



FLORIDA MUNICIPAL POWER AGENCY

**INTERIOR ALTERATIONS FOR FMPA
ADMINISTRATION OFFICE
HR AND EXECUTIVE AREA
RFP # 2021-249**

**Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819-9002
(407) 355-7767 Fax (407) 355-5796**



FLORIDA MUNICIPAL POWER AGENCY

INTERIOR ALTERATIONS FOR FMPA ADMINISTRATION OFFICE

HR AND EXECUTIVE AREA

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REQUEST FOR PROPOSAL

(This is not an order)

R
E Florida Municipal Power Agency
T TO: 8553 Commodity Circle
U Orlando, Florida 32819
R Attn: **Amie Erickson**
N

RFP FMPA 2021-249

Date Issued: **July 6, 2021**

Telephone: (407) 355-7767

SEALED BIDS MUST PHYSICALLY BE IN THE FLORIDA MUNICIPAL POWER AGENCY OFFICE PRIOR TO PROPOSAL OPENING AT **2:00 p.m. on, August 10, 2021**. WHICH WILL BE IN THE FMPA FIRST FLOOR CONFERENCE ROOM LOCATED IN THE FMPA ADMINISTRATION BUILDING AT 8553 COMMODITY CIRCLE, ORLANDO, FLORIDA 32819.

- Bids shall be submitted along with any necessary forms provided and must be manually signed.
- Bids shall be sealed in an envelope with the bid number, opening date, and time clearly indicated.
- Bids received after the opening date and time will be rejected and returned unopened.
- The attached Invitation shall become part of any purchase order resulting from this Invitation to Bid.

DESCRIPTION

July 2021
REQUEST FOR PROPOSAL #2021-249

FLORIDA MUNICIPAL POWER AGENCY
REQUEST FOR PROPOSAL INTERIOR ALTERATIONS TO FMPA ADMINISTRATION OFFICE
HR AND EXECUTIVE AREA

See attached Invitation to Bid, General Conditions, Specifications, and Bid Forms for detailed description.

It is the intent and purpose of the Florida Municipal Power Agency that this Invitation to Bid promotes competitive bidding. It shall be the bidder's responsibility to advise if any language, requirements, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this Invitation to Bid to a single source. Such notification must be submitted in writing and must be received by not later than ten (10) days prior to the bid opening date.

ADVERTISEMENT

Bid For

July 2021

FLORIDA MUNICIPAL POWER AGENCY

**INTERIOR ALTERATIONS TO FMPA ADMINISTRATION OFFICE
HR AND EXECUTIVE AREA
REQUEST FOR PROPOSAL #2021-249**

Sealed bids will be received by the Florida Municipal Power Agency (FMPA), 8553 Commodity Circle, Orlando, Florida 32819, **until 2:00 p.m., August 10, 2021** at time bids will be opened publicly by a FMPA representative.

The bid is for INTERIOR ALTERATIONS TO FMPA ADMINISTRATION OFFICE HR AND EXECUTIVE AREA as more fully described in the bid package.

Bid packages for this project may be obtained from FMPA, at the above address, by telephone (407) 355-7767, or via Internet from <http://www.fmpa.com>.

No bid may be altered, withdrawn, or resubmitted after the scheduled closing time for receipt of bids. Bids received after the day and time stated above will not be considered and will be returned to the bidder unopened.

Bids will be accepted by companies who have established, through demonstrated expertise and experience that they are qualified to provide the service as specified.

A mandatory pre-bid meeting is scheduled for 2:00 p.m. on Thursday, July 15, 2021 at FMPA's office. FMPA will only accept bids from firms represented at this mandatory pre-bid meeting.

The Florida Municipal Power Agency reserves the right to reject any and all bids in total or in part and/or to waive defects in bids.

Jacob Williams
General Manager
Florida Municipal Power Agency

FLORIDA MUNICIPAL POWER AGENCY
RFP #2021-249
Request for Proposal
Interior Alterations to FMPA Administration Office
HR and Executive Area

1. Introduction

The Florida Municipal Power Agency (FMPA) office building at 8553 Commodity Circle, Orlando, Florida needs some interior alterations. The building is about twenty-one years old consisting of two stories and approximately 25,000 square feet.

2. FMPA Description

Formed by the Florida Legislature in February 1978, the Florida Municipal Power Agency is a non-profit, joint action agency created to serve the needs of municipal electric utilities in Florida. Of the 32 municipal systems in the State, 29 are FMPA members who participate at varying levels in Agency activities.

Member utilities of the Agency serve approximately 500,000 customers. Each member appoints one representative to the Board of Directors which governs the Agency's activities. Currently FMPA has five power supply projects and one pooled financing project. Thirteen members currently purchase all of their power requirements from the Agency (All-Requirements Project). Thirteen (13) members participate in other FMPA power supply projects.

In addition to power supply and pooled financing, many FMPA members participate in various joint purchasing activities. Included are purchases of distribution line construction materials and various technical services such as instrument calibration and testing at power plants.

3. General Description of Services Sought

FMPA desires to have a general contractor firm provide Interior Alterations for FMPA Administration Office.

- a. Construction drawings attached: Titled "Interior Alteration for FMPA HR and Executive Area".
- b. Prelim Shop drawings from Shiftt for the glass wall and door. See drawings for hold to dimensions. Wall provide by CDS. Contact Bob Eckes @ Shiftt Interiors at Mobile: 407-509-5531 or beckes@shifttinteriors.com
- c. It is the bidder's responsibility to read the details of the construction drawings as some materials will be provided by FMPA, including but not limited to, carpet, carpet adhesive, ceiling tiles (metal), light fixtures, etc.
- d. Upon award of the services FMPA will enter into a Service Agreement, with the selected vendor, which terms will govern for the work requested. Initiation of any work is

contingent on the executing of FMPA's Construction Services Contract and Issue of Permit for Construction by Orange County Government, currently there is a 9-12 week waiting period.

4. RFP Schedule

FMPA's timetable for this Request for Proposal (RFP) process is shown below. Note that all times shown are based on eastern daylight savings time (EDT) or Eastern standard time (EST), as appropriate; however, the dates shown are only estimates and may be modified at any time by FMPA.

Public Notice/Distribution of RFP		July 6, 2021
Mandatory Pre-bid Meeting	2:00 p.m.	July 15, 2021
Deadline for Questions	2:00 p.m.	July 23, 2021
Deadline for Responses	2:00 p.m.	July 28, 2021
Sealed Proposals Due Date	2:00 p.m.	August 10, 2021
Notice of Award		August 17, 2021
Initiation of Work		Execution of Agreement/ Issue of Permit from Orange County (currently a 9-12 week wait)

5. Notice to Bidders

Sealed Bid packages will be received until 2:00 p.m. on **August 10, 2021** ("Bid Due Date") at the offices of Florida Municipal Power Agency. Each bidder is required to submit an Affidavit of Compliance (included in this package), other forms included in this package as appropriate, and any other information necessary to allow a complete evaluation of the bid. Registered bidders will be notified through the issue of bid addenda of any change in the Bid Due Date or other necessary revision to information contained in this Request for Proposal. FMPA reserves the right to reject all bids received after the Bid Due Date.

One original and two (2) copies of the bid response package should be sealed and delivered to the following address:

Amie Erickson
Facilities Specialist
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819

Clearly legible on the outside of the sealed envelope shall be **"REQUEST FOR PROPOSAL INTERIOR ALTERATIONS TO FMPA ADMINISTRATION OFFICE HR AND EXECUTIVE AREA FMPA, RFP# 2021-249"**.

6. Duration of Offer

Bids submitted in response to this Invitation to Bid are irrevocable for 180 days following the closing date. This period may be extended at FMPA's request only by written agreement of the bidder. The content of this Invitation to Bid and the bid of the successful bidder will be included by reference in any resulting contract.

7. Right of Rejection

This Request for Proposal is not an offer establishing any contractual rights. This solicitation is solely an invitation to submit bids.

FMPA reserves the right to:

- 1) Reject any and all bids received in response to this RFP;
- 2) Waive any requirement in this RFP;
- 3) Not disclose the reason for rejecting a proposal;
- 4) Not select the bid with the lowest price
- 5) Seek and reflect clarifications to bids.

8. Bid Contents

- a) **Description of Services details** - Proposers are to include with their proposal a complete description of their understanding of the services requested and the services available.
- b) **Related Experience** - Proposers must demonstrate first-hand experience in providing similar services. Proposers must provide a listing of clients for whom the bidder has provided similar services, a general description of the services rendered, and a contact name and telephone number.
- c) **Qualifications of Staff** - Proposals should include a description of any special qualifications of the personnel to be providing services which the bidder believes should be considered in evaluating the bid.
- d) **Resources** - Bidders are to provide a discussion on current backlog, size of crews, number of crews available, and any other pertinent information relating to the bidder's ability to perform the work in a timely fashion.
- e) **Use of Subcontractors**: The proposal must specifically identify if any aspects of the project may be completed by a subcontractor. Specific tasks and the specific subcontractor to be used must be provided.
- f) **Special Features or Suggestions** - Proposals should include a description of any special features of bidder's installation or materials used which the bidder believes should be considered in evaluating the bid.

Bidders are invited to provide suggestions to FMPA concerning changes to the scope of work or any other suggestions that will reduce cost or improve the life or performance of the installations. However, bidders should provide a response to this RFP fully in compliance with the scope of work as written. FMPA may or may not, at its sole discretion, follow suggestions provided by proposers.

- g) **Pricing**, each proposal will provide a schedule for each phase of the job. Each bid will include a lump sum, fixed price bid to provide all the services listed.

9. **Interpretations and Addenda**

All questions regarding interpretation of this RFP, technical or otherwise, must be submitted in writing to the following:

By Fax: **Amie Erickson**
(407) 355-5796

By Mail or Courier: **Amie Erickson**
Facilities Specialist
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32809

By Email: Amie.erickson@fmpa.com

Only written responses provided by FMPA to bidder' questions will be considered official. A verbal response by FMPA will not be considered an official response. Written responses to questions and requests for interpretations will be provided to all bidders and posted on FMPA's web site at www.fmpa.com. Copies of all addenda issued in connection with this RFP will be sent to all registered bidders and posted on FMPA's web site at www.fmpa.com.

10. **Errors, Modifications or Withdrawal of Bid**

Each proposer should carefully review the information provided in the RFP prior to submitting a response. The RFP contains instructions which should be followed by all proposers. Modifications to proposals already received by FMPA will only be accepted prior to the Proposal Due Date. Proposals may be withdrawn by giving written notice to FMPA prior to the Proposal Due Date.

11. **Proprietary Confidential Business Information**

All proposals shall be the property of FMPA. Pursuant to Section 119.071(1) (b), Florida Statutes (2014), all sealed packages submitted to FMPA in response to this RFP are exempt from the public records disclosure requirements of Article 1, section 24(a) of the Florida Constitution and section 119.07(1), Florida Statutes, until such time as FMPA provides notice of a decision or 30 days after proposal opening, whichever is earlier. FMPA will not disclose to third parties any information labeled "Confidential" in a proposal, unless such disclosure is required by law or by order of any court or government agency having appropriate jurisdiction.

However, FMPA reserves the right to disclose any information contained in any proposal to third parties for the sole purpose of assisting in the proposal evaluation process.

12. Bidder Qualifications

FMPA will accept bids from firms knowledgeable in providing services. Bidders unfamiliar to FMPA may be required to provide proof of experience.

13. Mandatory Pre-Bid Meeting

A mandatory pre-bid meeting is scheduled for 2:00 P.M. on Thursday, July 15, 2021 at FMPA's office. FMPA will only accept bids from firms represented at this mandatory pre-bid meeting.

14. Items Provided by Contractor

The selected bidder shall supply all labor and materials necessary to provide the scope of services listed. Exception where noted in construction drawings, materials will be supplied by Owner. Materials shall include, but not be limited to, dumpsters, onsite storage trailer, etc. These materials shall conform to the requirements of FMPA.

15. Default and Damages Provisions

FMPA will negotiate the conditions of default and damages with the successful bidder.

16. Evaluation Process

The bids will be evaluated based on information provided by each bidder by the Bid Due Date. No additional data will be considered after the Bid Due Date, except for clarifications requested by FMPA. FMPA will evaluate the bids in terms of price and non-price factors.

Selection and rejection of bids and notification of bidder at all stages will remain entirely with FMPA's discretion. FMPA intends to notify bidders not selected under this solicitation within a reasonable amount of time.

Price Criteria

Bids will be evaluated on the two following price criteria:

1. The lump sum price for the scope of services listed. Backup information used to develop the lump sum price shall be provided (i.e., square footage calculations, coverage estimates, etc.) so that FMPA can be assured the bid adequately and fairly meets its needs.
2. The value of any cost saving options presented by the bidder ("value engineering"), to the extent the options are accepted and implemented by FMPA

Non-Price Criteria

In addition to the price criteria listed above, the bids will be evaluated in accordance with the following non-price criteria:

1. Experience of key personnel assigned
2. Experience of the firm in providing the services listed

3. Warranty provided
4. Qualitative aspects of value engineering suggestions provided by the Bidder
5. Time to complete the job
6. Qualitative aspects of the plan to protect surrounding interior areas of the building that will be impacted.

Interview

At this time, FMPA does not anticipate the need for a formal interview of short-listed candidates. However, based on the responses, FMPA reserves the right to schedule appropriate interviews with selected bidders. If needed, the interviews will be scheduled at a mutually convenient time.

17. Public Entity Crimes Statement

Pursuant to Section 287.133(2)(a), FLORIDA STATUTES, all bidders should be aware of the following:

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

18. Collusion

By offering a submission pursuant to this Request for Proposal, the bidder certifies the bidder has not divulged, discussed, or compared his bid with other bidders and has not colluded with any other bidder or parties to this bid whatsoever. Also, the bidder certifies, and in the case of a joint bid, each party thereto certifies, as to his own organization, that in connection with this bid:

- (1) Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and or cost data, with any other bidder or with any competitor.
- (2) Any prices and/or cost data quoted for this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.
- (3) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

- (4) The only person or persons interested in this bid, principal or principals is/are named therein and that no person other than therein mentioned has any interest in this bid or in the contract to be entered into and;
- (5) No person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or established commercial agencies maintained by the Bidder for the purpose of doing business.

19. Drug Free Workplace

Whenever two or more responses to this RFP are identical with respect to quality, delivery, and service are received, preference shall be given to a respondent that certifies that it has implemented a drug-free work-place program by completing and executing the attached Drug Free Workplace Statement.

20. Subcontracted Services

Proposal should indicate which, if any, of the services to be provided would be subcontracted by the proposer to independent contractors. If work is intended to be subcontracted, BID SUBMITTAL MUST BE ACCOMPANIED BY BACKGROUND MATERIALS AND REFERENCES FOR PROPOSED SUBCONTRACTOR(S) – NO EXCEPTIONS. In addition, Contractor(s) must notify FMPA any time work will include subcontracted services. FMPA maintains the right to reject the proposed subcontractor for specific project work.

21. Control of Work and Subcontractors

Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and safety programs in connection with the performance of the Work. In addition, Contractor shall be solely responsible for the engagement and management of any subcontractors used to perform any portion of the Work.

22. Safety and Protection

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with work under this RFP. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All persons on the site who may be affected by the project work;
2. All Work and materials and equipment to be incorporated therein, whether in storage on or off of the project site.

23. Insurance

Before starting and until Acceptance of Work by FMPA, and without further limiting Supplier's liability under this Agreement, the Supplier shall procure and maintain, at its sole expense, insurance of the types and in the amounts stated below:

Schedule	Amount
<u>Workers Compensation</u> Statutory Coverage Employer's liability including appropriate Federal Acts	Statutory Limits \$500,000 each occurrence
<u>Commercial General Liability</u> Premises, Operations Products Completed, Operations Contractual Liability Independent Suppliers	\$1,000,000 each occurrence \$2,000,000 aggregate – bodily injury and property damage, combined single limit
<u>Automobile/Vehicle Liability</u> All vehicles – Owned, non-owned, hired	\$1,000,000 each occurrence, combined single limit
<u>Excess/Umbrella Liability</u>	\$2,000,000 each occurrence and annual aggregate

Supplier's Commercial General Liability policy shall remain in effect for at least two years after all work is complete.

Supplier shall specify FMPA as additional insureds for all coverage except Worker's Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by FMPA.

The Supplier shall require their insurance carrier to waive all rights of subrogation against FMPA, their members, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the FMPA, or any indemnitee.

All deductibles for insurance specified herein shall be paid by supplier.

All Subcontractors performing Work pursuant to this bid shall procure the insurance required under this bid during the life of the subcontract. The subcontractor insurance may be provided through separate coverage or by endorsement under insurance provided by supplier. Supplier shall submit Subcontractor's certificates of insurance to FMPA prior to allowing Subcontractor to perform Work at any site or Work Area.

24. Site Access Conditions

FMPA and authorized staff shall provide Contractor access to the Facility as necessary to perform the Services. Access shall be subject to Contractor's obligation to comply with the following conditions:

1. Contractor shall confine its activities to only those portions of the Facility necessary for performance of the Services.
2. Contractor shall take all safety measures reasonably necessary to protect FMPA and FMPA property, its permittees and licensees and the property of each, from injury or damage caused by or resulting from the performance of Services. Contractor shall follow any and all safety and security procedures established by FMPA for the Facility. In the event of a security emergency, FMPA may deny Contractor access to a Facility or request that Contractor leave the Facility.
3. Contractor shall maintain all required insurance coverage's set forth in Section 23 at all times during the term of the Purchase Order.
4. Contractor's performance of Services shall not interfere with the use, occupancy or enjoyment of the Facility by FMPA.
5. No work or activity performed as part of the Services shall cause to be in violation of any requirement of law nor shall Contractor or any agent, employee or representative violate any federal, state or local laws while performing Services.
6. All Services shall be performed in a manner that will not damage the Facility and Contractor shall promptly notify FMPA and shall be responsible for the cost of repairing any such damage should it occur.
7. Work will be performed during the daytime hours of 7:00 a.m. to 4:00 p.m. Monday through Friday. Exceptions may apply if the work deems otherwise.
8. FMPA rules on maintaining a drug-free workplace shall be strictly followed and enforced by Contractor with respect to all of its employees or subcontractors and none of Contractor's employees, subcontractors, agents or representatives shall be permitted to use non-prescription drugs or alcohol at any FMPA Facility.

25. Final Contract

A final contract will be provided and negotiated with the selected bidder prior to the initiation of any work. All aspects of the Request for Proposal will be included in the final contract.

Any final contract(s) that result from the proposal evaluation and negotiation process may need to be submitted to FMPA's Executive Committee and/or Board of Directors for approval.

Initiation of any work is contingent on FMPA's Executive Committee and/or Board of Directors budget approval for the project.

26. Entire Contract

These General Terms and Conditions, the Services Agreement between FMPA and the selected vendor(s), including attachments thereto, constitute the entire agreement.

**PROPOSAL TO PROVIDE INTERIOR ALTERATIONS FOR FMPA
ADMINISTRATION OFFICE HR AND EXECUTIVE AREA
RFP# 2021-249**

I have carefully examined the Request, Terms and Conditions, Description of Services, Bid Forms, and any other documents accompanying or made a part of this RFP. With full knowledge and understanding of the aforesaid, I agree to abide by all conditions of this bid.

I hereby propose to furnish the services specified in the RFP at the prices quoted in my bid as indicated in the appropriate spaces on this and the attached sheet AOC-1.

I certify that I am duly authorized to submit this proposal on behalf of the vendor and that the vendor is ready, willing and able to perform if awarded the bid.

Prices quoted shall remain firm and irrevocable for a period of 180 days.

ADDENDA. The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparing this proposal (if applicable).

Number _____	Dated _____
Number _____	Dated _____
Number _____	Dated _____
Number _____	Dated _____

Provide a price for the execution of work for Interior Alternations of FMPA's Administration Office HR and Executive Area

FOR THE SUM OF _____ DOLLARS

Respectfully
submitted:

Company Name: _____

Signature: _____
(Authorized Representative)

(Type or Print Name of Signer)

DRUG-FREE WORKPLACE COMPLIANCE FORM

IDENTICAL TIE BIDS

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing the bids will be followed if none of the ties vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that _____ does:

(Name of business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

Vendor's Signature

Date

STATEMENT OF NO BID

Amie Erickson
Facilities Specialist
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819

We, the undersigned, have declined to submit a bid on your Invitation to Bid Number # **2021-249**, **July 2021, FLORIDA MUNICIPAL POWER AGENCY REQUEST FOR PROPOSAL INTERIOR ALTERATIONS TO FMPA ADMINISTRATION OFFICE HR AND EXECUTIVE AREA** for the following reasons:

- We do not offer this service/product.
- Our schedule would not permit us to perform.
- Unable to meet specifications.
- Unable to meet bond requirements.
- Other _____

We understand that if the Statement of No Bid letter is not executed and returned, our name may be deleted from the list of qualified bidders of the Florida Municipal Power Agency.

Company Name: _____

By: _____
(Authorized Person's Signature)

(Print or type name and title of signer)

Company Address: _____

Telephone Number: _____

Toll Free Number: _____

Fax Number: _____

Date: _____

AFFIDAVIT OF COMPLIANCE
FMPA RFP # 2021-249
**REQUEST FOR PROPOSAL INTERIOR ALTERATIONS TO FMPA
ADMINISTRATION OFFICE HR AND EXECUTIVE AREA**

_____ We DO NOT take exception to the Bid Specifications.

_____ We TAKE exception to the Bid Specifications as follows:

Company Name: _____

By: _____

(Authorized Person's Signature)

(Print or type name and title of signer)

Company Address:

Telephone Number

Toll Free Number:

Fax Number:

Date:

CONSTRUCTION SERVICES CONTRACT
[SMALL PROJECT]

between

FLORIDA MUNICIPAL POWER AGENCY,

a governmental legal entity created and existing pursuant to Florida law,

and

MERRITT CONTRACTING CORPORATION,

a Florida corporation and certified general contractor,

date as of

April __, 2020.

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CONSTRUCTION SERVICES CONTRACT

This construction services contract is dated as of April __, 2020, and is between FLORIDA MUNICIPAL POWER AGENCY, a governmental legal entity created and existing pursuant to Florida law (“**Owner**”), and MERRITT CONTRACTING CORPORATION, a Florida corporation and certified general contractor (license no. CGC1507704) (“**Contractor**”).

Owner owns an office building facility located at 8553 Commodity Circle, Orlando, Orange County, Florida (the “**Premises**”). On February 18, 2020, Owner issued its Request for Proposal for Interior Modifications for FMPA Administration Office RFP # 2020-277 (the “**RFP**”). Contractor submitted a bid in response the RFP and desires to perform all of the Work (as defined in Article 14) on the Premises, as described in the Contract Documents (as defined in Section 1.1) and pursuant to the terms and conditions of this contract.

Unless otherwise indicated, capitalized terms used in this contract have the meanings ascribed to them in Article 14.

The parties therefore agree as follows:

Article 1 CONTRACTOR’S WORK

1.1 **Contract Documents.** The “**Contract Documents**” consist of this contract, the RFP, including drawings, specifications, and addenda issued before this date of this contract, other documents listed or referenced in this contract and Changes Orders (as defined in Section 6.2) issued after the date of this contract, all of which form the Contract Documents and are as fully a part of this contract as if attached to this contract or repeated in the body of this contract.

1.2 **The Work.** Contractor must fully and completely execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

1.3 **Date of Commencement and Substantial Completion.** The date of commencement of the Work is the date of this contract unless Owner indicates a different date in a Notice to Proceed issued by Owner. Contractor must achieve Substantial Completion (as defined in Section 2.5) of the entire Work not later than [date], subject to adjustments of the Contract Time (as defined in Section 7.1) as provided for in the Contract Documents.

1.4 **Contract Sum.** Owner will pay Contractor the Contract Sum in current funds for Contractor’s performance of the Work. The “**Contract Sum**” is the guaranteed lump sum amount of \$_____, subject to additions and subtractions as provided for in the Contract Documents.

Article 2
PAYMENTS AND COMPLETION

2.1 **Progress Payments.** (a) Upon the issuance of the Notice to Proceed by Owner, Contractor must submit an Application for Payment to Owner certifying that Contractor has secured materials, labor, and subcontractors, if any, needed to complete the Work, and listing all subcontractors, and providing a Lien (as defined in Section 5.4) waiver for the initial payment on behalf of Contractor and all subcontractors, if any, for Owner's approval. Within 15 days (as defined in Section 7.1(d)) of Owner's approval of such Application for Payment, which Owner will not unreasonably withhold, condition, nor delay, Owner will make an initial payment to Contractor of \$_____. [Note: I suggest 30% of Contract Sum.]

(b) Upon Contractor's acceptance of the Substantial Completion Certificate (as defined in Section 2.5(c)), Contractor must submit an Application for Payment to Owner, which details the remainder of the Work that is left to achieve Final Completion (as defined in Section 2.7) and provides a Lien Waiver on behalf of Contractor and all subcontractors, if any, for all portions of the Work that have been completed to achieve Substantial Completion. Within 15 days of Owner's acceptance of such Application for Payment, which Owner will not unreasonably withhold, condition, nor delay, Owner will make a payment to Contractor in the amount of \$_____. [Note: I suggest 50% of the Contract Sum.]

(c) Upon Owner's issuance of the Certificate of Final Completion (as defined in Section 2.7(a) and meeting all requirements of Section 2.7(b)), Contractor must submit an Application for Payment to Owner, which provides a Lien Waiver on behalf of Contractor and all subcontractors, if any, for the entire Work. Within 15 days of Owner's acceptance of such Application for Payment, which Owner will not unreasonably withhold, condition, nor delay, Owner will make a payment to Contractor in the amount of \$_____. [Note: I suggest 20% of the Contract Sum.]

2.2 **Applications for Payment.** Upon each of the milestones provided for in section 2.1, Contractor must furnish Owner with an Application for Payment. Owner will deliver Contractor prompt written notice of (1) any failure of the Application for Payment to comply with the requirements of this contract, including section 2.3, or (2) any amounts Owner intends to withhold pursuant to section 2.4.

2.3 **Supporting Documentation.** (a) Each Application for Payment submitted by Contractor must be accompanied by the following, all in form and substance satisfactory to Owner:

- (1) a duly executed or acknowledged Contractor's certification stating that (A) all subcontractors have been paid amounts properly due under their respective subcontracts and identifying all subcontractors, (B) the applicable Work has been performed in accordance with and complies with this Contract, (C) no Liens have been filed or

commenced, or if filed, Contractor has provided a Bond to adequately bond over such Lien;

- (2) if applicable, a duly executed unconditional Lien waiver in the form attached hereto in Exhibit 1 from Contractor that is applicable to Work completed prior to the date of such Application for Payment with respect to which Contractor has already received payment (subject to Owner's set-off and payment withholding rights under this contract); and a contractor's conditional Lien waiver and release that is applicable to Work completed prior to the date of such Application for Payment with respect to which Contractor seeks payment in such Application for Payment in the form attached hereto as Exhibit 2. The final Application for Payment must be accompanied by final and full waivers of Liens, conditioned on receipt of payment of all amounts of the Contract Price due and owing to Contractor, in a form satisfactory to Owner, from Contractor with an unconditional final and full waiver of Liens provided simultaneously upon payment of all amounts of the Contract Price due and owing to Contractor under this Contract;
- (3) such other information, documents or other materials (A) as may be required by the laws or customs of the jurisdiction in which the Premises is located in order to protect Owner from Liens, and (B) as reasonably required by Owner;

2.4 **Payments Withheld.** Owner may withhold payment on an Application for Payment or any other amount due to Contractor or a portion thereof to the extent such payment is disputed by Owner or to the extent reasonably necessary to protect Owner from harm incurred or harm that could be incurred because of:

- (1) Contractor's failure to carry out the Work, including all required submittals, reports and documentary deliveries, in accordance with this contract or for any material breach of this contract;
- (2) other amounts due to Owner from Contractor under this contract;
- (3) the existence of defective, deficient or nonconforming Work not yet corrected by Contractor whether or not payment for such Work pursuant to Section 2.1 has been previously made. Contractor may invoice Owner for such amounts withheld in the next regular Application For Payment made after completion of such Work;
- (4) Liens filed or commenced by any person that has performed a portion of the Work, unless Contractor has furnished a Bond to protect Owner against such Liens; or
- (5) Claims by third parties which Contractor is or could be responsible (in whole or in part) and as to which Owner, in good faith, believes additional security is necessary to prevent harm to Owner.

2.5 **Substantial Completion.** (a) “**Substantial Completion**” is the state in the progress of the Work when the Work or a designated portion thereof, if Owner agrees to accept or designate the Work as meeting the requirements for Substantial Completion in incremental portions, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use. When Contractor considers the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Owner a comprehensive and complete list of all items to be completed or corrected prior to Final Completion (the “**Punch List**”). Failure of Contractor to include some item on the Punch List does not alter or lessen the responsibility and obligation of Contractor to complete all Work in accordance with the Contract Documents.

(b) Upon receipt of the Punch List from Contractor, Owner will make an inspection to determine whether the Work or a designated portion thereof meets the requirements for Substantial Completion. If Owner’s inspection reveals any item, whether or not included on the Punch List, which is not sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before the Work or designated portion thereof can be deemed to have achieved Substantial Completion, complete or correct all such item(s) upon notification by Owner. In such case, Contractor must make such completion or correction and request another inspection by Owner, until Owner agrees the Work or designated portion thereof has achieved Substantial Completion.

(c) When Owner agrees the Work or designated portion thereof has achieved Substantial Completion, Owner will provide notice to Contractor which must include the date of Owner’s acceptance of the Work or designated portion thereof as having achieved Substantial Completion (the “**Substantial Completion Certificate**”). The Substantial Completion Certificate must also set forth the responsibilities of Contractor for security, maintenance, air conditioning, utilities, damage to the Work, and insurance, and fix the time within which Contractor must finish all items on the Punch List. Warranties required by the Contract Documents commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specified in the Substantial Completion Certificate. Upon Owner’s issuance of the Substantial Completion Certificate, Contractor shall promptly review it and provide for its written acceptance.

2.6 **Partial Occupancy or Use.** (a) Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided that such occupancy or use is consented to by applicable insurer(s) and governmental authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion of the Work has achieved Substantial Completion, provided that Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, air conditioning, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers such a portion of the Work to be substantially complete, it shall prepare and

submit a proposed Punch List to Owner pursuant to Section 2.5(a). Consent of Contactor to partial occupancy or use shall not be withheld, conditioned, or delayed.

(b) Immediately prior to any partial occupancy or use by Owner pursuant to this Section 2.6, Contractor and Owner must jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record in writing the condition of the Work.

(c) Unless otherwise agreed upon by the parties, partial occupancy or use of a portion or portions of the Work does not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

2.7 Final Completion and Final Payment. (a) Upon receipt of Contractor's notice that the Work is ready for final inspection and acceptance, Owner will promptly make such inspection. When Owner finds the Work acceptable under the Contract Documents and fully performed, Owner within 10 days will issue a "**Certificate of Final Completion**" stating that to the best of Owner's knowledge, information, and belief, and on the basis of Owner's visits and inspections of the Work, the Work has been completed in accordance with the Contract Documents. Owner's issuance of the Certificate of Final Completion will constitute a representation that the conditions listed in section 2.7(b) have been fulfilled.

(b) "**Final Completion**" requires Owner's issuance of the Certificate of Final Completion and Contractor's submission to Owner of:

- (1) an affidavit that all payrolls, bills for materials and equipment, and all other items of indebtedness associated with the Work hereunder for which Owner might be responsible or encumbered have been paid in full and completely satisfied;
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment under this contract, if any, is currently in effect;
- (3) a written statement that Contractor knows of no reason that such insurance, if any, will not be renewable to cover the period required by the Contract Documents;
- (4) consent of surety, if required, to final payment;
- (5) delivery of all warranty documentation to Owner, including documentation of special warranties, such as manufacturer's warranties or specific subcontractor warranties;
- (6) the general release and affidavit provided for in Section 2.7(e); and
- (6) as may be required by Owner, other data establishing payment or satisfaction of all obligations of Contractor, such a receipts and releases and waivers of Liens, Claims, security interests, or encumbrances arising out of or in connection with this contract, to the extent and in such form as may be designated by Owner.

(c) If a subcontractor refuses or is unable to furnish a release or waiver required by Owner, Contractor may furnish a Bond in a form satisfactory to Owner to indemnify Owner against such Lien, Claim, security interest, or encumbrance. If, despite the requirements of this contract and the Contract Documents, a Lien, Claim, security interest, or encumbrance remains unsatisfied after all payments owed to Contractor under this contract have been made, Contractor must immediately refund to Owner all money that Owner may be compelled or required to pay in discharging a Lien, Claim, security interest, or encumbrance, including all related costs and expenses and attorney's fees.

(d) The making of final payment pursuant to Section 2.1(c) shall constitute a waiver of Claims by Owner against Contractor, except those related to or arising from:

- (1) Liens, Claims, security interests, or encumbrances arising out of or related to this contract and unsettled between Contractor and Owner;
- (2) failure of the Work to comply with the requirements of this contract and the Contract Documents;
- (3) terms of all warranties, including special warranties required by the Contract Documents; and
- (4) audits performed by Owner after final payment.

(e) As a condition of final payment Contractor shall submit to Owner a general release and an affidavit, in form and substance satisfactory to Owner, that releases all Claims of Contractor under the Contract (except (1) those previously made in writing by Contractor which have not yet been resolved, (2) those that are then the subject of a Dispute in accordance with Article 12, and (3) Claims as to which Contractor is entitled to indemnity under this Contract to the extent not then known by Contractor).

(f) Notwithstanding any provision to the contrary set forth in this contract, Owner and Contractor acknowledge and agree that Contractor will not be entitled to final payment of the Contract Sum until Contractor has achieved Final Completion.

2.8 Disputed Applications for Payment. If there is any dispute about any amount which is requested by Contractor or which is claimed by Owner to be due and payable by Contractor, the amount not in dispute will be promptly paid in accordance with the provisions hereof, and any deduction of a disputed amount which is not specifically agreed to by Contractor or Owner, as applicable, and which is then determined by arbitration, litigation or by mutual agreement, to have been wrongfully withheld will be promptly paid by Owner or Contractor, as applicable, together with interest from the date such amount otherwise would have been payable to the date of payment at the Interest Rate.

2.9 **Payment of Subcontractors.** Contractor must promptly pay each subcontractor the amount to which such subcontractor is entitled. Contractor must, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to its sub-subcontractors in a similar manner. Owner shall have no obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by applicable law, in which event Contractor shall immediately reimburse Owner therefor, with interest thereon at the Interest Rate.

Article 3
OWNER

3.1 **Owner.** The term “**Owner**” means Owner and Owner’s authorized representative.

3.2 **Owner’s Right to Stop Work.** If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, as required in Article 10, or repeatedly fails to carry out Work in accordance with the Contract Documents, Owner may issue a written order to Contractor to stop Work, or a portion thereof, until the cause for such order is eliminated.

3.3 **Owner’s Right to Carry Out the Work.** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 10 day period after receipt of written notice from Owner to commence and continue correction of such default or negligence with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies.

Article 4
CONTRACTOR

4.1 **General.** The term “**Contractor**” means Contractor and Contractor’s authorized representative. Contractor must be lawfully licensed and otherwise lawfully entitled, as required by applicable law to perform the Work, including all Work that occurs at the Premises. Contractor shall perform the Work in accord with the Contract Documents.

4.2 **Review of Contract Documents and the Premises.** (a) Execution of this contract by Contractor is a representation that Contractor has visited the Premises, is generally familiar with the local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

(b) Because the Contract Documents are complimentary, Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as all information supplied by Owner, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Premises affecting it. These obligations of Contractor are for the purpose of facilitating coordination and construction by Contractor and are not for the

purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. However, Contractor must promptly report to Owner any errors, omissions, or inconsistencies discovered by or made known to Contractor.

(c) Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of governmental authorities, but Contractor shall promptly report to Owner any nonconformity discovered by or made known to Contractor in writing.

(d) If Contractor believes that additional cost or time is involved because of clarifications or instructions Owner issues in response to Contractor's notices or requests for information pursuant to Subsections (b) and (c) of this Section 4.2, Contractor shall submit a proposed Change Order as provided in Article 6. If Contractor fails to perform the obligations of Subsections (b) and (c) of this Section 4.2, Contractor shall pay such costs and damages to Owner, as would have been avoided if Contractor had performed such obligations. If Contractor performs those obligations, Contractor shall not be liable to Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of governmental authorities.

4.3 Supervision and Construction Procedures. (a) Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor 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 this contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, Contractor shall evaluate the Premises safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely notice to Owner, and shall propose alternative means, methods, techniques, sequences, or procedures. Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless Owner objects to Contractor's proposed alternative, Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

(b) Contractor shall be responsible to Owner for acts and omissions of the Contractor's employees, subcontractors, sub-subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its subcontractors.

(c) Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

4.4 **Labor and Materials.** (a) Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, air conditioning, 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.

(b) Except in the case of minor changes in the Work approved by Owner in accordance with Section 4.12(d) or ordered by Owner in accordance with Section 6.4, Contractor may make substitutions only with the consent of the Owner, after evaluation by Owner and in accordance with a Change Order or Construction Change Directive.

(c) Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

4.5 **Warranty.** (a) Contractor warrants to Owner that materials and equipment furnished under this contract will be of good quality and new unless the Contract Documents require or permit otherwise. Contractor further warrants that the Work will be first-class, high quality Work, conform to the requirements of the Contract Documents, and will be free from all defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements are defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b) All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of Owner, or shall be transferable to Owner, and shall commence in accordance with Section 2.5(c).

4.6 **Taxes.** Contractor shall pay sales, consumer, use and similar taxes for the Work provided by Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

4.7 **Permits, Fees, Notices and Compliance with Laws.** (a) Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for any construction permits required as well as for other permits, fees, licenses, and inspections by government authorities necessary for proper execution and completion of the Work.

(b) Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of governmental authorities applicable to performance of the Work.

(c) If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of governmental authorities, Contractor is entirely responsible for such Work and shall bear all the costs attributable to correction.

(d) If Contractor encounters conditions at the Premises that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, Contractor shall promptly provide notice to Owner before conditions are disturbed and in no event later than five days after first observance of the conditions. Owner will promptly investigate such conditions and, if Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will coordinate with Contractor on an equitable adjustment to be made in the Contract Sum or Contract Time, or both. If Owner determines that the conditions at the Premises are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, Owner shall promptly notify Contractor in writing, stating the reasons. If Contractor disputes Owner's determination, Contractor may proceed as provided in Article 12.

4.8 Allowances. (a) Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.

(b) Unless otherwise provided in the Contract Documents,

- (1) allowances shall cover the cost to Contractor of materials and equipment delivered at the Premises and all required taxes, less applicable trade discounts;
- (2) Contractor's costs for unloading and handling at the Premises, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- (3) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (A) the difference between actual costs and the allowances under Clause (1) of Section 4.8(b) and (B) changes in Contractor's costs under Clause (2) of Section 4.8(b).

(c) Materials and equipment under an allowance shall be selected by Owner with reasonable promptness.

4.9 Superintendent. Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at all times at the Premises during performance

of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, Owner may notify Contractor, stating whether Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of Owner to provide notice within the 14 day period constitutes notice of no reasonable objection. Contractor shall not employ a proposed superintendent to whom Owner has made a timely objection. Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld, conditioned, nor delayed.

4.10 **Contractor's Construction and Submittal Schedules.** (a) Contractor, promptly after being awarded the Contract, shall submit for Owner's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the magnitude and scope of the Work, as agreed with Owner, including (1) the anticipated date of commencement of the Work, interim schedule milestone dates, and the anticipated date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals, in coordination and with communication to Owner keeping Owner apprised at all times of schedules changes, as required by the conditions of the Work.

(b) Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for Owner's approval. Owner's approval shall not be unreasonably withheld, conditioned, nor delayed. The submittal schedule shall (1) be coordinated with Contractor's construction schedule, and (2) allow Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for Owner's review of submittals.

(c) Contractor shall perform the Work in general accordance with the most recent schedules submitted to Owner.

4.11 **Documents and Samples.** Contractor shall make available, at the Premises, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, (each, as defined in Section 4.12(a)) and similar required submittals. These shall be in electronic form or paper copy, available to Owner, and packaged and organized in a coherent manner for submittal to Owner upon completion of the Work as a record of the Work as constructed.

4.12 **Shop Drawings, Product Data and Samples.** (a) **“Shop Drawings”** are drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. **“Product Data”** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. **“Samples”** are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

(b) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by Owner without action.

(c) Contractor shall review for compliance with the Contract Documents, approve, and submit to Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner. By submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents to Owner that Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by Owner.

(d) The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by Owner’s approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified Owner of such deviation at the time of submittal and (1) Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by Owner’s approval thereof.

(e) Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by Owner on previous submittals. In the absence of such notice, Owner’s approval of a resubmission shall not apply to such revisions.

(f) Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

4.13 Use of Premises. Contractor shall confine operations at the Premises to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, the Contract Documents, and directions of Owner and shall not unreasonably encumber the Premises with materials or equipment, taking into account all direction from Owner with regard to use of the Premises.

4.14 Cutting and Patching. (a) Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

(b) Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner by cutting, patching, or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter construction by Owner except with written consent of Owner. Such consent shall not be unreasonably withheld, conditioned, nor delayed. Contractor shall not unreasonably withhold, condition, nor delay, from Owner, its consent to cutting or otherwise altering the Work.

4.15 Cleaning Up. Contractor shall keep the Premises and surrounding area in a clean and workman like manner, free from accumulation of waste materials and rubbish caused by operations under this contract. At completion of the Work, Contractor shall remove waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials from and about the Premises. If Contractor fails to clean up as provided in this contract and the Contract Documents, Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

4.16 Access to the Work. Contractor shall provide Owner with access to the Work in preparation and progress wherever located.

4.17 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees as necessary for completion of the Work. Contractor shall defend suits or claims for infringement of copyrights and patent rights and must hold Owner harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in drawings, specifications, or other documents prepared by Owner. However, if an infringement of a copyright or patent is discovered by, or

made known to, Contractor, Contractor shall be responsible for the loss unless the information is promptly furnished to Owner.

4.18 **Subcontractor Relations.** By appropriate written agreement, Contractor must require each subcontractor, to the extent of the Work to be performed by such subcontractor, to be bound by this contract, by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's work that Contractor, by these Contract Documents, assumes towards Owner. Each subcontract agreement must preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that Contractor's decision to subcontract such work does not prejudice Owner's rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against Contractor that Contractor has, in this contract, against Owner. In the case of sub-subcontractors, Contractor shall require each subcontractor to enter into similar agreements with each sub-subcontractor. Contractor must make available to each proposed subcontractor, prior to signature of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor the terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will in the same fashion make copies of application portions of such documents available to their respective sub-subcontractors.

4.19 **Contingent Assignment of Subcontracts.** Each subcontract agreement for a portion of the Work must be assignable by Contractor to Owner, provided that:

- (1) assignment is effective only after termination of this contract by Owner for cause pursuant to Section 11.2, and only for those subcontract agreements that Owner accepts by notifying the subcontractor and Contractor; and
- (2) assignment is subject to the prior rights of the surety, if any, obligated under a Bond relating to this contract.

Article 5 INDEMNIFICATION

5.1 **Contractor's Indemnity.** Contractor shall indemnify, defend and hold harmless Owner and its successors, assigns, officers, directors, members, partners, employees, shareholders, agents, affiliates, consultants, agents and representatives (the "**Owner Indemnitee(s)**"), from and against (1) third party Claims and liabilities for bodily injury, death or tangible (including real property) third-party property damage to the extent caused by (1) the negligence and willful misconduct of Contractor, its subcontractors, agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be responsible, in the performance of the Work or its other duties or obligations under this contract, without regard to the legal theory underlying such Claims, including strict liability, (2) Claims by any governmental

authority arising from violations of applicable law by Contractor or any of its subcontractors, regardless of tier or (3) Claims by any governmental authority for taxes that are the responsibility of Contractor or any of its subcontractors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor or any of its subcontractors or any of their respective agents or employees under this contract; provided, however, this indemnity shall not apply to the extent any such Claims or liabilities arise or result from the negligence or willful misconduct of Owner Indemnitees, or anyone for whom they are responsible. This indemnification, defense and hold harmless obligation shall survive the termination or expiration of this contract until the expiration of the applicable statute of limitations therefor. In Claims against any Owner Indemnitee under this Section 5.1 by an employee of Contractor, a subcontractor, anyone employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 5.1 shall not be limited by (4) the amount, type or availability of insurance provided by any persons or (5) a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, a subcontractor or any other above referenced person under compensation acts, disability benefit acts, or other employee benefit acts.

5.2 **Notice.** Owner shall give prompt written notice to Contractor that it is required to provide indemnification under Section 5.1 or any other indemnification provision of this contract of any Claim or event known to it which does or may give rise to a Claim against Owner based on this contract, stating the nature and basis of said Claim or event and the amounts thereof, to the extent known.

5.3 **Defense of Claims or Actions.** (a) If any Claim is made or brought by any third party with respect to which an indemnified party hereunder believes it is entitled to indemnification, the indemnified party shall give written notice of such Claim (a “**Claim Notice**”) and a copy of the Claim, process and all legal pleadings with respect thereto (to the extent available to the indemnified party) to the other indemnifying party within five days of being served with such Claim. Failure to give such notice in a timely manner shall not diminish the indemnification obligations of the parties under this Contract except to the extent the failure or delay in giving such notice results in actual and material prejudice to the indemnifying party. Any party seeking indemnification hereunder shall deliver to the party from which indemnification is sought a detailed schedule setting forth a description (including the nature of the Claim and the amount thereof) of each Claim providing the basis for indemnification.

(b) The indemnifying party may assume the defense of any such Claim as mutually agreed. If the indemnifying party wishes to assume the defense of such Claim, such assumption shall be evidenced by written notice to the indemnified party. After such notice, the indemnifying party shall engage independent legal counsel of reputable standing selected by the indemnifying party and reasonably acceptable to the indemnified party, to assume the defense and shall contest, pay, settle or compromise any such Claim on such terms and conditions as the indemnifying party may determine and pay the entire cost thereof. If the indemnifying party assumes the defense of any Claim, the indemnified party shall have the right to employ its own counsel, at its expense; if the indemnified party reasonably concludes and specifically notifies the

indemnifying party either that (1) there may be specific defenses available to it which are different from or additional to those available to the indemnifying party or that (2) such Claim involves or could have a material adverse effect upon it with respect to matters beyond the scope of the indemnity provided hereunder, then the counsel representing the indemnified party, to the extent made necessary by such defenses and to the extent of matters beyond the scope of the indemnity provided hereunder, shall have the right to direct such defenses of such Claim on its behalf and with respect to matters beyond the indemnity provided hereunder, at such indemnified party's cost and expense.

(c) If the indemnifying party does not agree in writing to assume the defense of a Claim, the indemnified party may engage independent counsel of reputable standing selected by it to assume the defense and may contest, pay, settle or compromise any such Claim on such terms and conditions as the indemnified party may determine; provided, however, that the indemnified party shall not settle or compromise any Claim without the prior consent of the indemnifying party if the indemnifying party acknowledges in writing its liability for any liabilities incurred or required to be paid in respect of such Claim and provide reasonable assurances of its ability to satisfy any such liabilities.

(d) The indemnified party and the indemnifying party shall cooperate in good faith in connection with such defense and such parties shall have the right to employ their own counsel, but, except as provided above, the fees and expenses of their counsel shall be at their own expense. The indemnified party or the indemnifying party, as the case may be, shall be kept fully informed of such Claim at all stages thereof whether or not they are represented by their own counsel.

(e) The indemnifying party shall not, except with the consent of the indemnified party, enter into any settlement or consent to entry of any judgment that (1) does not include as an unconditional term thereof the giving by the person(s) asserting such Claim to the indemnified party of an unconditional release from all liability with respect to such Claim; (2) includes a statement as to an admission of fault, culpability or failure to act by or on behalf of the indemnified party; and (3) imposes any conditions, future obligations or limitations on the indemnified party; provided, however, that for settlements with any governmental authority, the consent of the indemnified parties shall not be unreasonably withheld, conditioned, nor delayed and in making such determination, the indemnified party shall exercise its reasonable business judgment (without taking into account the indemnity afforded hereby) consistent with usual and customary settlement terms, conditions and practices for the applicable governmental authority.

5.4 **Liens.** Contractor hereby acknowledges for itself and its subcontractors that neither Owner, the Premises, nor any other property of Owner, including the Work are subject to lien under Chapter 713, Florida Statutes or other provision of applicable law. Contractor agrees not to make, file or pursue any Lien against Owner, the Work, or the Premises (or any portion thereof) for any reason arising out of performance of the Work. Contractor shall notify Owner of all substantial claims for non-payment of amounts claimed to be due in connection with performance of the Work. Contractor shall not suffer to exist and shall promptly discharge and

furnish a Bond in respect of or obtain release for any actual or claimed stop notice, lien (statutory or otherwise), attachment, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, charge, preference, priority or security agreement, claim for non-payment, judgment, levy, security interest or similar interests filed or arising in connection with the Work, by Contractor, its Subcontractors and others for whom Contractor is responsible (each a “Lien”), and shall indemnify, defend and hold harmless Owner from and against all costs, charges and expenses including attorneys’ fees and charges, court costs, and pre- and post-judgment interest that Owner may incur resulting from or arising out of any such actual or claimed Liens. Contractor’s obligations with respect to Liens covered by this Section 5.4 are subject to the following terms:

- (1) the provisions of Section 5.3 shall apply as if Owner is the indemnified party and Contractor is the indemnifying party thereunder;
- (2) Contractor is not liable for any additional expenses resulting from Owner’s failure to reasonably cooperate in the defense of any such Liens at Contractor’s expense; and
- (3) Contractor has sole control of the defense and settlement for any such Liens, provided that Contractor shall promptly confirm in writing its obligation to indemnify, defend and hold Owner harmless from and against all costs and expenses with respect to such Lien. Contractor shall take prompt steps to discharge any such Liens filed against Owner, the Work, the Premises, or upon any equipment, facility, or structures encompassed therein, or upon the premises upon which they are located. If Contractor fails to promptly (but in no event later than seven Days after the filing or creation of same) discharge or furnish a Bond with respect to such Liens, Owner may promptly notify Contractor in writing and take any action to satisfy, defend, settle or otherwise remove such Lien at Contractor’s expense, including Owner’s attorneys’ fees and charges, court costs, and pre- and post-judgment interest. Owner shall have the right, but not the obligation to (A) deduct any such expenses from any payment due, or which may become due, to Contractor or (B) collect from Contractor any balance remaining. Contractor shall have the right to contest any such Liens, provided it first provides to Owner (on behalf of Owner) a Bond to assure payment reasonably satisfactory to Owner, in the amount of such Liens.

5.5 No Waiver of Sovereign Immunity Limitations. The parties understand and agree that nothing in this contract is intended, nor can it be construed to effect, a waiver of Owner’s rights to sovereign immunity limitations as provided in section 768.28, Florida Statutes, or other applicable law.

Article 6 CHANGES IN THE WORK

6.1 Changes in the Work. (a) Changes in the Work may be accomplished after execution of this contract, and without invalidating this contract, by Change Order, Construction

Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 6 and elsewhere in the Contract Documents.

(b) A Change Order shall be based upon agreement among Owner and Contractor. A Construction Change Directive is issued by Owner, but does not require the agreement of Contractor. An order for a minor change in the Work may be issued by Owner alone.

(c) Changes in the Work shall be performed under applicable provisions of the Contract Documents. Contractor shall proceed promptly with changes in the Work, unless otherwise provided in a Change Order, Construction Change Directive, or order for a minor change in the Work.

6.2 **Change Orders.** A “Change Order” is a written instrument prepared by Owner or Contractor, signed by both parties, setting forth their agreement upon all of the following:

- (1) The change in the Work, with as detailed a description of such change as Owner and Contractor determine is needed;
- (2) The amount of the adjustment, if any, in the Contract Sum; and
- (3) The extent of the adjustment, if any, in the Contract Time.

6.3 **Construction Change Directives.** (a) A “Construction Change Directive” is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Construction Change Directive, without invalidating this contract, order changes in the Work within the general scope of this contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner of Contractor’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. A Construction Change Directive signed by the Contractor indicates the Contractor’s agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(b) A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

(c) If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- (2) unit prices stated in Schedule A, stated in the Contract Documents, or subsequently agreed upon;
- (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) as provided in Subsection (d) of this Section 6.3

(d) If Contractor does not respond promptly to a Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, Contractor must nevertheless comply with the Construction Change Directive, except that Contractor may initiate dispute resolution in accordance with Article 12. In such case, and also under Subsection (c) of this Section 6.3, Contractor shall keep and present to Owner an itemized accounting together with appropriate supporting data of Contractor's costs directly caused by the Construction Change Directive. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subsection (d) are limited to the following:

- (1) costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs, reasonably incurred;
- (2) costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- (4) costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- (5) costs of supervision and field office personnel directly attributable to the change.

(e) If Contractor disagrees with the adjustment in the Contract Time, the Contractor may initiate dispute resolution in accordance with Article 12.

(f) The amount of credit to be allowed by Contractor to Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as submitted by Contractor and agreed by Owner. 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.

(g) Pending final determination of the total cost of a Construction Change Directive to Owner, Contractor may request payment for Work completed under the Construction Change Directive in a specific Application for Payment, if the total cost of such Construction Change Directive is reasonably estimated to exceed more than 20% of the Contract Sum. In such instance, if Owner and Contractor agree with the estimated adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

6.4 **Minor Changes in the Work.** Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Owner's orders for minor changes must be in writing. If Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, Contractor must notify Owner and shall not proceed to implement the change in the Work. If Contractor performs the Work set forth an order for a minor change without prior notice to Owner that such change will affect the Contract Sum or Contract Time, Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

Article 7
TIME

NOTE: There are no liquidated damages included in this contract form for delay in the schedule due to Contractor.

7.1 **Time.** (a) Unless otherwise provided, "**Contract Time**" is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in this contract.

(c) The date of Substantial Completion is the date established by the Owner pursuant to Section 2.5.

(d) The term "**day**" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

7.2 **Progress and Completion.** (a) Time limits stated in the Contract Documents are of the essence of this contract. By executing this contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) Contractor shall not knowingly, except by agreement or instruction of Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by Contractor.

(c) Once Contract has commenced the Work, Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

7.3 Delays and Extensions of Time. If Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of Owner or an employee of Owner; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and Owner agrees, justify delay, then the Contract Time shall be extended for such reasonable time as the parties agree. Disputes relating to time shall be resolved in accordance with applicable provisions of Article 12. This Section 7.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

Article 8 PROTECTION OF PERSONS AND PROPERTY

8.1 Safety Precautions and Programs. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and this contract.

8.2 Safety of Persons and Property. (a) Contractor 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, whether in storage on or off of the Premises, under care, custody, or control of Contractor, a subcontractor, or a sub-subcontractor; and
- (3) other property at the Premises or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of Contractor's performance of the Work.

(b) Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

(c) Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Work, in accordance with applicable law, reasonable

safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying Owner's employees and others within the Premises and the owners and users of adjacent properties and utilities of the safeguards.

(d) When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel in accord with applicable law.

(e) Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 8.2(a) and (b) caused in whole or in part by Contractor, 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 Contractor is responsible under Sections 8.2(a) and (b). Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or anyone directly or indirectly employed by Owner, or by anyone for whose acts Owner may be liable, and not attributable in whole or in part to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Article 5.

(f) Contractor shall designate a responsible member of Contractor's organization at the Premises during the Work whose duty is the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner.

(g) Contractor shall not permit any part of the construction or Premises to be loaded or impacted so as to cause damage or create an unsafe condition.

8.3 Injury or Damage to Person or Property. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

8.4 Hazardous Materials and Substances. (a) Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered in the Premises by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify Owner of the condition.

(b) Upon receipt of Contractor's notice, Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the

Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor may promptly reply to Owner in writing stating whether or not Contractor has reasonable objection to the persons or entities proposed by Owner. If Contractor has an objection to a person or entity proposed by Owner, Owner shall propose another to whom Contractor have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. By Change Order, the parties will extend the Contract Time appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

(c) To the extent permitted by law, Owner shall indemnify and hold harmless Contractor against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance discovered by Contractor, which was in fact not brought to the Premises or any property of Owner by Contractor and did not arise or become exacerbated due to the contributing fault or negligence of Contractor, presents the risk of bodily injury or death as described in Section 8.4(a) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of Contractor.

(d) Owner shall not be responsible under this Section 8.4 for hazardous materials or substances the Contractor brings to the Premises or any property of Owner unless such materials or substances are required by the Contract Documents. Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

(e) Contractor shall reimburse Owner for the cost and expense Owner incurs (1) for remediation of hazardous materials or substances Contractor brings to the Premises or any property of Owner and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 8.4(a), except to the extent that the cost and expense are due to Owner's sole fault or negligence.

(f) If, without negligence on the part of Contractor, Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, Owner shall reimburse the Contractor for Contractor's reasonable cost and expense thereby incurred.

8.5 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss.

Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Articles 6 and 12.

Article 9
INSURANCE AND BONDS

9.1 **Contractor's Insurance and Bonds.** (a) Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Schedule B or elsewhere in the Contract Documents. Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Premises is located. Owner must be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

(b) Contractor shall provide Bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. Contractor shall purchase and maintain the required Bonds from a company or companies lawfully authorized to issue Bonds in the jurisdiction where the Premises is located.

(c) Upon the request of any person or entity appearing to be a potential beneficiary of Bonds covering payment of obligations arising under this contract, Contractor must promptly furnish a copy of the Bonds or authorize a copy to be furnished.

9.2 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, Contractor must provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of such notice from Contractor, Owner shall, unless the lapse in coverage arises from an act or omission of Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage, agreeable to Owner, by Contractor. The furnishing of such notice by Contractor does not relieve Contractor of any contractual obligation to provide any required coverage.

NOTE: This is written so that Owner must have property insurance covering the Premises.
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9.3 **Owner's Insurance.** (a) Owner may purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Schedule B or elsewhere in the Contract Documents, subject to the discretion and business needs of Owner. The Owner shall purchase and maintain the required property insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Premises is located.

(b) If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in this contract or elsewhere in

the Contract Documents, Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from Owner, Contractor may delay commencement of the Work and may obtain insurance, if necessary to protect the interests of the Contractor, subcontractors, and sub-Subcontractors in the Work. The cost of such insurance shall be charged to Owner by a Change Order. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. If Owner does not provide written notice, and Contractor is damaged by the failure or neglect of Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for reasonable costs and damages attributable thereto.

(c) Within three (3) business days of the date Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, Owner must provide notice to Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of Contractor:

- (1) Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; and
- (2) the Contract Time and Contract Sum shall be equitably adjusted.

If Contractor purchases replacement coverage, the cost of the insurance shall be charged to Owner by an appropriate Change Order. The furnishing of notice by Owner shall not relieve Owner of any contractual obligation to provide required property insurance.

9.4 Waivers of Subrogation. Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this contract or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance. Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 9.4 does not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

9.5 Loss of Use, Business Interruption, and Delay in Completion Insurance. Owner, at Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

9.6 **Adjustment and Settlement of Insured Loss.** (a) A loss insured under the property insurance required by this contract shall be adjusted by Owner as fiduciary and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of Section 9.6(b). Owner shall pay the Contractor its share of insurance proceeds received by Owner, and by appropriate agreements Contractor must make payments to its subcontractors in similar manner.

(b) Prior to settlement of an insured loss, Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. Contractor shall have 14 days from receipt of such notice to object to the proposed settlement or allocation of the proceeds. If Contractor does not object, Owner may settle the loss and Contractor shall be bound by the settlement and allocation. Upon receipt, Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or Owner does not terminate this contract for convenience, Owner and Contractor may agree to a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, Owner may nonetheless proceed to settle the insured loss, and any dispute between Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 12. Pending resolution of any dispute, Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

Article 10

UNCOVERING AND CORRECTION OF WORK

10.1 **Uncovering Work.** (a) If a portion of the Work is covered contrary to Owner's request or requirements expressly provided in the Contract Documents, it must, if requested by Owner, be uncovered for Owner's examination and be replaced at Contractor's expense, without change in the Contract Time.

(b) If a portion of the Work has been covered that Owner has not specifically requested to examine prior to being covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, Contractor shall be entitled to an equitable adjustment in the Contract Sum and Contract Time. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, correcting the Work, and replacement shall be at Contractor's expense.

10.2 **Before Substantial Completion.** Contractor shall promptly correct Work rejected by Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Owner's related expenses made necessary thereby, shall be at Contractor's expense.

10.3 After Substantial Completion. (a) In addition to Contractor's obligations under Section 4.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 2.5(c), or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if Owner fails to notify Contractor and give Contractor an opportunity to make the correction, Owner waives the rights to require correction by Contractor and to make a claim for breach of warranty. If Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from Owner, but not less than 20 days, or if a correction takes longer than 20 days to complete, to begin efforts to make the correction within such 20 day period and diligently pursue the correction until it is completed, Owner may correct it in accordance with Section 3.3.

(b) The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work, except for Punch List items. The one-year period of correction of Work for Punch List items shall extend from the date of the Certificate of Final Completion.

(c) Contractor shall remove from the Premises all portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

(d) Contractor shall bear the cost of correcting destroyed or damaged construction of Owner, whether completed or partially completed, caused by Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

(e) Nothing contained in this Section 10.3 shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 10.3(a) relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

10.4 Acceptance of Nonconforming Work. If Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as

appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

Article 11
TERMINATION OR SUSPENSION OF THE CONTRACT

11.1 Termination by Contractor. (a) Contractor may terminate this contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a subcontractor, a sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- (1) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- (2) an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- (3) because Owner has not made payment owed to Contractor within the time stated in the Contract Documents.

(b) Contractor may terminate this contract if, through no act or fault of the Contractor, a subcontractor, a sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 11.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If one of the reasons described in Subsections (a) and (b) of this Section 11.1 exists, Contractor may, upon seven days' previous written notice to Owner, terminate this contract and recover from Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not executed, not to exceed 10%, and costs reasonably incurred by reason of such termination.

(d) If the Work is stopped for a period of 60 consecutive days through no act or fault of Contractor, a subcontractor, a sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because Owner has repeatedly failed, unreasonably and without explanation to Contractor, to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, upon seven additional days' notice to Owner, terminate this contract and recover from Owner as provided in subsection (c) of this Section 11.1.

11.2 Termination by Owner for Cause. (a) Owner may terminate this contract if the Contractor:

- (1) repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- (2) fails to make payment to subcontractors or suppliers in accordance with the respective agreements between Contractor and the subcontractors or Suppliers;
- (3) violates applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- (4) otherwise is guilty of a material breach of any provision of the Contract Documents.

(b) When any of the reasons described in Subsection (a) of Section 11.2 exist, Owner may, without prejudice to any other rights or remedies of Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate this contract and may, subject to any prior rights of the surety, if any:

- (1) exclude Contractor from the Premises and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
- (2) accept assignment of subcontracts pursuant to Section 4.19; and
- (3) finish the Work by whatever reasonable method the Owner may deem expedient.

Upon written request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work.

(c) If Owner terminates this contract for one of the reasons stated in Subsection (a) of Section 11.2, Contractor is not entitled to receive further payment, if any, until the Work is finished.

(d) If the unpaid balance of the Contract Sum exceeds Owner's costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor must pay the difference to the Owner upon Owner's invoice for the same. The amount to be paid to Contractor or Owner, as the case may be is an obligation for payment which the parties acknowledge and agree survives termination of this contract.

11.3 Suspension by Owner for Convenience. (a) Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

(b) The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Subsection (a) of Section 11.3. Adjustment of the Contract Sum shall include profit, not to exceed 10%. No adjustment shall be made to the extent

- (1) that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- (2) that an equitable adjustment is made or denied under another provision of this contract.

11.4 Termination by Owner for Convenience. (a) Owner may, at any time, terminate this contract for Owner's convenience and without cause. Upon receipt of notice from Owner of such termination for Owner's convenience, Contractor shall (1) cease operations as directed by Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for Owner's convenience, Owner shall pay Contractor for Work properly executed and costs incurred by reason of the termination, including costs attributable to termination of subcontract.

Article 12 CLAIMS AND DISPUTES

12.1 Authorized Representatives. Each party must designate an authorized representative in writing who is empowered to address matters as they arise during the Work, who will receive and initiate communications between Owner and Contractor and who is authorized to make decisions related to the Work and bind the represented party, except that no Modification nor amendment to this contract is valid unless such Modification or amendment meets the requirements of the contract for its form and substance.

12.2 Dispute Resolution. (a) The parties expressly agree that they will first engage in good faith negotiations to resolve any dispute arising out of or related to this contract. Good faith negotiations include without limitation the requirement that any dispute will be first reviewed by Owner's authorized representative and Contractor's authorized representative who must endeavor to define the issues underlying the dispute and prepare a joint recommendation for resolution.

(b) An authorized representative of a party may submit a claim arising out of, or relating to, this contract which an authorized representative of a party does not believe can be resolved by the parties' authorized representatives (hereinafter collectively referred to as a "**Dispute**") to a Senior Officer from each party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers shall be final and binding upon the parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within 20 days (or such longer time as the parties agree) after notice to each party of the Dispute, either party may give notice to the other party requesting its voluntary participation in non-binding mediation of the Dispute in accordance with mutually acceptable procedures. If the mediation does not occur or result in a settlement of the Dispute within a 20 day period (or such

longer time as the parties agree), either party may pursue any other available remedy at law or in equity.

(c) For purposes of this contract, the term “**Senior Officer**” means the chief executive officer, president, any senior vice president or other officer appointed by a party’s board of directors.

Article 13
GENERAL PROVISIONS

13.1 **Governing Law.** The validity and interpretation of the contract and the rights and obligations of the parties hereunder shall be governed and construed in accordance with the laws of the State of Florida without regard for any conflicts of law provisions that might cause the law of other jurisdictions to apply. All Disputes arising out of or related to this contract, shall be brought exclusively in the State or U.S. Federal courts sitting in Leon County, State of Florida, as appropriate. The parties consent to and agree to submit to the personal jurisdiction of such courts. Each of the parties hereby waives, and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any argument or claim that: (1) such party is not personally subject to the jurisdiction of such courts, (2) such party and such party’s property is immune from any legal process issued by such courts, or (3) any litigation or other process commenced in such courts is brought in an inconvenient forum.

13.2 **Entire Contract.** This contract is in effect and the parties are bound by the conditions applicable to their conduct as of the Effective Date. This contract, including the Contract Documents, represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and upon execution of this contract by Owner and Contractor shall supersede all prior negotiations, binding documents, representations or agreements, whether written or oral. This contract, except as expressly provided herein, may be amended or modified only by a written instrument signed by both Owner and Contractor.

13.3 **Successors and Assigns.** Contractor may not assign, convey or transfer this contract (by operation of law, merger or otherwise), or any part thereof, without Owner’s prior written consent. Any assignment, conveyance, or transfer in violation of this Section 13.3 shall be void ab initio. This contract is binding upon, and inures to the benefit of, the successors and permitted assigns of the parties hereto.

13.4 **Contractual Relationship.** Nothing contained in this contract may be construed as creating a contractual relationship of any kind (1) between Owner and any subcontractor, or (2) between any persons other than Owner and Contractor. Contractor is an independent contractor and all of its agents and employees shall be subject solely to the control, supervision, and authority of Contractor. Owner and Contractor disclaim any intention to create a partnership or joint venture.

13.5 **Notices.** (a) Each party giving or making any notice, request, demand, or other communication (each, a “**notice**”) pursuant to this contract shall give the notice in writing, unless

otherwise expressly permitted in this contract, and shall use one of the following methods of delivery, each of which for purposes of this contract is a writing: (1) personal delivery; (2) registered or certified mail, in each case, return receipt requested and postage prepaid; (3) nationally recognized overnight courier, with all fees prepaid; (4) electronic mail with electronic confirmation of the addressee opening the electronic mail (i.e., read receipt) or (5) facsimile.

(b) Each party giving a notice shall address the notice to the appropriate person at the receiving party (the “**Addressee**”) at the address listed below or to another Addressee or at another address designated by a party in a notice pursuant to this section X.5:

If to Owner:

Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819-9002
Reference: Building Interior Renovations
Attn: _____
Telephone: 407-355-7767 (for verification purposes only)
Facsimile: 407-355-5796
E-mail: _____

With required copies to:

Florida Municipal Power Agency
2061-2 Delta Way
P.O. Box 3209 (32315-3209)
Tallahassee, Florida 32303
Reference: Building Interior Renovations
Attn: General Counsel and Chief
Legal Officer
Telephone: 850-297-2011 (for verification purposes only)
Facsimile: 850-297-2014
E-mail: jody.lamar.finklea@fmpa.com

If to Contractor:

Merritt Contracting Corporation
1950 Monte Carlo Trail
Orlando, Florida 32805
Attn: Lance Merritt, President
Telephone: (407) 461-6466 (for verification purposes only)
Facsimile: (407) 671-4778
E-mail: _____

(c) Except as provided elsewhere in this contract, a notice is effective only if the party giving or making the notice has complied with subsections (a) and (b) and if the Addressee has received the notice. A notice is deemed to have been received as follows:

- (1) If a notice is delivered in person, or sent by registered or certified mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
- (2) If a notice is sent by facsimile, upon receipt by the party giving or making the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number.
- (3) If the Addressee rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change of address for which no notice was given, then upon the rejection, refusal, or inability to deliver.
- (4) Despite the other clauses in this subsection (c), if any notice is received after 5:00 p.m. on a business day where the Addressee is located, or on a day that is not a business day where the addressee is located, then the notice is deemed received at 9:00 a.m. on the next business day where the Addressee is located.

13.6 Rights Cumulative; Costs and Attorney's Fees. (a) Except as expressly provided or limited in this contract, Contractor and Owner shall each be entitled to avail itself of any remedy available under this contract or pursuant to applicable law and the pursuit of a remedy shall not constitute an election of remedies. To the extent Owner or Contractor prevails against the other party in a court action (including proceedings at all levels of trial and appellate courts), reasonable costs and expenses, court costs and other expenses, including attorney's fees, shall be paid by the losing party.

(b) Nothing in this contract is to be construed to limit either party's duty to mitigate damages to the extent required by law.

13.7 No Waiver. No course of dealing or failure of Owner or Contractor, or both, to enforce strictly any term, right or condition of this contract may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this contract will operate as a waiver of any other term, right or condition.

13.8 Audit. (a) Contractor (and its subcontractors) shall maintain complete and accurate books and records relating to any cost-reimbursable Work, time and materials based Work, components of the Work billed under this contract or relating to the quantity of units billed under any unit pricing agreed to by the parties or costs of termination pursuant to Section 11.4 (i.e., Work not covered by lump-sum prices) (all the foregoing hereinafter referred to as "**Records**") for the Records Retention Period. All such Records shall include breakdowns, documentation and supporting dates in such detail as Owner may reasonably request, shall be

open to inspection and subject to audit and reproduction during normal working hours by Owner and/or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this contract. For the purpose of evaluating or verifying such actual or claimed costs, Owner shall have access to Records at any time within the Records Retention Period, subject to the limitations set forth in this Section 13.8(a). Owner shall have access, during normal working hours, to all necessary Contractor facilities and shall be provided adequate and appropriate work space to conduct audits pursuant to this Section 13.8(a). Owner shall give Contractor reasonable notice of the date and time it intends to commence any audit. If the audit indicates that Owner has under paid Contractor, Contractor may invoice Owner for such amount plus interest calculated from the date of underpayment to the date of the audit at the Interest Rate. Owner will pay Contractor's invoice within 30 days of receipt. If the audit indicates that Owner has overpaid Contractor, Owner may invoice the Contractor for such amount plus interest calculated from the date of overpayment to the date of the audit based on the Interest Rate. Contractor will pay Owner's invoice within 30 Days of receipt. The rights of Owner set forth in this Section 13.8(a) survive the termination or expiration of this Contract.

(b) Where any of Contractor's invoice(s) includes compensation for Work performed on a unit price basis, Contractor shall submit Contractor's determination of units of Work performed determined in accordance with the provisions of this contract, and substantiated by appropriate documentation. Unit prices shall be as specified in Schedule A or as subsequently developed by the Parties. Upon verification by Owner of such documents, Owner will advise Contractor in writing of either Owner's acceptance of Contractor's determination of units or Owner's determination of such units. If Contractor believes that Owner has incorrectly determined the units of Work performed, Contractor will comply with the provisions of Article 12. All undisputed amounts will be due and payable in accordance with this Contract. The firm fixed, all-inclusive installed unit prices set forth in Schedule A, including delivery to the Premises, shall apply to both additions to and deletions from the scope of Work when priced on a unit price basis.

(c) When any of Contractor's invoice(s) includes compensation for Work performed on a time and material basis or similar basis of compensation, Contractor shall submit to Owner a detailed breakdown in a form reasonably acceptable to Owner of the costs of labor and materials and fees (if any) due to Contractor. All costs reflected in such breakdown shall be net of applicable credits. Rebates that are not so netted by Contractor shall be remitted to Owner within 30 Days of Contractor's receipt. The term "**applicable credits**" shall mean any and all refunds, rebates, credits, discounts or similar amounts (including any interest thereon) received by Contractor. Contractor shall pay, and require each of its subcontractors to pay, all materials and labor invoices received in connection with performance of the Work as required by the terms of their respective contracts. Upon receipt of such breakdown, Owner shall make the determination of the amount due Contractor, and unit prices (if applicable) shall govern. The determination of Owner shall be final and conclusive, subject to Contractor's right to dispute such

determination pursuant to Article 12. Rates and terms for Work to be performed on a time and material basis are set forth in Schedule A.

13.9 **Survival.** Articles 5 and 13 of this contract and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either party, survives the termination, cancellation or expiration of this contract.

13.10 **No Third Party Beneficiaries.** The provisions of this contract are intended for the sole benefit of Owner and Contractor and, except to the extent specifically identified herein, there are no third party beneficiaries other than assignees contemplated by the terms herein.

13.11 **Non-Recourse.** Anything to the contrary notwithstanding, the obligations of Owner under this contract are special obligations of Owner and do not constitute obligations of (and no recourse shall be had with respect thereto) any shareholder, partner, member, officer, trust officer, director or employee of Owner and no action shall be brought or maintained by Contractor against any such shareholder, partner, member, officer, trust officer, director or employee. Neither the State of Florida nor any political subdivision thereof other than Owner is obligated to make payments hereunder. Neither the full faith and credit of the State of Florida nor any political subdivision or member thereof is obligated hereunder. Owner has no taxing power.

13.12 **Provisions Required by Law.** Any term or condition required to be contained in this contract as a matter of law which is not so contained herein is deemed to be incorporated in this Contract as though originally set forth herein.

13.13 **Severability.** If any provision of this contract, or the application thereof to any person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this contract, and the application of such provision to persons or circumstances other than those as to which it is specifically held invalid or unenforceable, shall not be affected thereby, and each and every remaining provision of this contract will be valid and binding to the fullest extent permitted by applicable law.

13.14 **Joint Effort.** Preparation of this contract has been a joint effort of the parties and the resulting document (or any portion thereof) is not to be construed more severely against one of the parties than against the other.

13.15 **Counterparts.** This contract may be executed in counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

13.16 **Approvals Not To Relieve Contractor.** No approval, consent or failure to disapprove, inspect or failure to inspect, or comment on, any matter by or the submission of any drawing or document to, or acquiescence on the part of, Owner will relieve Contractor of any liability for any of its obligations under this contract or otherwise.

Article 14
DEFINITIONS

“**Application for Payment**” means Contractor’s written request for payment by Owner pursuant to the requirements of Section 2.1, or otherwise, and in conformity with all applicable provisions of this contract and the Contract Documents.

“**Bond**” means a bond (1) issued by a surety company acceptable to Owner, (2) in a form and substance acceptable to Owner, (3) in an amount of not less than 150% of the claim of Lien or expected Claim value, and (4) sufficient to permit Owner to obtain title insurance with no exceptions for such Lien, if applicable.

“**Claim**” means any and all claims, causes of action, proceedings, demands and suits.

“**Effective Date**” means the date first stated in the introductory paragraph of this contract.

“**Interest Rate**” means the rate *per annum* (365 or 366 days, as appropriate) prime rate as published from time-to-time in the “Money Rates” table of the Wall Street Journal; provided, however, if more than one such prime rate is published, the average shall be used for the purposes of this contract, unless an applicable bank rate is agreed to by the parties.

“**Modification**” means a (1) written amendment to this contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by Owner pursuant to this contract.

“**Notice to Proceed**” means the written instruction given by Owner to Contractor to commence work under this contract.

“**Records Retention Period**” means the period of time commencing on the date of Owner’s issuance on the Certificate of Final Completion and ending on the day prior to the fifth anniversary thereof.

“**Work**” means all of the obligations to be provided or performed by Contractor pursuant to this contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor, and everything else necessary to be done to fulfill Contractor’s obligations.

[Signatures Follow on the Next Page]

The parties are signing this Contract as of the date stated in the introductory clause.

FLORIDA MUNICIPAL POWER AGENCY

By: _____
Jacob A. Williams
General Manager and CEO

MERRITT CONTRACTING CORPORATION

By: _____
Lance J. Merritt
President

Exhibit 1
UNCONDITIONAL LIEN WAIVER

Exhibit 2
CONDITIONAL LEIN WAIVER AND RELEASE

Schedule A
UNIT PRICES; TIME AND MATERIAL RATES

Schedule B
INSURANCE AND BOND REQUIREMENTS