2 If Design/Builder is responsible for the abatement or removal of asbestos in the Project as set forth in the Agreement Documents, Design/Builder and Subcontractors shall undertake any such activities in accordance with the terms of this Agreement and any applicable federal law for hazardous waste removal.

10.1.3 Design/Builder shall conduct safety meetings with its site personnel and subcontractors not less often than monthly.

10.2 SAFETY OF PERSONS AND PROPERTY.

10.2.1 Design/Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) Employees on the Work and other persons who may be affected thereby;

(b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of Design/Builder or Design/Builder's Subcontractors or Sub-subcontractors; and

(c) The Building and any portions thereof and any other property at the Project Site or adjacent thereto and any other property on which Work will be performed or which Design/Builder will occupy or cross in performing the Work, including any trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction and the Work of Owner or any of Owner's separate contractors.

10.2.2 Design/Builder shall give notices and comply with applicable laws, ordinances rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 Design/Builder shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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10.2.5 Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Clauses 10.2.1(b) and 10.2.1(c) caused in whole or in part by Design/Builder, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Design/Builder is responsible under Clauses 10.2.1(b) and 10.2.1(c), except damage or loss attributable to acts or omissions of Owner or anyone directly or indirectly employed by Owner (other than Design/Builder), or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of Design/Builder. Design/Builder shall designate a responsible member of Design/Builder's organization at the Project Site to be safety director, whose duty shall be the prevention of accidents.

10.2.6 Design/Builder shall not load or permit any part of the construction or Project Site to be loaded so as to endanger its safety.

10.3 EMERGENCIES.

In an emergency affecting safety of persons or property, Design/Builder shall act reasonably to prevent threatened damage, injury or loss.

ARTICLE 11
BONDS

At Owner's option, Design/Builder shall furnish to Owner Performance and Payment Bonds; including the satisfactory performance of all of Design/Builder's obligations under the Agreement, including warranty obligations and liquidated damages.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK.

12.1.1 If a portion of the Work is covered contrary to Owner's request or any applicable governmental or tribal authority's requirements, or to requirements specifically expressed in the Agreement Documents, it must, if required in writing, be uncovered for their observation and be replaced at Design/Builder's expense without change in the Agreement Time.

12.1.2 If a portion of the Work has been covered, which the Design/Builder or Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such Work and it shall be uncovered by Design/Builder. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is not in accordance with the Agreement Documents, Design/Builder shall pay such costs unless the condition was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.

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12.2 CORRECTION OF WORK - WARRANTY.

12.2.1 Design/Builder shall promptly correct Work rejected (a) by any applicable governmental authority, or (b) by the Owner as defective or failing to conform to the requirements of the Agreement Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Design/Builder shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for any contractor retained by Owner for services and expenses made necessary thereby.

12.2.2 If any of the Work is found to be defective or not in accordance with the requirements of the Agreement Documents, Design/Builder shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Design/Builder a written acceptance of such condition. This obligation under this Section 12.2.2 shall survive acceptance of the Work under the Agreement and termination of the Agreement. Owner shall give notice of defect promptly after discovery of the condition.

12.2.3 Design/Builder shall remove from the Project Site portions of the Work that are defective or not in accordance with the requirements of the Agreement Documents and are neither corrected by Design/Builder nor accepted by Owner.

12.2.4 If Design/Builder fails to promptly correct defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, Owner may correct it in accordance with Section 2.4. If the Design/Builder does not proceed with correction of such defective or non-conforming Work within the reasonable time fixed by written notice from the Owner, Owner may remove it and store the savable material or equipment at Design/Builder's expense. If Design/Builder does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days written notice dispose of such materials and equipment.

12.2.5 Design/Builder shall bear the cost of correcting destroyed or damaged construction, of Owner or separate contractors whether completed or partially completed, caused by Design/Builder's correction or removal of Work which is defective or not in accordance with the requirements of the Agreement Documents.

12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which Design/Builder might have under the Agreement Documents. Establishment of the time period of one year as described in Section 12.2.2 relates only to the specific obligation of Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Agreement Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Design/Builder's liability with respect to Design/Builder's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NON-CONFORMING WORK.

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

SAMPLE

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 RIGHTS AND REMEDIES.

13.1.1 Duties and obligations imposed by the Agreement Documents and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by applicable law.

13.1.2 No action or failure to act by Owner shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be provided by the Agreement Documents or specifically agreed in writing.

13.2 TESTS AND INSPECTIONS.

13.2.1 Tests, inspections and approvals of portions of the Work required by the Agreement Documents or by-laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Design/Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Design/Builder shall give the Owner timely notice of when and where tests and inspections are to be made so the Owner may observe such procedures. Owner, unless otherwise provided in this Agreement, shall bear costs of tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded.

13.2.2 If the Owner or applicable public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.2.1 the Owner will instruct Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Design/Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so the Owner and/or its designees may observe such procedures. Owner shall bear such costs except as provided in Section 13.2.3.

13.2.3 If such procedures for testing, inspection or approval under Sections 13.2.1 and 13.2.2 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, Design/Builder shall (a) correct any items of non-compliance within seventy-two (72) hours of Design/Builder's receipt of a notice to that effect and (b) bear all costs made necessary by such failure including those of repeated procedures and compensation for the services and expenses of any of Owner's contractors.

13.2.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by Design/Builder and promptly delivered to the Owner.

13.2.5 If the Owner wishes to observe tests, inspections or approval required by the Agreement Documents, they will do so promptly and, where practicable, at the normal place of testing.

13.2.6 Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

SAMPLE

13.3 COMMENCEMENT OF STATUTORY LIMITATION PERIOD.

As between Owner and Design/Builder:

13.3.1 Before Substantial Completion: As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on such date of Substantial Completion.

13.3.2 Between Substantial Completion and final Certificate for Payment: As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the date of issuance of the final Certificate for Payment; and

13.3.3 After Final Certificate for Payment: As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the date of any act or failure to correct the Work by Design/Builder under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by Design/Builder or Owner, whichever occurs last.

END OF GENERAL CONDITIONS

SAMPLE

DESIGN/BUILD AGREEMENT
PART 2

BETWEEN

SEMINOLE TRIBE OF FLORIDA
a Federally Recognized Indian Tribe Under 25 U.S.C. §5123
("OWNER")

AND

_____
a _____
("DESIGN/BUILDER")

FOR

_____ (_____)
_____ **SEMINOLE INDIAN RESERVATION**
("Project")

SAMPLE

THIS AGREEMENT (the "Agreement") is made, entered into and effective as of the date of the last signature of this Agreement ("Effective Date") by and between the SEMINOLE TRIBE OF FLORIDA, a federally recognized Indian Tribe under 25 U.S.C. §5123 ("OWNER") and _____, a _____ ("DESIGN/BUILDER")

PART 2 OF AGREEMENT - FINAL DESIGN AND CONSTRUCTION

A. Identification information

OWNER:
SEMINOLE TRIBE OF FLORIDA,
A FEDERALLY RECOGNIZED INDIAN
TRIBE UNDER 25 U.S.C §5123

DESIGN/BUILDER:

OWNER ADDRESS:
6300 STIRLING ROAD,
HOLLYWOOD FLORIDA 33024
PHONE: (954) 966-6300

DESIGN/BUILDER ADDRESS:

OWNER REPRESENTATIVE:
_____
DIRECTOR OF THE _____
DEPARTMENT
5700 GRIFFIN ROAD
DAVIE, FLORIDA 33314
PHONE: (954) 966-6300
E-MAIL:

DESIGN/BUILDER REPRESENTATIVE:

PROJECT NAME:
_____

ENGINEER NAME AND ADDRESS:

PROJECT LOCATION:
_____ SEMINOLE INDIAN
RESERVATION

SAMPLE

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Agreement documents consist of DESIGN/BUILDER's Proposal identified in this Part 2, the Construction Documents approved by OWNER in accordance with Paragraph 2.2.1 below and any modifications issued after execution of this Agreement ("Agreement Documents"). A modification is a Change Order signed by both parties. A Change Directive is a written order by OWNER to perform changed work where the cost of the changed work has not been determined. These form the Agreement and are as fully a part of the Agreement as if attached to this Part 2 or repeated herein.

1.1.2 The Project is the total design and construction for which DESIGN/BUILDER is responsible under Part 2, including all professional design services and all labor, materials and equipment used or incorporated in the architectural and all other design and construction.

1.1.3 The Work comprises the completed construction designed under the Project and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.2 DESIGN/BUILDER REPRESENTATIONS

1.2.1 DESIGN/BUILDER represents and warrants:

1.2.1.1 DESIGN/BUILDER is and will remain fully qualified and able to cause the Work to be accomplished in a manner consistent with good trade practices and within the time and in the manner specified in the Agreement Documents and has and will continue to have sufficient and qualified personnel to fulfill its duties under this Agreement in the manner required.

1.2.1.2 DESIGN/BUILDER has and will continue to have all licenses and permits as a Florida state licensed contractor. It will use only Florida licensed architects, engineers, landscape architects, and other professions or trades that require licensure in Florida.

1.2.1.3 DESIGN/BUILDER is and will continue to be financially capable and has and will continue to have sufficient financial resources to fulfill its duties under this Agreement in the manner required, including the ability to obtain all bonds permitted by the Agreement Documents.

1.2.1.4 DESIGN/BUILDER has undertaken a prudent and professional investigation of the Project and Project Site and is familiar with the conditions of Project Site and has carefully considered all subsurface information furnished by geotechnical consultants retained by DESIGN/BUILDER determined to be necessary by DESIGN/BUILDER for completion of the Work. DESIGN/BUILDER further acknowledges that it is familiar with the requirements of the various governmental agencies, departments and bureaus having jurisdiction, and from its own investigations has satisfied itself as to the nature and location of the Work,

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the general and local conditions, and all matters which may in any way affect the Work or its performance.

1.2.1.5 DESIGN/BUILDER has not made and will not in the future make any payments, agreement, or arrangement for the payment of any commission, percentage, brokerage fee or other compensation to any person in connection with the procuring or soliciting of this Agreement or for services as a broker or finder in connection with the transactions contemplated hereby.

1.2.1.6 DESIGN/BUILDER will not commit its personnel to, or engage in, any other projects during the term of this Agreement such that other projects may materially and adversely affect the quality or efficiency of the Work required to be performed by DESIGN/BUILDER in connection with this Project or which will otherwise be detrimental to the performance and completion of this Project.

1.2.1.7 DESIGN/BUILDER accepts the relationship of trust and confidence established between it and OWNER under this Agreement. DESIGN/BUILDER shall use its best efforts and shall furnish its best professional skill and judgment and shall cooperate with OWNER, Architect, and OWNER's other consultants in furthering the best interests of OWNER. DESIGN/BUILDER shall furnish efficient business administration, coordination, supervision, and management, in the most expeditious, economical, and soundest manner possible, consistent with the best industry accepted standards and the best interests of OWNER, and in accordance with the Agreement Documents.

1.2.1.8 DESIGN/BUILDER warrants that it has examined, and will continue to examine, the Project and Project site, all areas where Work is to be performed, and the surrounding areas, and has compared, and will continue to compare, its findings with the Agreement Documents. DESIGN/BUILDER will inform itself to the best of its ability based on its prudent and professional investigation as to all matters necessary for conducting the Work including, but not limited to, general working conditions, labor requirements, accessibility, condition of the premises, obstructions, drainage conditions, actual elevations, excavating and filling. DESIGN/BUILDER has undertaken such investigation as to the character of the Project Site and the character of existing structures at or adjacent to the Project Site, and the character and extent of OWNER's and other contractors' operations in the area, and in connection with the Project. No allowance or extra payment will be subsequently made because of any items or conditions occasioned by DESIGN/BUILDER's failure to make such comparison and examination, or by reason of any error or oversight on DESIGN/BUILDER's part.

1.3 COMPLETE PRODUCT

It is the intent of OWNER and DESIGN/BUILDER that the Agreement Documents include all items necessary for proper execution and completion of the Work. The Agreement Documents

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are complementary, and what is required by any shall be binding as if required by all. Work not covered in the Agreement Documents will not be required unless it is consistent with and is reasonably inferable from the Agreement Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical, or trade meanings are used in the Agreement Documents in accordance with such recognized meanings.

1.4 OWNERSHIP AND USE OF DOCUMENTS

Any drawings, specifications, and other documents furnished by DESIGN/BUILDER will be the property of OWNER upon the creation of such documents. Such documents shall not be used on any other project without the prior consent of OWNER. With the exception of one (1) contract set for each party to the Agreement, such documents are to be returned or suitably accounted for to OWNER on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyright or other reserved rights. Drawings issued by DESIGN/BUILDER concerning clarifications, proposed changes (in the form of "bulletins," or clouding on revised drawings) or changes will be in the form of a reproducible print of each such drawing. DESIGN/BUILDER shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work. DESIGN/BUILDER, its employees, and all other persons involved in the Work, whether on site or not, shall retain in confidence and shall not, without OWNER's prior written authorization, copy or disclose to any third party any information of a confidential nature obtained from OWNER, whether obtained directly or deduced from other confidential information.

ARTICLE 2
DESIGN/BUILDER

2.1 SERVICES AND RESPONSIBILITIES

Design services shall be performed by qualified design professionals selected and paid by DESIGN/BUILDER. The professional obligations of such persons shall be undertaken and performed in the interest of DESIGN/BUILDER and OWNER. Construction services shall be performed by qualified construction contractors and suppliers, selected, and paid by DESIGN/BUILDER and acting in the interest of DESIGN/BUILDER. All such contractors and suppliers are subject to the prior approval of OWNER.

2.2 BASIC SERVICES

2.2.1 DESIGN/BUILDER shall submit Construction Documents for review and approval by OWNER. Construction Documents shall include technical drawings, schedules, diagrams, and specifications, setting forth in detail the requirements for construction of the Work and shall:

1. develop the intent of DESIGN/BUILDER's Proposal in greater detail;
2. provide information customarily necessary for the use of those in the building trades; and
3. include documents customarily required for regulatory agency approvals.

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2.2.2 DESIGN/BUILDER shall assist OWNER in filing documents required to obtain necessary approvals of applicable governmental authorities having jurisdiction over the Project, if any.

2.3 PRELIMINARY DUTIES

2.3.1 Provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. Prepare preliminary estimates of Construction Cost for early schematic designs based on area, volume, Subcontractor quotes, and/or other standards. Assist OWNER in achieving mutually agreed upon program and the Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.

2.3.2 Review designs, including but not limited to, to the extent applicable, architectural designs, structural, HVAC, plumbing, fire projection, power and lighting, security systems and communications, interior designs, and vertical transportation for constructability in accordance with the Project Budget and Program requirements. Advise on the Project Site use and improvements, selection of materials, Project and Project Site systems and equipment, improvements to the Project and Project Site, call and security systems, and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, integration into existing Project and Project Site systems, and factors related to cost including, but not limited to, costs of alternative designs or materials (value engineering), preliminary budgets and possible economics.

2.3.3 Perform prudent investigations, evaluations and/or appraisals of existing Project Site conditions. DESIGN/BUILDER shall verify utility locations if (a) their removal and/or relocation is required by the Specifications and Drawings, or (b) there is any conflict between existing utilities and the Work. DESIGN/BUILDER shall coordinate with OWNER and with those utility companies so that the Work is progressed to maintain the Agreement Schedule pursuant to **Exhibit B-2**, while taking into account the operational needs of OWNER. DESIGN/BUILDER acknowledges that it has previously investigated the existing conditions in connection with the determination of the Project scope and is therefore substantially familiar with the condition of the Project and Project Site. DESIGN/BUILDER has made, and will continue to make, such investigation as it believes is necessary and appropriate during this stage in order to have a full and satisfactory knowledge of existing conditions of the Project, Project Site, and all related Work. DESIGN/BUILDER shall advise OWNER of any additional information or testing that it may need to perform its services. If DESIGN/BUILDER does not advise OWNER of the need for additional information, it shall be presumed that DESIGN/BUILDER has all information necessary for it to perform the Work.

2.3.4 Provide for OWNER's review and acceptance of a written Project schedule, and monthly (or as otherwise required by OWNER) update, which is consistent with the approved schedule so as to coordinate and integrate DESIGN/BUILDER's Work, the services of consultants, and OWNER's responsibilities with anticipated construction schedules showing key milestones for the completion of the Project (the "Project Schedule"). The Project Schedule shall include assumptions regarding normal weather conditions/rain days.

2.3.5 Advise OWNER in writing immediately upon discovery if, in the judgment of DESIGN/BUILDER, the issuance of architectural or engineering documents does not meet

SAMPLE

schedule requirements; or if the information provided on such documents is inadequate for the current purposes intended; or if requirements of such documents conflict with other documents issued, or with existing conditions on the Project Site.

2.3.6 Prepare for OWNER's approval a more detailed, line-item by area written estimate of Construction Cost developed by using estimation techniques which anticipate the various elements of the Project; and based on schematic design documents. Update and refine this estimate periodically as the design development and Construction Documents are prepared based upon such completion percentage milestones as OWNER and DESIGN/BUILDER may agree upon (if no other agreement is made, then the applicable stages of completion shall be 30%, 60%, 90% and 100%). Promptly advise OWNER if it appears that the Construction Cost may exceed the Project Budget and make recommendation for corrective action.

2.3.7 Review and check the Agreement Documents for (a) conflicts, discrepancies, and omissions, and (b) variations from customary construction practices and methods which, in the opinion of DESIGN/BUILDER, may cause difficulties or occasion delay in the performance of the Work and advise OWNER promptly, in writing, of any such observed problems. Coordinate Agreement Documents by consulting with OWNER regarding Drawings and Specifications as they are being prepared and recommend alternative solutions whenever design details adversely affect construction feasibility, cost, or schedule. Advise OWNER, using DESIGN/BUILDER's skill and judgment, regarding any missing or incomplete aspects of the Project scope.

2.3.8 Prepare and supervise the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of Subcontractors. Verify that the requirements and assignment of responsibilities are included in all Subcontracts. DESIGN/BUILDER shall be solely responsible for the safety of areas in which Work is performed – both on-site and off-site.

2.3.9 Investigate and recommend a schedule for purchase of materials and equipment requiring long lead time procurement and coordinate the schedule with the early preparation of portions of the Agreement Documents. With OWNER's prior written approval, competitively bid and order such materials and equipment and expedite and coordinate delivery of these purchases.

2.3.10 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Take all appropriate actions in order to minimize adverse effects of labor shortages.

2.4 SUBCONTRACTS

2.4.1 DESIGN/BUILDER shall determine the separation of the Project into subcontracts for various categories of Work. Advise on the method to be used for selecting Subcontractors and awarding subcontracts. DESIGN/BUILDER will obtain Bids from and, with OWNER's reasonable approval, enter into subcontracts with Subcontractors. OWNER may designate specific persons or entities from which DESIGN/BUILDER shall obtain Bids. As separate Subcontracts are awarded, insure that (a) the Work of the separate Subcontractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate separate Subcontractors, (c) the likelihood of jurisdictional disputes has been minimized, (d) proper coordination has been provided for phased construction as applicable, and (e) OWNER is named as an intended third-party beneficiary of the subcontracts. Subcontractors shall be competitively bid and entered into on a lump-sum price basis. Except as expressly authorized by OWNER in writing subcontracts shall not be on a cost-plus basis.

SAMPLE

2.4.2 Proposed subcontracts and purchase orders in excess of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) shall be approved by OWNER prior to being awarded by DESIGN/BUILDER. DESIGN/BUILDER will notify OWNER, at least seventy-two (72) hours in advance if a lack of response by OWNER could cause a negative impact on the Project Schedule. Provided OWNER responds within such seventy-two (72) hour period, no extension of time shall be granted. Prior to submitting any Subcontract for OWNER's approval, DESIGN/BUILDER shall investigate through such means as are standard in the construction industry, the financial capability of the Subcontractor and other material information known about it and advise OWNER as to the desirability and cost of obtaining payment and performance bonds from such Subcontractor. OWNER may decline, in its sole discretion, to approve a proposed Subcontractor because of such information or for any other reason. All major subcontractors, as determined by OWNER, shall be required to provide a payment and performance surety bond, with the cost of these bonds to be included as part of the Subcontractor's bid for the work. These bonding requirements may be waived with the consent of both DESIGN/BUILDER and OWNER. DESIGN/BUILDER shall not allow any Subcontractor to enter the Project Site to perform work prior to executing an approved Subcontract and delivering to OWNER the insurance certificate(s) required herein, provided, however, that an executed Subcontract shall not be required of a Subcontractor prior to entering the Project Site if DESIGN/BUILDER has obtained each of the following: (a) the insurance certificate required hereby; (b) a fully executed letter of intent between DESIGN/BUILDER and the Subcontractor; and (c) OWNER's written approval to DESIGN/BUILDER's "Analysis of Award" relating to the subcontract. In such event, DESIGN/BUILDER shall enter into a written Subcontract within thirty (30) calendar days thereafter.

2.4.3 Upon the award of the initial Subcontractors and within thirty (30) calendar days of the commencement of the Construction Phase and prior to the issuance of the first "Application for Payment" of the Construction Phase, submit to OWNER for approval a Project schedule of values comprised of individual schedules of values for each subcontract and an overall coordination of such values within the Agreement Sum, all in a format as determined by OWNER (the "Schedule of Values").

2.4.4 DESIGN/BUILDER will exert reasonable and diligent effort to promote harmony and appropriate measures to keep the Project free of labor disputes, conflicts, and protests, and to protect OWNER from same. DESIGN/BUILDER must promptly replace labor or other staff where OWNER makes a reasonable request to do so.

2.5 SCHEDULES

2.5.1 DESIGN/BUILDER shall develop a Project "Construction Schedule" providing for all major elements of construction, including times of commencement and completion required of each separate Subcontractor/element of work for OWNER's approval. The Project Schedule (and any revisions thereto) shall be updated and revised at appropriate intervals as required by OWNER or the current and Projected conditions of the Work and Project, shall set forth milestones and Substantial Completion Dates for the Work, shall designate those items on the critical path of the Work, shall be related to the entire Project to the extent required by the Agreement Documents, shall indicate dates necessary to vacate various work areas, and shall provide for expeditious and practicable execution of the Work. Any item that cannot be demonstrated as being on or affecting the critical path of the Work shall not result in an extension of time to perform the Work in the event such item is delayed.

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2.5.2 DESIGN/BUILDER shall prepare progress updates twice per month for comparison to the Project Schedule and submit these to OWNER as a condition precedent to payment of DESIGN/BUILDER's Fee. The portion of any invoice representing DESIGN/BUILDER's Fee will not be paid unless these updates are submitted. These updates shall include:

1. The effect on the schedule of any delays in any activities in progress and/or the impact of known or suspected delays which are expected to affect future Work;
2. The effect of Agreement Modifications on the schedule;
3. Schedule changes for the purpose of regaining lost time or improving progress;
4. Contractual changes, as approved by OWNER, to milestones, due dates, and the overall Agreement completion date since the last revision of the Approved Project Schedule; and
5. Consistent with the Approved Project Construction Schedule issued with the Proposal and utilizing the scheduling information provided by the separate Subcontractors, the schedule updates must incorporate the activities of Subcontractors on the Project, including activity sequences and duration, allocation of labor and materials, processing of "Shop Drawings," "Product Data" and Samples, and delivery of materials and equipment requiring long lead time procurement. Include OWNER's occupancy requirements showing portions of the Project having occupancy priority. Update and submit any revised Project Construction Schedule from that used for Proposal purposes as required to show current conditions and revisions required by actual experience and to make it compatible with the Approved Project Schedule. All schedules shall be coordinated with delivery dates required by tenant leases, as applicable.

2.5.3 DESIGN/BUILDER shall monitor the progress of the Work using the Approved Project Schedule and shall report to OWNER any schedule deviations with reference to the Approved Project Schedule. Construction Schedule updates shall be formally presented to OWNER no less than twice per month and shall include the current status of each Subcontractor, supplier, and vendor. OWNER's receipt and approval of an updated Approved Project Schedule shall not constitute notice of a delay, approval of a time extension (should the updated schedule reflect a later completion date than earlier schedules), or an agreement by OWNER to pay any delay or acceleration costs. The completion dates required by the Agreement can only be revised by an approved, fully executed Change Order.

2.5.4 DESIGN/BUILDER shall commence Work within ten (10) calendar days after the Notice to Proceed. DESIGN/BUILDER shall advise OWNER at least seventy-two (72) hours in advance of beginning actual construction operations, including surveying and layout.

2.5.5 DESIGN/BUILDER is required to complete all Work under this Agreement within the times specified, for both interim Completion Dates and Substantial completion, as set forth on the Approved Project Schedule. Completion of Work prior to any Interim Milestone or the final Completion Date will not entitle DESIGN/BUILDER to additional compensation.

2.5.6 DESIGN/BUILDER shall perform the Work continuously and diligently, using such means and methods of Work as will assure its completion no later than the date specified therefor, or on the date to which time for completion may be extended in writing by OWNER.

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2.5.7 Should DESIGN/BUILDER be or anticipate being delayed or disrupted in performing the Work hereunder for any reason, it shall promptly, and in no event more than Fourteen (14) calendar days after the commencement of any condition that is causing or is threatening to cause such delay or disruption, notify OWNER in writing of the condition and inform OWNER of the effect of such condition upon the Approved Project Schedule, stating why and in what respects the condition is causing or is threatening to cause delay. Failure to comply strictly with this notice requirement shall be sufficient cause to deny DESIGN/BUILDER a change in schedule (if DESIGN/BUILDER would otherwise be entitled to a change in schedule under this Agreement) on a day-to-day basis for each day beginning on the date that is three (3) calendar days from the date that DESIGN/BUILDER becomes aware of such cause for delay or disruption and continuing until the date such notice is given; provided, however, DESIGN/BUILDER shall not be entitled to an extension of time to the extent such extension would not be necessary but for DESIGN/BUILDER's failure to strictly comply with this Section.

2.5.8 Revised completion dates for the Work will be authorized by OWNER only if (a) DESIGN/BUILDER has been necessarily delayed in meeting the critical path for such Completion Date by a cause which constitutes an "Excusable Delay" (which shall be a delay (A) not proscribed by any other provision of this Agreement and (B) which is beyond the reasonable control of DESIGN/BUILDER and results from (i) an unanticipated shortage of materials, (ii) war, casualty, earthquakes, floods, fire or windstorms, or (iii) a stop-work law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental authority) or a cause attributable to OWNER, a change to the Work initiated by OWNER, or some other cause for which OWNER is contractually responsible; (b) such cause becomes apparent after the execution of the Agreement and was not discovered by DESIGN/BUILDER in the course of its prudent and professional investigation of the Project and Project Site as described herein; (c) the completion of the Work by the applicable Interim Milestone or the total Project by the Substantial Completion date is actually and necessarily delayed by such cause; (d) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay; and (e) DESIGN/BUILDER has met any notice requirements set forth in this Agreement for it to be entitled to any extension of time. All extensions of time to which DESIGN/BUILDER is entitled hereunder will be acknowledged by Change Order.

2.5.9 DESIGN/BUILDER agrees that no extension of time will be granted for time lost due to normal seasonal weather conditions. If unusually severe weather can be shown to have affected the critical path, a non-compensable time extension will be granted for the period of such delay at no additional cost to OWNER.

2.5.10 DESIGN/BUILDER shall not be entitled to receive a separate extension of time for each of several causes of delay to the critical path operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of DESIGN/BUILDER or of its Subcontractors, and would of itself, irrespective of the concurrent causes, have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault, or omission.

2.5.11 As a condition precedent to the granting of an extension of time, DESIGN/BUILDER shall give written notice to OWNER within Fourteen (14) calendar days after the time when DESIGN/BUILDER knows of any cause which might result in delay, for which it

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may claim an extension of time, including those causes of which OWNER has knowledge, specifically stating in such notice that an extension is or may be claimed; identifying such cause and describing, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice.

2.5.12 Since the possible necessity for an extension of time may materially alter the scheduling plans, and other actions of OWNER and since, with sufficient notice, OWNER may, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time might be claimed, the giving of written notice as required above is of the essence of DESIGN/BUILDER's obligations hereunder. If failure of DESIGN/BUILDER to give written notice as required above actually prevents OWNER from the opportunity to mitigate the effect of the delay, DESIGN/BUILDER will waive that portion of the claim that OWNER was then unable to mitigate.

2.5.13 It shall in all cases be presumed that no extension, or further extension of time is due unless DESIGN/BUILDER shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of OWNER. DESIGN/BUILDER shall maintain adequate records supporting any claim for an extension of time.

2.6 ADMINISTRATION OF THE AGREEMENT

2.6.1 Unless otherwise provided in the Agreement Documents, DESIGN/BUILDER shall provide or cause to be provided and shall pay for all design and construction services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.6.2 DESIGN/BUILDER shall be responsible for construction means, methods, techniques, sequences, and procedures employed by DESIGN/BUILDER and all Subcontractors in the performance of their Work; and be responsible for the failure of DESIGN/BUILDER or any Subcontractor to carry out Work in accordance with the Agreement Documents.

2.6.3 DESIGN/BUILDER shall keep OWNER informed of the progress and quality of the Work. DESIGN/BUILDER shall provide monthly monitoring of the Agreement Sum in accordance with **Exhibit A-2** and **Exhibit B-2**, attached hereto, and provide monthly reports to OWNER showing actual costs for activities in progress and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs, and immediately advise OWNER whenever projected costs have the potential to exceed budgets or estimates.

2.6.4 DESIGN/BUILDER shall ensure that the Work is being performed in accordance with the requirements of the Agreement Documents and guard OWNER against defects and deficiencies in the Work and increases in cost. If DESIGN/BUILDER becomes aware of any fault or defect in the Work, DESIGN/BUILDER shall give prompt written notice thereof to OWNER. As appropriate DESIGN/BUILDER shall request special inspection or testing of Work not in accordance with the provisions of the Agreement Documents whether or not such Work be then fabricated, installed, or completed. DESIGN/BUILDER shall reject Work which does not conform to the requirements of the Agreement Documents and cause correction of such defective Work. Upon DESIGN/BUILDER's receipt of a notice of non-compliance from OWNER's testing consultant, DESIGN/BUILDER shall either (a) correct any item of noncompliance within seventy-two (72) hours of DESIGN/BUILDER's receipt of such notice or (b) within such seventy-two (72) hour period, notify OWNER in writing of all steps needed to make such correction(s), together

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with a schedule for performing such correction(s); the form of notice of non-compliance will be furnished by OWNER.

2.6.5 Use all best efforts to insure that DESIGN/BUILDER's and all Subcontractors' activities do not interfere with any Project and/or Project Site systems (i.e., electric, elevator, plumbing, HVAC, etc.) necessary to maintain ongoing operations of the Project and Project Site. DESIGN/BUILDER will provide OWNER with seven (7) business days, advance notice of any planned shutdowns of basic Project and Project Site systems and will obtain OWNER's written approval prior to commencing any such shutdown. DESIGN/BUILDER shall separately notify OWNER at least fourteen (14) calendar days before such planned shutdown if denial will have an adverse impact on the Project Schedule.

2.6.6 DESIGN/BUILDER warrants to OWNER that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Agreement Documents. Work not conforming to these requirements shall be corrected in accordance with Article 10.

2.6.7 DESIGN/BUILDER shall secure and pay for building and other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of Part 2 or are legally required at the time DESIGN/BUILDER's Proposal was first submitted to OWNER.

2.6.8 DESIGN/BUILDER shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

2.6.9 DESIGN/BUILDER shall pay royalties and license fees. DESIGN/BUILDER shall defend suits or claims for infringement of patent rights and shall save OWNER harmless from such claims, except that payment of such royalties and fees shall be included within the Agreement Sum.

2.6.10 DESIGN/BUILDER shall be responsible to OWNER for acts and omissions of DESIGN/BUILDER's subcontractors, employees, and parties working under DESIGN/BUILDER to perform a portion of the Work, including their agents and employees.

2.6.11 DESIGN/BUILDER shall keep the premises free from accumulation of waste materials or rubbish caused by DESIGN/BUILDER's operations and shall keep the premises broom clean daily. At the completion of the Work, DESIGN/BUILDER shall remove from and about the Project DESIGN/BUILDER's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

2.6.12 DESIGN/BUILDER shall prepare Change Orders for OWNER's approval and execution in accordance with Part 2 and shall have authority to make minor changes in the design and construction consistent with the intent of Part 2 not involving an adjustment in the Agreement Sum or an extension of the Agreement Time. DESIGN/BUILDER shall promptly inform OWNER, in writing, of minor changes in the design and construction. OWNER may prepare Construction Change Directives.

2.6.13 DESIGN/BUILDER shall maintain at the Project Site, on a current basis: all record copies of all subcontracts, drawings, specifications, addenda, Change Orders and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; "as-built" drawings; material safety data sheets; applicable handbooks; maintenance and operating manuals

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and instructions; other related documents and revisions which arise out of the Subcontracts or Work. Maintain records for new construction only, in duplicate, of principal Project and Project Site layout lines, and key elevations certified by a qualified surveyor or professional engineer. Make all records available to OWNER. At the completion of the Project, but prior to final payment, deliver all such records to OWNER in duplicate.

2.6.14 At the completion of the Project, enforce warranties applicable to Subcontractors and guarantees and arrange and coordinate any Work performed in connection therewith throughout the longest of (a) the period of such warranties and guarantees or (b) Twelve (12) months after Substantial Completion of construction as defined elsewhere in this Agreement or (c) one (1) year after the Project is opened to the public for business.

2.6.15 DESIGN/BUILDER shall not itself, and DESIGN/BUILDER shall not suffer or permit anyone else to, advertise the Project or their respective participation therein without OWNER's prior written consent, which consent may be unreasonably withheld. DESIGN/BUILDER shall not itself, and DESIGN/BUILDER shall not suffer or permit anyone else to, place any signage (other than safety or directional signage) on or about the Project and Project Site.

2.6.16 In case of termination of a design professional, DESIGN/BUILDER shall provide the services of another lawfully licensed person approved by OWNER.

2.7 DESIGN/BUILDER SUPPORT ACTIVITIES. DESIGN/BUILDER shall perform the following construction support activities:

2.7.1 General conditions support activities including management, scheduling, protection, minor demolition, patching and repair work, maintenance of the Project Site including daily clean-up and removal of debris resulting from DESIGN/BUILDER's and any Subcontractor's activities, daily maintenance of Project Site, safety and security, temporary utilities, sanitary facilities, and Project Site surveys.

2.7.2 Maintain a competent experienced full-time staff (the "Project Staff") at the Project Site (or at DESIGN/BUILDER's home office, only if and to the extent approved by OWNER) and a fully equipped field office. Project Staff shall be as listed in **Exhibit E** attached hereto, who shall supervise, manage, coordinate, direct, monitor, review and inspect the Work and the progress of the Subcontractors on the Project. The parties acknowledge that third party inspection companies, some of which may be Subcontractors of DESIGN/BUILDER and some of which may be engaged directly by OWNER, may carry out inspection of certain elements of the Work. Such inspections shall not relieve DESIGN/BUILDER of any of its duties or obligations pursuant to this Agreement.

2.7.3 DESIGN/BUILDER shall provide temporary offices for OWNER, as indicated in the project requirements, for so long as may reasonably be needed.

2.7.4 Equip and maintain the Project field office with telephone, facsimile machine, photocopy machine, plan table, plan racks, a computer terminal for access by the Project Staff, OWNER, and its agents, to access Subcontract accounting information, submittal logs, etc.; and such other equipment as is approved by OWNER.

2.7.5 All project accounting shall be performed at DESIGN/BUILDER's other office locations as is approved by OWNER.

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2.7.6 The key personnel indicated in **Exhibit E** attached hereto shall be assigned by DESIGN/BUILDER to the Project. The foregoing persons shall be available to the Project as required by OWNER and OWNER's time, cost, quality, and other objectives, as necessitated by particular problems and as appropriate for sound construction practice in accordance with the high standards and duties established by this Agreement. The foregoing persons shall, except as otherwise indicated on such exhibit, be employed full time at the Project Site unless otherwise approved by OWNER. OWNER retains the right, in its reasonable discretion and with or without cause, to direct the removal from further Work on the Project or the Project Site any employee of DESIGN/BUILDER within twenty-four (24) hours.

2.7.7 Changes in the Project Management Staff during the Term of the Project shall be subject to written approval by OWNER.

2.7.8 Provide administrative, management and related services as required to coordinate the Work of the Subcontractors with each other and with the activities and responsibilities of DESIGN/BUILDER and OWNER to complete the Project in accordance with OWNER's objectives for cost, time, and quality. Provide sufficient organization, personnel, and management to carry out the requirements of this Agreement. On a timely basis, advise the Subcontractors as to priorities and maintain diligent follow-up to avoid all problematic delivery, installation, or other delays. Establish, and coordinate with OWNER (and, if requested by OWNER and OWNER's consultants), a system for processing, expediting, and administering all Subcontractors and the purchase of materials, supplies and equipment. Monitor the procurement and delivery of critical materials to the Project and coordinate the deliveries with the progress of the Work to ensure that such materials are available when required. Arrange for storage of such materials if necessary. Maintain an up-to-date expediting and procurement status log at all times and furnish copies of same to OWNER periodically as requested.

2.7.9 Schedule and conduct pre-construction and construction progress meetings to discuss such matters as: procedures, progress, problems, and scheduling. Prepare and promptly distribute minutes. Attend all other meetings upon request by OWNER or as required for the expeditious progress of the Work (consistent with OWNER's time, cost, quality, and other objectives) with OWNER, Consultants, and others.

2.7.10 Copy OWNER on all correspondence, memoranda, and bulletins by DESIGN/BUILDER to consultants and public agencies and deliver to OWNER on a current and up-to-date basis copies of all written communications received from public agencies. Copy OWNER on all default notices sent to or received from Subcontractors, as well as the entire Project. Keep a daily log containing records of weather, Subcontractors' Work on the Project Site, number of workers, Work accomplished, problems encountered, and visitors to the Project Site; and provide copies of said log to OWNER.

2.7.11 Arrange for delivery and storage, protection, and security (off-site, if necessary) for materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.

2.7.12 Take such steps as are necessary in DESIGN/BUILDER's reasonable judgment during emergencies, without the prior approval of OWNER, to protect life and property. In connection with such emergency, arrange for the taking of photographs and the preparation of reports and make recommendations to OWNER in writing for the engagement of such consultants and inspection services as are prudent to record the facts and cooperate and assist in obtaining

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insurance recoveries. As soon as possible, OWNER is to be notified by DESIGN/BUILDER of the emergency and the actions taken by DESIGN/BUILDER in connection therewith.

2.7.13 With OWNER's maintenance personnel direct the checkout of utilities, operational systems, and equipment for readiness and assist in their initial start-up and testing.

2.7.14 DESIGN/BUILDER shall be responsible for the correction and completion of the Work. Verify that all outstanding Work, including punch-list Work, has been completed; that all as-built Drawings, maintenance manuals, records and operating instructions have been received and approved by OWNER and that the close-out binder requirements of OWNER's construction department otherwise not expressly set forth herein have been satisfied; that OWNER has received all applicable warranties and guarantees in writing, and that the surety's consent to final payment under any Subcontract, as the case may be, shall have been obtained, all as a condition precedent to final payment.

2.8 TAXES

OWNER is a federally recognized Indian tribe whose purchases or importations of tangible personal property, including materials, equipment and supplies to be incorporated into the Project (collectively "Materials"), are exempt from Florida sales and use tax. OWNER has implemented OWNER's Direct Purchase Program, through which OWNER may, at its option, purchase Materials directly from its vendors on a sales/use tax exempt basis. The Materials to be purchased by OWNER pursuant to OWNER's Direct Purchase Program. To the extent that the Agreement Price provided in this Agreement includes the cost of Materials that OWNER has elected to purchase directly from its vendors pursuant to OWNER's Direct Purchase Program, such Agreement Price shall be deemed to have been reduced by the costs of such Materials. All Materials that OWNER will not purchase directly from its vendors pursuant to OWNER's Direct Purchase Program, will be provided by DESIGN/BUILDER. Any sales or use tax that DESIGN/BUILDER incurs in respect to Materials OWNER has elected not to purchase directly from its vendors pursuant to OWNER's Direct Purchase Program may be passed through to, and collected from, OWNER as a component of the cost of such Materials. To the extent that DESIGN/BUILDER provides Materials that OWNER has elected to purchase directly from its vendors pursuant to OWNER's Direct Purchase Program, DESIGN/BUILDER shall be responsible for any sales or use taxes imposed in respect to such Materials, and DESIGN/BUILDER shall not be entitled to collect the same from OWNER directly or indirectly as a component of the cost of the Materials, a reimbursable expense under Article 5 or otherwise. DESIGN/BUILDER shall indemnify OWNER for any damages OWNER incurs by reason of DESIGN/BUILDER's failure to comply with the requirements of this Paragraph 2.4.

SAMPLE

ARTICLE 3
OWNER

3.1 OWNER's Project representative is authorized to act on OWNER's behalf with respect to the Project. OWNER or such authorized representative shall examine documents submitted by DESIGN/BUILDER and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of Work. OWNER may replace the representative upon written notice given to DESIGN/BUILDER.

3.2 OWNER may appoint an on-site project representative to observe the Work and to have such other responsibilities as OWNER and DESIGN/BUILDER agree in writing prior to execution of Part 2.

3.3 OWNER shall cooperate with DESIGN/BUILDER in securing applicable building and other permits, licenses, and inspections, and shall pay the applicable fees for such permits, licenses, and inspections as part of the Agreement Sum.

3.4 If OWNER becomes aware of any fault or defect in the Work, OWNER shall give prompt written notice thereof to DESIGN/BUILDER.

3.5 WORK BY OWNER OR OWNER'S CONTRACTORS

3.5.1 OWNER reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. If DESIGN/BUILDER claims that delay or additional cost is involved because of such action by OWNER, DESIGN/BUILDER shall make such claims as provided in Paragraph 4.7.

3.5.2 DESIGN/BUILDER shall afford OWNER's separate contractor(s) reasonable accommodations for execution of their work including the storage of any materials and equipment. DESIGN/BUILDER shall incorporate and coordinate DESIGN/BUILDER's Work with work of OWNER's separate contractors as required by the Agreement Documents.

3.5.3 Costs caused by defective or ill-timed work shall be borne by the party responsible.

SAMPLE

ARTICLE 4
TIME

4.1 DESIGN/BUILDER shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction, in accordance with the project schedule, and so as to not cause delay to the scheduled completion of the Work.

4.2 Time limits stated in the Agreement Documents are of the essence of Part 2 ("Agreement Time"). The Work to be performed under Part 2 shall commence upon execution of a Notice to Proceed unless otherwise agreed and, subject to authorized modifications by Change Order. The Agreement Time, in accordance with **Exhibit B-2**, attached hereto, shall be as follows:

a.) The Work in Part 2 shall achieve Substantial Completion within _____ ( ) calendar days from the commencement date stated in the Notice to Proceed for Part 2 of the Agreement.

b.) The Work in Part 2 shall be entirely complete (Final Completion) within _____ ( ) calendar days from the commencement date stated in the Notice to Proceed for Part 2 of the Agreement.

4.3 The Date of Substantial Completion of the Work is the date when construction is sufficiently complete so OWNER can occupy and utilize the Work for its intended use.

4.4 The schedule provided in DESIGN/BUILDER's Proposal shall include a construction schedule consistent with Paragraph 4.2 above.

4.5 DESIGN/BUILDER shall notify OWNER when the Work is substantially completed by issuing a Certificate of Substantial Completion which, when accepted by OWNER,

shall establish the Date of Substantial Completion. The Certificate shall state the responsibility of each party for security, maintenance, utilities, damage to the Work and insurance, shall include a punch list of items to be completed or corrected, and shall fix the time within which DESIGN/BUILDER shall complete the punch list.

4.6 If DESIGN/BUILDER is delayed in the progress of the Project by acts or neglect of OWNER, OWNER's employees, vendors, separate contractors employed by OWNER, changes order in the Work not caused by the fault of DESIGN/BUILDER, labor disputes, fire, adverse weather conditions beyond the twenty year norm not reasonably anticipatable, or other causes beyond DESIGN/BUILDER's control; or by delay which OWNER and DESIGN/BUILDER agree is justifiable, the Agreement time shall be reasonably extended by Change Order.

4.7 Liquidated Damages. Liquidated damages will be:

☒ Liquidated Damages will be applicable at _____ ($___) per calendar day for each day DESIGN/BUILDER is last beyond the Agreement Time for Substantial Completion. The same rate of liquidated damages shall also be applied for each day of delay in achieving the Agreement Time for Final Completion. Such damages shall be credited against the last payment due to Design Builder under this Part 2 or, if it reasonably appears at any time during the construction of the Project that the Liquidated Damages will exceed the amount of the last payment due, OWNER pay hold back from such payments preceding the final payment sums reasonably determined by OWNER to be necessary to properly credit OWNER the anticipated Liquidated Damages.

ARTICLE 5
REIMBURSABLE AND EXCLUDED COSTS WITHIN GUARANTEED MAXIMUM PRICE

5.1 REIMBURSABLE COSTS

5.1.1 All of the items listed below in this Article 5.1 relating to reasonable costs actually and necessarily incurred by DESIGN/BUILDER in the performance of the Work are referred to herein as the "Cost of the Work". All costs defined herein shall be actual direct costs paid by DESIGN/BUILDER, less all discounts, rebates and salvages which shall be taken by DESIGN/BUILDER subject to Paragraph 5.1.18 of this Agreement. All payments made by OWNER pursuant to this Article 5, whether those payments are actually made before or after the execution of this Agreement, are included within the GMP, below; provided, however, that in no event shall OWNER be required to reimburse DESIGN/BUILDER for any portion of the cost of the Work incurred prior to the notice to proceed date unless DESIGN/BUILDER has received OWNER's written consent.

5.1.2 The salaries, wages, and employee benefits of all labor in the employ of DESIGN/BUILDER (including the Project manager, Project superintendent and assistants, foreman, engineers, safety personnel, timekeepers, clerks, cost accountants, laborers and other trades as required to perform the Work) when stationed at the Field office of DESIGN/BUILDER's other office and performing duties to the benefit of the project. Employee benefits shall include employee bonuses and incentive compensation only if and to the extent sufficient unexpended funds remain within the GMP after the Project is complete and all other Costs of the Work are paid. OWNER shall approve, in writing, the reimbursable supervisory and administrative

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personnel prior to the commencement of construction. If any personnel are replaced or if the DESIGN/BUILDER brings additional personnel to the Project Site, the DESIGN/BUILDER shall get written authorization from OWNER prior to those personnel being charged to the Project.

5.1.3 Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation, social security, insurance, medical and health benefits, and pension and retirement contributions (such costs are limited to actual, reasonable, verifiable costs, subject to audit, and shall not include any profit). These costs (Labor Burden) shall be accounted for and established at the commencement of the Agreement for use of a rate applicable to the Agreement.

5.1.4 The reasonable cost (as approved by OWNER) of travel of personnel in Paragraph 5.1.2 while traveling in connection with the Work, specifically excluding any travel for the convenience of DESIGN/BUILDER or between DESIGN/BUILDER's office or other job sites and the Project Site.

5.1.5 Transportation by employee-owned passenger automobiles supplied directly in connection with the Work by personnel listed in Paragraph 5.1.2, limited to the maximum per mile charge allowed by the Internal Revenue Service; provided however that employees' travel between home and work shall not be a reimbursable cost. Costs of leased or rented passenger vehicles and/or car allowances granted to management and supervisory personnel listed in Paragraph 5.1.2. If such leased or rented passenger vehicles are owned by DESIGN/BUILDER or an entity related to DESIGN/BUILDER, then such rental charges are limited as described in Paragraph 5.1.18.

5.1.6 The cost of reproduction of Drawings, photographs, maps, charts, and reports.

5.1.7 The costs of any insurance premiums associated with OWNER's requirement that DESIGN/BUILDER carry insurance coverage.

5.1.8 The actual, reasonable, and documented cost of special consultants assigned to the Project and performing work on the Project site on a temporary basis, if required in the performance of the Work with prior written approval by OWNER, including contractor's mechanical, electrical, structural, scheduling, waterproofing, material testing, permit expediting, public and subcontractor outreach, and other consultants that may perform Work on behalf of the Project.

5.1.9 Fuel and maintenance for all construction equipment and supervisory personnel vehicles used in connection with the Work (if the rental rates established for any vehicles owned by DESIGN/BUILDER or a related entity do not include fuel and maintenance costs).

5.1.10 Actual costs of field Project Site office.

5.1.11 All costs for clean-up and removal of debris, safety, and traffic control.

5.1.12 Construction utilities, including power, water, phone, internet, temporary sewer, and disposal costs.

5.1.13 Warehousing or storage of material and equipment received prior to installation with prior written approval by OWNER. If, in OWNER's sole opinion, such warehousing and storage costs are due to DESIGN/BUILDER caused delays and/or poor sequencing of the Work by DESIGN/BUILDER, these costs shall not be considered a Cost of the Work and will be at DESIGN/BUILDER's sole cost and expense.

SAMPLE

5.1.14 The cost of DESIGN/BUILDER's and Subcontractors' bonds if required by OWNER.

5.1.15 Cost of all materials, supplies and equipment incorporated in the Work, including costs of postage, freight, shipping, transportation, and storage thereof.

5.1.16 Payments made by DESIGN/BUILDER to Subcontractors and suppliers for Work performed pursuant to this Agreement and properly entered into under this Agreement.

5.1.17 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which are paid for by OWNER, shall remain the property of OWNER and shall be delivered to OWNER upon completion of the Work in accordance with the instruction furnished by OWNER.

5.1.18 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Project Site of the Work, whether rented from DESIGN/BUILDER or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery costs thereof. The rental rates for any machinery and equipment owned by DESIGN/BUILDER or an affiliated entity shall be agreed upon by OWNER and DESIGN/BUILDER in advance, and those rates (which shall be exclusive of fuel and maintenance costs) shall be incorporated into a rate schedule which will be incorporated into this Agreement. Notwithstanding anything to the contrary, the aggregate amount of rental costs charged for any individual piece of DESIGN/BUILDER -owned machinery or equipment shall be limited to 80% of its fair market value. Further, if and to the extent OWNER reimburses DESIGN/BUILDER rental costs for an individual tool or piece of equipment up to an amount equal to or greater than 80% of its fair market value, OWNER shall have the right to purchase that item from DESIGN/BUILDER by paying the difference. The rental charges for equipment and machinery which is not owned by DESIGN/BUILDER, or an affiliated entity shall not exceed prevailing market rates.

5.1.19 Sales, use, gross receipts, transaction, privilege, or similar taxes related to the Work, lawfully imposed by any governmental authority, noting the obligation of DESIGN/BUILDER to arrange for direct purchase of items described above to properly avoid sales tax.

5.1.20 Costs of licenses necessary for the performance of the Work, tests, royalties, and license fees for which DESIGN/BUILDER is responsible.

5.1.21 Costs to repair/replace damaged Work to the extent not caused by Design/ Builder or someone for whom DESIGN/BUILDER is contractually or legally responsible. DESIGN/BUILDER will diligently pursue recovery of such costs from the Subcontractor and/or material supplier to minimize the cost to OWNER.

5.1.22 OWNER has the right to perform audits (including a final audit) of DESIGN/BUILDER and its Subcontractors, vendors, and suppliers throughout the Project and/or at the end of the project at OWNER's convenience.

5.1.23 Costs for watchman and security services for the project, if applicable.

5.1.24 Cost for preparation and coordination of as built/record drawings.

5.1.25 Costs and expenses DESIGN/BUILDER incurred for Pre-Construction services during the Design phase of the project.

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5.2 EXCLUDED COSTS

5.2.1 Salaries and other compensation of DESIGN/BUILDER's personnel stationed at DESIGN/BUILDER's principal office or offices other than the Project Site office (except that DESIGN/BUILDER shall be compensated for that portion of the Project Manager's and/or other project staff member's time which is devoted to this Project regardless of whether the Project Manager is physically on-site, in DESIGN/BUILDER's principal office, or elsewhere during that time).

5.2.2 Expenses of DESIGN/BUILDER's principal office and offices other than the Project Site.

5.2.3 Home office overhead and general expenses.

5.2.4 DESIGN/BUILDER's capital expenses, including interest on DESIGN/BUILDER's capital employed for the Work.

5.2.5 Rental costs of machinery and equipment, except as specifically provided in Paragraph 5.1.18.

5.2.6 Costs due to the fault or negligence of DESIGN/BUILDER, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective, or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

5.2.7 Any cost not specifically and expressly described in Paragraph 5.1.

5.2.8 Costs which would cause the GMP to be exceeded.

5.2.9 Damages assessed in favor of OWNER against DESIGN/BUILDER.

5.3 DESIGN/BUILDER shall have an affirmative obligation to seek out and obtain cash discounts when such is in the best interest of the Project and approved by OWNER. Cash discounts obtained on payments made by DESIGN/BUILDER shall accrue to OWNER if (a) before making the payment, DESIGN/BUILDER included them in an Application for Payment and received payment therefore from OWNER, or (b) OWNER has deposited funds with DESIGN/BUILDER with which to make payments; otherwise, cash discounts shall accrue to DESIGN/BUILDER. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to OWNER, and DESIGN/BUILDER shall make provisions so that they can be secured. Amounts that accrue to OWNER in accordance with the above provisions shall be credited to OWNER as a deduction from the cost of the Work, as well as a deduction from the GMP. At the end of the Project, any equipment for which OWNER has paid rent equal to or exceeding its fair market value will become the property of OWNER, i.e., office equipment, furniture, vehicles, etc. DESIGN/BUILDER shall furnish a bill of sale or vehicle title as appropriate.

5.4 PROGRESS PAYMENTS

5.4.1 DESIGN/BUILDER shall deliver to OWNER itemized Applications for Payment in such detail and with the required backup as indicated herein. DESIGN/BUILDER shall maintain cost accounting records on authorized Work performed and provide a monthly report on cost accounting, on magnetic media prior to or with payment applications. Record the progress of the

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Project. As a supplement to each Monthly Accounting Report, submit a written progress report in narrative form, and including photographs, to OWNER including information on each Subcontractor's Work, as well as the entire Project.

5.4.1.1 OWNER shall retain Five percent (5%) of each Application for Payment as approved by OWNER, unless OWNER consents in writing to a different percentage.

5.4.2 Within thirty (30) calendar days of OWNER's receipt of properly submitted and correct Application for Payment with supporting records and data, OWNER shall make payment to DESIGN/BUILDER.

5.4.3 The Application for Payment shall constitute a representation by DESIGN/BUILDER to OWNER that, to the best of DESIGN/BUILDER's knowledge, information and belief, the design and construction have progressed to the point indicated; the quality of the Work covered by the application is in accordance with the Agreement Documents; and DESIGN/BUILDER is entitled to payment in the amount requested.

5.4.4 DESIGN/BUILDER shall pay each subcontractor, upon receipt of payment from OWNER, out of the amount paid to DESIGN/BUILDER on account of such subcontractor's work, the amount to which said subcontractor is entitled in accordance with the terms of DESIGN/BUILDER's contract with such subcontractor. DESIGN/BUILDER shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner.

5.4.5 OWNER shall have no obligation to pay or to be responsible in any way for payment to DESIGN/BUILDER until DESIGN/BUILDER has furnished OWNER with a release of claims for payment to the extent of the payment being made, and a release of claims for payment from each subcontractor and subconsultant working under DESIGN/BUILDER.

5.4.6 No progress payment or entire use or occupancy of the Project by OWNER shall constitute an acceptance of Work that is not in accordance with the Agreement Documents.

5.4.7 DESIGN/BUILDER warrants that: (1) title to Work, materials and equipment covered by an Application for Payment will pass to OWNER either by incorporation in construction or upon receipt of payment by DESIGN/BUILDER, whichever occurs first; (2) Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (3) no Work, materials or equipment covered by an Application for Payment will have been acquired by DESIGN/BUILDER, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by such other person or otherwise imposed by DESIGN/BUILDER or such other person. The obligation for "free and clear of liens" does not arise if OWNER has not paid the Contractor for the amount of the claim.

5.4.8 If the Agreement provides for retainage, then at the date of Substantial Completion or occupancy of the Work by OWNER, whichever occurs first, DESIGN/BUILDER may apply for and OWNER, if and after DESIGN/BUILDER has satisfied the requirements of Paragraph 5.2.1 and any other requirements of the Agreement relating to retainage, shall pay DESIGN/BUILDER the amount retained, if any, for the Work or for the portion completed or occupied, less 150% of the reasonable value of incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

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5.5 FINAL PAYMENT

5.5.1 Neither final payment nor amounts retained, if any, shall become due until DESIGN/BUILDER submits to OWNER (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which OWNER or OWNER's property might be liable have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) a certificate that insurance required by the Agreement Documents is in force following completion of the Work, and (4) if required by OWNER, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims for payment arising out of Part 2, to the extent and in such form as may be designated by OWNER. If a contractor refuses to furnish a release or waiver required by OWNER, DESIGN/BUILDER may furnish a bond satisfactory to OWNER to indemnify OWNER against such claim(s). If such claim(s) remains unsatisfied after payments are made, DESIGN/BUILDER shall reimburse OWNER for moneys the latter may be compelled to pay in discharging such claim(s), including all costs and reasonable attorneys' fees.

5.5.2 Acceptance of final payment shall constitute a waiver of all claims by DESIGN/BUILDER except those previously made in writing and identified by DESIGN/BUILDER as unsettled at the time of final Application for Payment.

ARTICLE 6
AGREEMENT SUM AND GUARANTEED MAXIMUM PRICE (GMP)

6.1 The Agreement sum, including authorized adjustments, is the total amount payable by OWNER to DESIGN/BUILDER for performance of the Work under the Agreement ("Agreement Sum"). The Agreement Sum shall not exceed the Guaranteed Maximum Price ("GMP") of _____ ($) inclusive of DESIGN/BUILDER's fixed fee in the amount of _____ ($), and Allowances up to _____ ($) as detailed in **Exhibit A-2**, **Exhibit H**, **Exhibit I**, subject to any increase or decrease in the sum as provided in the Terms and Conditions of this Agreement. Costs which would cause the GMP to be exceeded shall be paid by DESIGN/BUILDER without reimbursement by OWNER, except for changes agreed by OWNER and DESIGN/BUILDER that require a Change Order in accordance with the provisions of Article 9.

6.2 Under no circumstance may the Agreement Sum, including both DESIGN/BUILDER's fee and Cost of the Work, exceed the GMP, subject to adjustments in accordance with the Agreement.

6.3 Notwithstanding any inconsistencies in the Drawings or Specifications or between them, DESIGN/BUILDER warrants and represents that the GMP represents the cost for a complete and operating Project containing all fully functional elements set forth in the Construction Documents and the cost for all work depicted in the drawings or specifications or reasonably inferable therefrom.

6.4 The GMP is based on DESIGN/BUILDER working as many hours as necessary to properly perform the Work and achieve the schedule requirements. In the event it is necessary for DESIGN/BUILDER or any Subcontractor to work overtime in order to maintain the Approved Project Schedule, DESIGN/BUILDER shall be responsible for all costs relating to such overtime unless such overtime work is required as the result of an "Excusable Delay". Any overtime required as the result of an Excusable Delay must be authorized in writing by OWNER.

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ARTICLE 7
PROTECTION OF PERSONS AND PROPERTY

7.1 DESIGN/BUILDER shall be responsible for initiating, maintaining, and providing supervision of safety precautions and programs in connection with the Work.

7.2 DESIGN/BUILDER shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

7.3 DESIGN/BUILDER shall give notices and comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities for completion of the Work, as well as those bearing on the safety of persons and property and their protection from damage, injury, or loss.

7.4 DESIGN/BUILDER shall protect and be responsible for the work through substantial completion and repair any defects/damages, as well as hold OWNER harmless from any claims, damages or losses to the work caused in whole or in part by DESIGN/BUILDER, a contractor of DESIGN/BUILDER or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable, except damage or loss solely attributable to the acts or omissions of OWNER, OWNER's separate contractors or anyone directly or indirectly employed by them or by anyone for whose acts they may be liable and not attributable to the fault or negligence of DESIGN/BUILDER.

7.5 DESIGN/BUILDER is responsible for verifying that all personnel, subcontractors, and laborers involved in the actual construction of the Project have no pending criminal charges or any criminal convictions occurring during the construction period, and that illegal substances and/or weapons are not present on the construction site. In the event of a breach of this provision, OWNER and/or its representatives may require that those individuals be removed from the construction site immediately, and/or be forbidden from entering the construction site in the future and DESIGN/BUILDER shall immediately comply with such request(s).

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ARTICLE 8
INSURANCE AND BONDS

DESIGN/BUILDER LIABILITY INSURANCE

8.1 DESIGN/BUILDER shall purchase and maintain in a company or companies authorized to do business in the state in which the Work is located such insurance as will protect DESIGN/BUILDER and OWNER from claims which may arise out of or result from operations under the Agreement by DESIGN/BUILDER, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable with the coverages and in the amounts as set forth on **Exhibit C**, attached hereto.

8.2 DESIGN/BUILDER's liability insurance shall include contractual liability insurance applicable to DESIGN/BUILDER's obligations under this Agreement.

8.3 The liability policies maintained by DESIGN/BUILDER shall name OWNER, OWNER's Representative, and OWNER's subsidiaries and/or affiliates, including their respective officers, directors, shareholders, partners, architects, consultants, agents, servants, workmen and employees, as additional insureds, and shall contain a provision that coverage afforded under the

policies will not be canceled nor failed to be renewed without at least sixty (60) calendar days prior written notice given to OWNER. Duplicate originals of the comprehensive general liability policy will be given to OWNER prior to start of construction. All insurance companies must be licensed to do business in the State of Florida or eligible surplus lines insurers in the State of Florida and shall have a Current Best Rating of A-VII. There shall be no endorsement limiting coverage from claims by additional named insureds. Copies of insurance policies acceptable to OWNER shall be delivered to OWNER prior to commencement of design and construction. These policies shall contain a provision that coverage will not be cancelled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to OWNER. The act of "endeavoring to notify" owner is not acceptable. The foregoing insurance coverages that are required to remain in force after final payment shall be submitted along with the application for final payment, if not before.

8.4 DESIGN/BUILDER shall be responsible for purchasing and maintaining Builders Risk Insurance to protect OWNER against claims which may arise to the improved premises during construction. The policy shall name OWNER as an additional insured. The payment of all deductibles which may be required shall be the sole obligation of DESIGN/BUILDER.

8.5 OWNER and DESIGN/BUILDER waive all rights against each other and the contractors, subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by OWNER as trustee. OWNER or DESIGN/BUILDER, as appropriate, shall require from contractors and subcontractors by appropriate written agreements, similar waivers each in favor of other parties as described above. The policies shall be endorsed to include such waivers of subrogation. Failure of DESIGN/BUILDER to obtain such waivers of subrogation from subcontractors shall result in DESIGN/BUILDER indemnifying OWNER for such subrogation claims.

8.6 OWNER shall have power to adjust and settle a loss with insurers.

8.7 All design professionals and/or consultants performing design services under this Agreement shall maintain professional liability coverage for negligent acts, errors or omissions arising out of the performance of any design services or functions under this Agreement. The coverage for each such policy shall be for an initial period of three (3) years with a subsequent two (2) year extension. Coverage shall include a professional services contractual liability coverage endorsement. Coverage shall be primary and shall be non-contributing with any insurance that may be maintained by OWNER. DESIGN/BUILDER shall be responsible for any deductibles and/or inadequate (gaps in) coverage.

INSURANCE TO BE FURNISHED BY SUBCONTRACTORS

8.8 Each Subcontractor shall be required to maintain the following insurance in amounts not less than those specified below, except as approved in writing by OWNER or its agent. All of Subcontractors' liability coverage shall name OWNER as an additional named insured and may not prohibit claims from additional named insureds.

8.9 Workers' Compensation and Employers Liability: Statutory Workers' Compensation (including occupational disease) in accordance with the applicable Federal and Florida law and including the Broad Form All States Endorsement. Employers Liability Insurance with a limit of at least Five Hundred Thousand Dollars ($500,000).

8.10 Comprehensive General Liability (CGL) including completed operations and contractual liability with a combined single limit for Personal Injury and Property Damage

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(including advertising injury) of at least One Million Dollars ($1,000,000) per occurrence and at least Two Million Dollars ($2,000,000) in the aggregate. The limit may be provided through a combination of primary and umbrella/excess liability policies.

8.11 Comprehensive Automobile Liability, Comprehensive, OWNER, Hired, Non-owned with limits of Two Million Dollars ($2,000,000) combined single limit each occurrence.

8.12 Any Subcontractor involved in demolition, abatement and/or removal of any asbestos related portions of the Project shall, in addition to the requirements set forth above, be required to maintain appropriate environmental insurance coverage.

8.13 All insurance shall waive subrogation against OWNER and shall be written by insurers having a rating from A.M. Best of at least A-V.

PERFORMANCE BOND AND PAYMENT BOND

8.14 OWNER shall have the right to require DESIGN/BUILDER to furnish bonds covering the faithful performance of the construction portion of the Agreement including warranty obligations and delay, and the payment of all obligations arising under this Part 2 of Agreement. If required, the form of bond shall be as set forth on **Exhibit D-2** attached hereto and made a part hereof or such alternative form as is otherwise acceptable to OWNER.

ARTICLE 9
CHANGES IN THE WORK

9.1 CHANGE ORDERS

8.1.1 A Change Order is a written order signed by OWNER and DESIGN/BUILDER, and issued after execution of Part 2, authorizing a change in the Work or adjustment in the Agreement Sum or Agreement time. The Agreement Sum and Agreement time may be changed only by Change Order.

8.1.2 OWNER, without invalidating Part 2, may order changes in the Work within the general scope of Part 2 consisting of additions, deletions or other revisions, and the Agreement Sum and Agreement time shall be adjusted accordingly. Such changes in the Work shall be authorized by Change Order or Change Directive and shall be performed under applicable conditions of the Agreement Documents.

8.1.3 Within Fourteen (14) calendar days, DESIGN/BUILDER shall (a) notify OWNER in writing if DESIGN/BUILDER believes that a Change Order is necessary and (b) give a recommendation as to the necessity of such Change Order (including its possible effect on the Approved Project Budget, schedule, and quality) and the best way to resolve or implement the change. DESIGN/BUILDER shall bear, without reimbursement from OWNER, all costs associated with any proposed Project changes that are not submitted to OWNER in writing within Fourteen (14) calendar days. In submitting any such request for a Change Order, DESIGN/BUILDER shall utilize the "Request for Project Change" form to be provided by OWNER. The responsibilities and procedures to be followed in connection with Change Orders are set forth in greater detail in Article 7 of the General Conditions. All Change Orders require the prior written consent of OWNER. OWNER may direct DESIGN/BUILDER to perform Work as not to impede the construction schedule. OWNER and DESIGN/BUILDER will review disputed Change Order requests and attempt to resolve them as expeditiously as possible.

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8.1.4 Cost or credit to OWNER resulting from a change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. by unit prices stated in the Agreement Documents or subsequently agreed upon;
3. by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. by the method provided below.

8.1.5 If none of the methods set forth in Paragraph 9.1.4 is agreed upon, DESIGN/BUILDER, provided a Change Directive signed by OWNER is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Agreement Documents. In case of an increase in the Agreement Sum, the cost shall include a reasonable allowance for overhead and profit. In case of the methods set forth in Sections 9.1.4.3 and 9.1.4.4, DESIGN/BUILDER shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Agreement Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums; rental value of equipment and machinery; additional costs of supervision and field office personnel solely and directly attributable to the change; and fees paid to architects, engineers and other professionals. Pending final determination of cost to OWNER, payments on account may be made on the Application for Payment. The amount of credit to be allowed by the DESIGN/BUILDER to OWNER for deletion or change which results in a net decrease in the Agreement Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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9.2 CONCEALED CONDITIONS

Since DESIGN/BUILDER is undertaking both the design and the construction, there will be no compensation for concealed conditions.

9.3 REGULATORY CHANGES

DESIGN/BUILDER shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws, or regulations subsequent to the submission of DESIGN/BUILDER's Proposal under Part 1 of the Agreement.

ARTICLE 10
CORRECTION OF WORK

10.1 DESIGN/BUILDER shall promptly correct Work rejected by OWNER or known by DESIGN/BUILDER to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed, and shall correct Work under this Part 2 found to be defective or nonconforming

within a period of one year from the date of final payment. This undertaking shall survive the termination and/or completion of this Agreement.

10.2 Nothing contained in this Article 10 shall be construed to establish a period of limitation with respect to other obligations of DESIGN/BUILDER under this Part 2. Section 10.1 relates only to the specific obligation of DESIGN/BUILDER to correct the Work, and has no relationship to the time within which the obligation to comply with the Agreement Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Agreement Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish DESIGN/BUILDER's liability with respect to DESIGN/BUILDER's obligations other than correction of the Work.

10.3 If DESIGN/BUILDER fails to correct defective Work as required or persistently fails to carry out Work in accordance with the Agreement Documents, OWNER, by written order signed personally or by an agent specifically so empowered by OWNER in writing, may order DESIGN/BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, OWNER's right to stop the Work shall not give rise to a duty on the part of OWNER to exercise the right for benefit of DESIGN/BUILDER or other persons.

10.4 If DESIGN/BUILDER defaults or neglects to carry out the Work in accordance with the Agreement Documents and fails within seven (7) calendar days after receipt of written notice from OWNER to commence and continue correction of such default or neglect with diligence and promptness, OWNER may without prejudice to other remedies OWNER may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due DESIGN/BUILDER costs of correcting such deficiencies. If the payments then or thereafter due DESIGN/BUILDER are not sufficient to cover the amount of the deduction, DESIGN/BUILDER shall pay the difference to OWNER.

ARTICLE 11
DISPUTE RESOLUTION

11.1 Nothing in this Agreement shall be deemed or construed on the part of OWNER or DESIGN/BUILDER as an intent or obligation to arbitrate any matter or dispute whatsoever, nor shall this Agreement, or any part of this Agreement, be read or interpreted as a consent to suit or a submission to the jurisdiction of any court by either party.

11.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be subject to voluntary mediation which may be initiated by either party upon ten (10) calendar days' written notice to the other party. All mediation proceedings shall be held at the administrative offices of the Seminole Tribe of Florida within the confines of Broward County in the State of Florida. Selection of a mediator shall be subject to mutual agreement of the parties. Should the parties be unable to agree to a mediator, or otherwise prefer, the mediator shall be selected by a neutral third party. The parties and the mediator shall maintain strict confidentiality with respect to any mediation proceeding. Nothing that transpires during the mediation proceeding is intended in any way to affect the rights or prejudice the position of any of the parties to the dispute in any later litigation or proceeding. The mediator is authorized to end the mediation whenever further efforts at mediation would not contribute to a solution of the dispute between the parties. A written report of the mediation process will not be prepared by the mediator. There shall be no record, electronic or otherwise, of the mediation proceeding, other than the internal records of the parties, which are agreed to be the confidential and privileged records of the respective party

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creating and holding same. The mediator's fee or time charge rate will be established at the time of selection or appointment. All expenses of the mediation, including required traveling and other expenses of the mediator, shall be shared equally by the parties, unless they agree otherwise. Neither party shall institute litigation while the mediation proceeding is pending; however, a party may withdraw at any time from the mediation proceeding. Any written settlement agreement of the parties that emerges from mediation shall be final and binding once fully executed, and the contents of which shall be maintained in strict confidentiality. The mediation proceeding shall be deemed terminated if, and when: (a) the parties have not executed a written settlement agreement within forty-five (45) calendar days following conclusion of the mediation formal meeting (which deadline may be extended by mutual agreement), or (b) either party serves on the other party and on the mediator a written notice of withdrawal from the proceeding. The mediator shall apply all applicable laws in conducting the mediation proceedings, and in assessing the respective positions of each party to the mediation in an effort to bring about a voluntary resolution of the dispute. Nothing contained herein is intended to constitute consent on the part of OWNER or DESIGN/BUILDER to participate in any legal proceeding regarding any claim, controversy, or dispute arising out of or relating to this Agreement or to any alleged breach thereof, and nothing contained herein shall be construed as consent on the part of either OWNER or DESIGN/BUILDER to submit to the jurisdiction of any tribunal for that purpose. This Article 11 shall survive the termination or completion of Part 1 of the Agreement and this Part 2.

11.3 CLAIMS FOR DAMAGES

Should either party to Part 2 suffer injury or damage to person or property because of an act or omission of the other party, the other party's employees or agents, or another for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time after such injury or damage is or should have been first observed. Failure to give timely notice may prejudice the claim to the extent that the other party may have been able to mitigate or eliminate any loss or claim with timely notice.

ARTICLE 12
TERMINATION OF THE AGREEMENT

12.1 TERMINATION BY OWNER

12.1.1 This Part 2 may be terminated by OWNER for convenience upon seven (7) calendar days' written notice to DESIGN/BUILDER. If such termination occurs, OWNER shall pay DESIGN/BUILDER for Work completed, but no lost profit on work not performed.

12.1.2 If DESIGN/BUILDER defaults or persistently fails or neglects to carry out the Work in accordance with the Agreement Documents or fails to perform the provisions of Part 2, OWNER may give written notice that OWNER intends to terminate Part 2. If DESIGN/BUILDER fails to correct the default(s), failure or neglect within seven (7) calendar days of the initial notice, then OWNER may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payment that may be or become owed to DESIGN/BUILDER; or, at OWNER's option, may terminate the employment of DESIGN/BUILDER and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon purchased by DESIGN/BUILDER for the Project as Cost of the Work and previously paid for by OWNER, and finish the Work by whatever method OWNER may deem expedient. If the unpaid balance of the Agreement Sum exceeds the expense of finishing the Work, the excess shall be paid

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to DESIGN/BUILDER, but if the expense exceeds the unpaid balance, DESIGN/BUILDER shall pay the difference to OWNER.

12.1.3 If this Agreement is terminated pursuant to any of the foregoing provision of this Article 12, then DESIGN/BUILDER shall (a) execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as OWNER may require for the purpose of fully vesting in OWNER the rights and benefits of DESIGN/BUILDER under such obligations and commitments, and (b) account for and turn over to OWNER all drawings and specifications, correspondence, details, shop drawings, samples and product data and such other Agreement Documents, records, materials and equipment relating to the Project. Compliance by DESIGN/BUILDER with the foregoing shall be a condition precedent to DESIGN/BUILDER's right to receive payment for termination in accordance with this Article 12.

12.2 TERMINATION BY DESIGN/BUILDER

If OWNER fails to make payment when due, DESIGN/BUILDER may give written notice of DESIGN/BUILDER's intention to terminate Part 2. If DESIGN/BUILDER fails to receive payment within ten (10) calendar days after receipt of notice of the specific nonpayment by OWNER, DESIGN/BUILDER may give a second written notice and seven (7) calendar days after receipt of such second written notice by OWNER, may terminate Part 2 and recover provable damages.

ARTICLE 13
EXHIBITS AND ATTACHMENTS TO THE AGREEMENT

13.1 All Attachments described in Article 10 of Part I of the Agreement shall be incorporated herein as if more fully stated and attached hereto. All exhibits and attachments referenced in, attached to and made a part of this Agreement are deemed incorporated into this Agreement by reference, whether or not the same are actually attached.

ATTACHMENT	TITLE
Appendix - 2	Appendix - 2 to Design/Build Agreement (Part 2)
Exhibit A-2	GMP Schedule of Values and Detailed GMP Estimate
Exhibit B-2	Project Schedule (Part 2)
Exhibit D-2	Bonds (Part 2) (Not Applicable)
Exhibit H	Fixed Prices Contained in GMP (Part 2)
Exhibit I	Allowance Items and Contingency Amounts Contained in GMP (Part 2)
Exhibit J	Design/Builder Labor and Equipment Rates (Part 2)

13.2 If any Exhibit, Addendum or Appendix (each an "Instrument") is attached to the Agreement but is not referenced in the Agreement or other identified Exhibit, the non-referenced Instrument shall be applied in accordance with its own terms. To the extent that any provision of an Attachment or Instrument is inconsistent with any other provision of this Agreement, the Attachment or Instrument will control. To the extent that any Attachment or Instrument is in conflict with another Attachment or Instrument, the priority will be the Attachment or Instrument which contains more specificity or imposes a higher standard upon DESIGN/BUILDER, as the case may be, with respect to the item of inconsistency.

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ARTICLE 14
NOTICE

All notices or other communications provided for by this Agreement shall be in writing. Notice shall be deemed properly delivered by the mailing of such notices to the parties entitled thereto, via certified mail, return receipt requested, postage prepaid, or via express delivery such as by Federal Express, UPS, or any like commercial express delivery company which provides a delivery receipt as evidence of delivery to the parties at the following addresses (or to such address designated in writing by one (1) party to the other):

OWNER:
Seminole Tribe of Florida
ATTN: _____
Director of the _____ Department
5700 Griffin Road
Davie, Florida 33314
Phone: (954) 966-6300
E-mail:

WITH COPIES TO: Jim Shore, Esq.
Seminole Tribe of Florida
6300 Stirling Road
Hollywood, FL 33316

DESIGN/BUILDER:

SAMPLE

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 The Agreement shall be governed by the applicable law of United States of America, the Seminole Tribe of Florida, the State of Florida, or other applicable authority, applied in that order.

15.2 Heading, tables, and the like are included and intended solely for purposes of convenience and reference only, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any provision of this Agreement.

15.3 If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly to its maximum lawful scope; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

15.3 This Agreement shall be binding on successors, assigns, and legal representatives of OWNER or DESIGN/BUILDER. Neither party shall assign, sublet, or transfer an interest in Part 2 without the written consent of the other.

15.4 This Agreement represents the entire and integrated agreement between OWNER and DESIGN/BUILDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and DESIGN/BUILDER. This Part 2 supersedes Part 1 and all prior negotiations, representations, or agreements. No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver and accepted and agreed to by both parties.

15.5 Unless otherwise stated herein, time is of the essence for the performance of all obligations under the terms and conditions of this Agreement; provided, however, that neither OWNER nor DESIGN/BUILDER shall be liable for failure to perform their respective obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), or a Force Majeure such as war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither an Act of God nor a Force Majeure shall, itself, shall be grounds to terminate this Agreement.

15.6 If OWNER or DESIGN/BUILDER asserts Force Majeure as an excuse for failure to perform any of their respective obligations under this Agreement, the nonperforming party must prove, in the absence of a written stipulation between the parties, that the nonperforming party took reasonable steps to minimize delay and to mitigate damages caused by foreseeable events, and that the nonperforming party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described herein as a Force Majeure.

15.7 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Signatures transmitted by facsimile or electronic means, shall be deemed the same as an original.

15.8 The parties understand, acknowledge and agree that neither party intends to confer upon any person or entity not a party to this Agreement any enforceable or other right, remedy, benefit or entitlement and the parties further deny and disclaim the existence of any intended third-party beneficiary with enforceable rights of any kind in connection with this Agreement. Nothing in this Agreement, whether expressed or implied, is intended to confer upon any person other than the parties hereto and their respective heirs, representatives, successors and permitted assigns, any right or remedies under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the liability of any other party hereto, nor shall any provision hereof give any entity any right of subrogation against or action over any party.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the respective dates set forth below at Hollywood Seminole Indian Reservation, Broward County, Florida.

OWNER: SEMINOLE TRIBE OF FLORIDA	**DESIGN/BUILDER:** _____
By: _____	By: _____
Name: Marcellus W. Osceola, Jr.	Name: _____
Title: Chairman	Title: _____
Date: _____	Date: _____

SAMPLE

APPENDIX - 2

TO

DESIGN/BUILD AGREEMENT (PART 2)

BETWEEN

SEMINOLE TRIBE OF FLORIDA

AND

This Appendix is a part of the above-referenced Design/Build Agreement ("Agreement"). Any and all capitalized terms used herein and not expressly defined herein shall have their meaning as set forth in the Agreement.

Design/Builder hereby expressly acknowledges and agrees that all of the documents attached to this Appendix (collectively, the "Attachments") shall be applicable in all respects to the Project and, accordingly, Design/Builder shall comply timely and completely with all of the provisions thereof applicable to Design/Builder, failing which Design/Builder shall be in default under the Agreement. The provisions applicable to Design/Builder include but are not limited to those that refer to a "contractor", "vendor", "subaward", "subcontract", subrecipient" and the like. Design/Builder acknowledges that certain of the Attachments contain references and/or links to additional information and websites that may contain further requirements affecting the Project and all of such additional requirements are incorporated into this Appendix as if fully set forth herein. Design/Builder also acknowledges that it has had a sufficient opportunity to review all of the Attachments and the various requirements described or referenced therein and ask any questions regarding same and has received satisfactory responses thereto from Owner or others. Design/Builder expressly hereby waives any right to claim that it was unaware or did not understand the implications of any of the requirements set forth or referenced in the Attachments and hereby indemnifies and holds harmless Owner from and against any and all losses, damages, expenses and claims which Owner may incur as the result of a failure of Design/Builder to comply with such requirements.

The Attachments start on the next page. Owner and Design/Builder hereby place their respective initials confirming their agreement to the foregoing provisions of this Appendix.

Owner: _____ Design/Builder: _____

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EXHIBIT A-2

GMP SCHEDULE OF VALUES

Description		Amount ($)
Construction		
Divisions	$	$
Division Allowances	$	
General Conditions		$
Fixed Fees		$
Contingency		$
TOTAL		**$**

Attachments:

Design/Builder's Detailed GMP Schedule of Values

SAMPLE

EXHIBIT B - 2

PROJECT SCHEDULE (PART 2)

Attachments:

Design/Builder Project Schedule

SAMPLE

EXHIBIT B - 2

BONDS (PART 2)

Attachment(s):

Design/Builder Performance and Payment Bonds

SAMPLE

EXHIBIT H

FIXED PRICES CONTAINED IN THE GMP (PART 2)

Description	Amount ($)
SUB-TOTAL	**$**

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EXHIBIT I

ALLOWANCE ITEMS AND CONTINGENCY AMOUNTS CONTAINED IN GMP (PART 2)

ALLOWANCE ITEMS	
Description	Amount ($)
TOTAL ALLOWANCE	
CONTINGENCY AMOUNTS	
Description	Amount ($)
TOTAL CONTINGENCY	

SAMPLE

EXHIBIT J

DESIGN/BUILDER LABOR AND EQUIPMENT RATES (PART 2)

Attachment(s):

Design/Builder Labor and Equipment Rates

SAMPLE

EXHIBIT K

DESIGN/BUILDER CLARIFICATIONS (PART 2)

Attachment(s):

- Design/Builder Clarifications and Assumptions for GMP and Part 2 of the Agreement

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