

DESIGN-BUILD AGREEMENT **Construction Phase Amendment**

This Construction Phase Amendment to that certain Design-Build Agreement dated as of _____, 20__ related to County's Solicitation No. _____, is entered into by and between LEE COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County"), and INSERT NAME (the "Design-Build Firm") of INSERT DESIGN-BUILD FIRM'S ADDRESS, whose federal tax identification number is INSERT DESIGN BUILD FIRM'S FEID, a INSERT DESIGN-BUILD FIRM'S STATE (FLORIDA, DELAWARE, ETC.) design-build firm licensed and authorized to perform all Work in the State of Florida.

SECTION 1. CONSTRUCTION PHASE SCOPE OF SERVICES

A. Section 3 of the Design-Build Agreement is hereby amended to add the following Construction Phase services to the approved Work for the Project.

B. Responsibilities of Design-Build Firm With Respect to Construction.

1) The Design-Build Firm shall provide all construction supervision, inspection, labor, materials, tools, construction equipment, and subcontracted items of every kind and type necessary for the timely execution and full completion of the Project in a good workmanlike manner as required by the Agreement.

2) Design-Build Firm shall pay all sales, use, gross receipts and similar taxes related to the Work provided by the Design-Build Firm, which have been legally enacted at the time of execution of this Agreement and for which the Design-Build Firm is liable.

3) The Design-Build Firm, within thirty (30) calendar days after approval of the Lee County Board of County Commissioners and prior to its first payment application, shall prepare and submit to the County and Project Manager, for their review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the Work. The Progress Schedule shall be updated monthly by the Design-Build Firm. All monthly updates to the Progress Schedule shall be subject to the County's review and approval. The County's review and approval of the submitted Progress Schedule updates shall be a condition precedent to the County's obligation to pay the Design-Build Firm.

4) The Design-Build Firm shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The system shall be satisfactory to the County, which shall be afforded access to all of the Design-Build Firm's records, books, correspondence, instructions, Drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. As set forth in Section 7.3 of the General Terms and Conditions, the Design-Build Firm shall preserve all such records

for a period of five (5) years after the final payment or longer where required by law. All such records shall be subject to public disclosure under Chapter 119, Florida Statutes, the Florida Public Records Law. Failure to disclose such documents shall result in the termination of this Agreement by the County.

SECTION 2. CONSTRUCTION PHASE FEE

A. General Condition Fee. The Design-Build Firm's compensation for services performed during the Construction Phase shall be a Guaranteed Maximum Price (GMP) of \$_____. The Construction Phase Fee shall be paid in proportionate monthly payments for the percentage of Work performed that month less retainage. The first monthly payment shall become due thirty (30) days following the issuance of the Construction Phase Notice to Proceed by the County and the final monthly payment shall be paid only when Construction of the Project is Finally Completed and occupancy of it is accepted by the County. If Construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the County.

Design-Build Firm's Exclusive Remedy: In the event the Construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the County, or is attributable to the County, the Design-Build Firm's sole and exclusive remedy is an extension of the Construction completion date.

B. Profit. For profit related to the Construction Phase of the Project, the fee shall be \$_____, and shall be paid in proportion to the ratio of the cost of the Work in place, and less retainage as it bears on the latest estimate of the total Construction cost or to the GMP or to the County's Construction budget, whichever is less. The balance of the fee shall be paid when Construction of the Project is Finally Completed and occupancy of the Project accepted by the County as provided in this Agreement. If Construction is authorized only for a part of a phase of the Project, the fee paid shall be proportionate to the amount of Work authorized by the County.

SECTION 3. CONTRACT TIME FOR CONSTRUCTION PHASE

A. Time is of the essence in the performance of the Work under this Agreement. Design-Build Firm shall commence the Work within ten (10) calendar days from the Commencement Date, established in the Notice to Proceed.

B. The Construction Phase Work shall be substantially completed within () calendar days from the Commencement Date. The Work shall be fully completed and deemed ready by the County for final completion within _____ () calendar days from the Substantial Completion Date.

C. County and Design-Build Firm recognize that, since time is of the essence for this Construction Phase Amendment, the County will suffer financial loss if the Work is not substantially completed within the time specified. Should Design-Build Firm fail

to substantially complete the Work within the time period noted above for Substantial Completion, County shall be entitled to assess, as Liquidated Damages, but not as a penalty, \$_____ for each calendar day thereafter until Substantial Completion is achieved. The Project shall be deemed to be Substantially Completed by the County on the date that the County's Representative certifies in writing that the Construction of the Project, or specified part thereof, is sufficiently completed in accordance with the Contract Documents, so that the Project or part can be utilized for the purposes for which it is intended. Along with such certification, the County's Representative shall compile a "punch list" of any remaining exceptions that do not adversely affect the use of the Project. Completion of these items will be required prior to final payment as provided herein.

D. Design-Build Firm hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted Liquidated Damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if Design-Build Firm fails to substantially complete the Work in accordance with the Progress Schedule.

E. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will fall to the next Monday or non-Lee County recognized holiday.

SECTION 4. EXHIBITS INCORPORATED

The following documents are expressly agreed to be incorporated by reference and made a part of this Construction Phase Amendment.

- Exhibit A: Approved Schematic Designs/Development Documents
- Exhibit B: Approved GMP Construction Drawings and Specifications
- Exhibit C: Construction Personnel
- Exhibit D: GMP Amount Detail

SECTION 5. STATUS OF THE AGREEMENT

All provisions of the Design-Build Agreement that are not amended or modified herein, including but not limited to the General Terms and Conditions in Exhibit A and any Supplementary Conditions in Exhibit J, shall remain in full force and effect and shall apply to this Construction Phase Amendment and the Work included herein.

SECTION 6. MODIFICATION

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the appropriate parties intended to be bound by it.

SECTION 7. SUCCESSORS AND ASSIGNS

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

SECTION 8. NO WAIVER

The failure of the County to enforce, at any time or for any period of time, any one or more of the provisions of the Agreement shall not be construed to be, and shall not be, a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

SECTION 9. PUBLIC RECORDS COMPLIANCE

A. In addition to other requirements provided herein, the Design-Build Firm shall comply with public records laws embodied in Chapter 119, Florida Statutes, and specifically shall:

- 1) Keep and maintain public records required by the County in order to perform the Work identified herein.
- 2) Upon request from the County, the Design-Build Firm shall provide the County with any requested public records or allow the requested records to be inspected or copied within a reasonable time by the County.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and thereafter if the Design-Build Firm does not transfer all records to the County.
- 4) Transfer, at no cost, to County all public records in possession of the Design-Build Firm upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County. If the Design-Build Firm keeps and maintains public records upon the conclusion of this Agreement, the Design-Build Firm shall meet all applicable requirements for retaining public records that would apply to the County.

B. If the Design-Build Firm does not comply with a public records request, the County shall treat that omission as breach of this Agreement and enforce the contract provisions accordingly. Additionally, if the Design-Build Firm fails to provide records when requested, the Design-Build Firm may be subject to penalties under Section 119.10, Florida Statutes, and reasonable costs of enforcement, including attorney fees.

IF THE DESIGN-BUILD FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILD FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.

SECTION 10. ENTIRE AGREEMENT

Each of the Parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, Work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

SECTION 11. SEVERABILITY

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

WITNESS:

DESIGN-BUILD FIRM: [Name]

Signed By: _____

Signed By: _____

Print Name: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: _____

OWNER: LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____

CHAIR

DATE: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

APPROVED SCHEMATIC DESIGN/DEVELOPMENT DOCUMENTS

EXHIBIT B

APPROVED GMP CONSTRUCTION DRAWINGS AND SPECIFICATIONS

EXHIBIT C
CONSTRUCTION PERSONNEL

EXHIBIT D
GMP AMOUNT DETAIL