



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Cheryl Dolin (954) 797-1191

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE HASKELL COMPANY TO PROVIDE DESIGN/BUILD SERVICES FOR IMPROVEMENTS TO DRIFTWOOD ESTATES PARK.

REPORT IN BRIEF:

With consideration of three (3) design build proposals presented to the Town Council at their meeting of June 7, 2000, the Council selected the Haskell Company and authorized staff to negotiate a contract for services. These negotiations have been successful delivering a design and construction contract which provides for each of the programed improvements identified within the Request for Proposals. These improvements include a new Multipurpose Sports Field (softball/baseball and soccer/football, lighting for the existing tennis court, one 24'x24' picnic shelter, two 12'x12' picnic shelters, an asphalt recreational path, a drinking fountain, site furnishings and the addition of landscaping and irrigation).

This contract provides for design and construction services with a completion interval of one hundred twenty (120) days for substantial completion delivering these facilities November, 2000.

PREVIOUS ACTIONS:

R-2000-130 Resolution

CONCURRENCES:

Non applicable

FISCAL IMPACT:

Has request been budgeted? Yes

Funding appropriated? Yes. \$199,951.11

(\$100,000.00 Town of Davie and \$100,000.00 FRDAP Grant)

Account Name: \$5,000,000 Public Improvement Revenue Bond Series 1999 and

FRDAP Grant in Matching Funds

Additional Comments: Not applicable

RECOMMENDATION(S):

Motion to approve the resolution.

Attachment(s):

Resolution

Contract

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE HASKELL COMPANY TO PROVIDE DESIGN/BUILD SERVICES FOR IMPROVEMENTS TO DRIFTWOOD ESTATES PARK.

WHEREAS, the Town Council previously approved the selection of The Haskell Company as the best qualified firm to provide design/build services for improvements to Driftwood Estates Park by Resolution No. R-2000-130; and

WHEREAS, it is in the Town’s best interest to execute a contract for these services; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to execute a contract with The Haskell Company.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie authorizes the Mayor to execute a contract with The Haskell Company for design/build services for improvements to Driftwood Estates Park, attached hereto and identified as Attachment “A”.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN-
BUILDER — LUMP SUM**

Document No. 525

First Edition, 1998

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Washington, DC

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**DESIGN-BUILD
INSTITUTE OF AMERICA**

Standard Form of Agreement Between Owner and Design-Builder — Lump Sum

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____
in the year of 2000 by and between the following parties, for services in connection with the Project
identified below.

OWNER:
(Name and address) Town of Davie
6591 Orange Drive
Davie, Florida 33314-3390

DESIGN-BUILDER:
(Name and address) The Haskell Company (A Florida Corporation)
111 Riverside Avenue
Jacksonville, Florida 32202

PROJECT:
*(Include Project name and location
as it will appear in the Contract
Documents)* Name: Design-Build Driftwood
Estates Park Improvements
Project No. B-00-57

Location: Davie, Florida

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree
as set forth herein.

Article 1
Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2
Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract");
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder;
- .3 Written Supplementary Conditions, if any, to the General Conditions of Contract;
- .4 The General Conditions of Contract;
- .5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- .6 Design-Builder's Deviation List, if any, contained in Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;
- .7 Owner's Project Criteria;
- .8 Design-Builder's Proposal, except for the Deviation List, submitted in response to Owner's Project Criteria; and
- .9 The following other documents, if any: *(Identify, for example, Unit Price Schedules, Design-Builder's allowances, Performance Standard Requirements, Owner's Permit List and any other document Owner and Design-Builder elect to make a Contract Document)*
 - A) Town of Davie RFP Bid No. B-00-57, dated April 4, 2000;
 - B) The Haskell Company Bid Proposal for Bid No. B-0057, dated May 8, 2000
 - C) Certificate of Insurance;

Article 3
Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4
Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

Deleted

~~**4.2 Owner's Limited License Upon Payment in Full.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties").~~

4.3 Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates the Project for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, conditioned on the following:

- .1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party; and
- .2 Owner agrees to pay Design-Builder the additional sum of twenty thousand Dollars (\$ 20,000.00) as compensation for the right to use the Work Product in accordance with this Article 4 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License Upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with

Owner's completion and occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

4.5 Owner's Indemnification for Use of Work Product. If Owner uses the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion

5.2.1 Substantial Completion of the entire Work shall be achieved no later than one hundred twenty (120) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

- None -

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by one (1) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner two hundred Dollars (\$ 200.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion. *(If liquidated damages are applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.4 will need to be modified accordingly)*

Deleted

~~5.5 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. (If an early completion bonus is applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.5 shall be modified accordingly.)~~

Article 6
Contract Price

6.1 **Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of * _____ Dollars (\$ 199,951.11) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

*one hundred ninety nine thousand nine hundred fifty one dollars and eleven cents

Deleted

~~6.2. **Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 3.4.1.3 or 3.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes: (insert applicable markup)~~

Article 7
Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the twentieth (20th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment ~~within ten (10) days~~ after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. the Florida Prompt Payment Act and with

7.2 Retainage on Progress Payments

7.2.1 Owner will retain ten percent (10 %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

Partial
Deletions

~~7.2.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.~~

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment ~~within thirty (30) days~~ after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

~~Deletes~~ **7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing ~~five (5) days after payment is due at the rate of _____ percent~~ ~~_____%~~ in accordance with the Florida Prompt Payment Act.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment, or as otherwise required by law. Some records may be subject to public access and retainage of documents must be made in accordance with Florida law.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 *(Choose one of the following:)*

~~Deletion~~ The fair and reasonable sums for overhead and profit ~~under commitment and above~~ anticipated had the Agreement not been terminated by the Owner.
or

~~Deletion~~ Overhead and profit in the amount of _____ percent (____%) on the sum of items ~~1~~ and ~~2~~ above.

~~Deleted~~ **8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

- ~~Deleted~~ .1 ~~If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (____%) of the remaining balance of the Contract Price.~~
- ~~Deleted~~ .2 ~~If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (____%) of the remaining balance of the Contract Price.~~

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

(The following Article 9 should be used only if the Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.)

Article 9

Representatives of the Parties

9.1 Owner's Representatives

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Robert D. Rawls, Deputy Town Administrator / Town Engineer
6591 Orange Drive
Davie, Florida 33314

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Cheryl Dolin / Project Manager Capital Projects
6591 Orange Drive
Davie, Florida 33314

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Norman C. Anderson, Project Director
The Haskell Company
111 Riverside Avenue
Jacksonville, Florida 32202

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Edward T. Curry, III
The Haskell Company
111 Riverside Avenue
Jacksonville, Florida 32202

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages.* *(Attach Insurance Schedule indicating the required coverage, amount of required coverage, duration of coverage, required rating of insurance carriers and any other insurance requirements required of the parties)*

*As specified in RFP Bid No. B-00-57

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security: *(Insert the amount of bonds and any other conditions of the bonds or other security)*

Performance and Payment Bond in the amount of 100% of the contract price. All bonds will be posted to comply with Florida Statute 255.05.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

The Haskell Company

(Name of Design-Builder)



(Signature)

Norman C. Anderson

(Printed Name)

Project Director

(Title)

Date: 6/23/00

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

**STANDARD FORM OF GENERAL
CONDITIONS OF CONTRACT
BETWEEN OWNER AND
DESIGN-BUILDER**

Document No. 535

First Edition, 1998

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Washington, DC

DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

Standard Form of General Conditions of Contract Between Owner and Design-Builder

*This document has important legal consequences. Consultation with
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Article 1

General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder — Lump Sum* (1998 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder — Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition).

1.2.2 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.4 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition).

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 *Site* is the land or premises on which the Project is located.

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.10 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.11 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act

on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit

Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review

and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of

the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder

agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident

arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction,

removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4** A legal description of the Site;
- .5** To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

~~**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.~~

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~~3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.~~

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

~~4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.~~

~~Deleted~~

~~4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.~~

~~Deleted~~

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

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4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

- .1 Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
- .2 Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;
- .3 Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
- .4 Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;
- .5 Coverage for claims for damages ~~(other than to the Work)~~ because of injury to or destruction of tangible property, including loss of use;
- .6 Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
- .7 Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof, as set forth in Article 10 of the Agreement.

Deletion

Revision

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.5 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

5.2 Owner's Liability Insurance

5.2.1 ~~Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.~~

5.3 Owner's Property Insurance

5.3.1 ~~Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full~~

~~insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner.~~

5.3.2 ~~Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.~~

5.3.3 ~~Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.~~

5.3.4 ~~Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.~~

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

5.4 Bonds and Other Performance Security

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

Article 6 **Payment**

6.1 Schedule of Values

6.1.1 Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are

suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their

sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3 consent of Design-Builder's surety, if any, to final payment;
- .4 all operating manuals, warranties and other deliverables required by the Contract Documents; and
- .5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial

Completion and (iii) the terms of any special warranties required by the Contract Documents.

Article 7

Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.

7.3 Payment Claim Indemnification

7.3.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification

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~~7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.~~

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual

delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense

and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice

Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

10.3 Litigation

10.3.1 Any disputes not resolved through mediation shall be litigated with venue being in Broward County, Florida and governed in accordance with the laws of the State of Florida. Costs of the action, including reasonable attorney's fees shall be recoverable by the prevailing party.

10.3.2 (Deleted)

10.3.3 (Deleted)

10.3.4 (Deleted)

10.4 Duty to Continue Performance

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10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop

and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ

any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-

Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to

cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12 **Miscellaneous**

12.1 Assignment

12.1.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall

not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if

transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

B I D P R O P O S A L

To: Mr. Herb Hyman
Town of Davie, Purchasing Division
6591 Orange Drive
Davie, Florida 33314

May 8,2000

RE: Driftwood Estates Park Design-Build Improvements, Project B-00-57

BIDDER: The Haskell Company
CONTACT: Norman C. Anderson
BIDDER'S ADDRESS: 111 Riverside Ave.
Jacksonville, Florida 32202
TELEPHONE NUMBER: (904) 357-4868

The undersigned having visited and examined the site of the work, and having carefully studied the bid documents, hereby proposes to furnish all labor, materials, tools, equipment, safety services, and required licenses necessary to perform the design-build services called for in the bid documents, and to perform all operations necessary to execute and complete such work in a quality, workman-like manner in accordance with the requirements called for in the bid documents for the proposed bid prices listed below.

CHAIN LINK FENCING	LS	1	\$3,297.00
DEMOLITION	LS	1	\$7,344.75
GRADING / DRAINAGE / SITE PREPARATION	LS	1	\$18,438.70
IRRIGATION	LS	1	\$8,400.00
LANDSCAPING	LS	1	\$5,370.62
MULTIPURPOSE FIELD	LS	1	\$20,948.36
RECREATIONAL PATH	LS	1	\$10,417.68
PICNIC SHELTERS (SLABS,SHELTER, & ELECT)	LS	1	\$25,566.95
PLUMBING	LS	1	\$3,150.00
SITE FURNISHINGS (BENCHES, PICNIC TABLES, ETC)	LS	1	\$2,601.47
SPORTS LIGHTING	LS	1	\$42,769.65
BASE PRICE			\$148,305.18
GENERAL CONDITIONS	LS	1	\$33,745.93
CONTINGENCY	LS	1	\$0.00
ARCHITECTURAL / ENGINEERING FEES	LS	1	\$17,900.00
TOTAL			\$199,951.11

C. LIST OF CLARIFICATIONS AND UNDERSTANDINGS

The Haskell Company's proposal is based on the following clarifications and understandings. This list includes items considered by The Haskell Company in the preparation of this proposal and included in this bid.

MULTIPURPOSE SPORTS FIELD

Haskell will provide one combination baseball / softball and football / soccer multipurpose -sports field as indicated on the RFP Master Plan.- Elevations of the fields shall be planned so as to allow for positive drainage of rain water off of the fields to adjacent swales. Haskell will design and construct new on-site retention areas to as required for the natural percolation of rain water outside of the play areas. Infield material on the baseball / softball field shall be sprigged with Bermuda 419 grass. Outfields will also be sprigged with Bermuda 419. Base lines shall be scalped and finished with clay. The entire grassed area of the multipurpose field shall be irrigated. The size of the outfield shall be 230'. The size of the play area for the soccer / football field shall be at least 180' x 260'.

Haskell do not plan to remove material for the fields. The site will be roto-tilled and supplemented with top soil to achieve finished field grades. The baseball / softball fields shall be provided with a backstop consisting of three panels 16' wide, one panel centered on home plate and the other two panels on each end flaring out at an angle of 45 degrees with the center panel. Each panel shall be 20' high, all in the vertical plane. The upright and cross pieces for each panel shall be galvanized steel. Backstop shall be 6 gauge, 2" maximum galvanized mesh.

Two "Dugouts" shall be provided with 4" reinforced broom finished concrete pad with a continuous thickened edge. The slab shall be designed for the player's benches specified below. It shall be protected from the ball field by a ten-foot (10') high chain link fence, which shall extend around the back off the slab as well as the front, and shall have two 4' wide openings for player access to the field. No sideline fencing beyond the dugouts will be installed.

Haskell will provide bases and home plate for the baseball / softball field and provide and install two (2) lightweight galvanized combination football / soccer goals (see enclosed detail).

Lighting for the new multipurpose sports field has been previously provided under a separate contract.

ALUMINUM BENCHES

Haskell will provide and install two (2) portable aluminum player's benches with backs, one for each dugout. Each bench shall be 15' long. Benches will be All-Star bleacher brand.

SPORTS LIGHTING

Haskell will provide Musco Lighting sports lighting system for one (1) tennis court.- The tennis court lights shall be pre-aimed TLC fixtures, 1500W. Electrical service has been provided for the tennis court lighting under a separate contract. The tennis courts lights shall be operated by a time clock with a key switch.

All lighting equipment shall comply with the Codes specified herein, including but not limited to:

National Fire Protection Association (NFPA) 780 Lightning Protection
National Electrical Code
Underwriter's Laboratory (UL)
National Electrical Manufacturer's Association (NEMA) Standard 250-1991 for
Enclosures for Electrical Equipment

The Design Build team shall provide lighting on the primary playing area to meet or exceed the Town of Davie RFP criteria. Haskell will provide direct bury round prestressed concrete poles of appropriate heights for tennis court. Poles will be manufactured by Accord Industries, or approved equal.

PICNIC SHELTER

Haskell will provide one (1) 24' x 24' Poligon picnic shelter. The shelter shall be constructed of painted, powder coated steel frames and shall have conventional pitched roof structures with a standing seam metal roof painted the same color green as the existing shelter Driftwood Estates Park.

A 24' x 36' concrete floor slab is existing. The shelter shall be located to one side of the existing concrete slab. The existing concrete slab shall be resurfaced and sealed with exterior concrete dressing compound such as ARDEX CD, or approved equal. A border around the floor slab shall be painted with safety yellow paint.

Haskell will provide fully enclosed lighting fixture in the large picnic shelter to enable its use in the evenings for picnics, meetings, or similar activities. The picnic shelter shall be provided with two (2) exterior waterproof duplex 110V receptacles. The shelter lighting will be operated by a timer with a key switch at the panel.

Haskell will provide and install one (1) ADA compliant water fountain adjacent to the 24'x24' shelter with lockable hose bib. The existing grill shall remain.

Haskell will supply four (4) - six foot long picnic tables. The picnic tables shall be made of hardwood, and be similar in appearance to the existing picnic tables at Driftwood Estates Park. Finish to be selected by Owner from the manufacturer's full range of standard options.

Haskell will provide two (2) trash receptacles. These trash receptacles shall be equipped with 30 gallon minimum liner. The exact location adjacent to the picnic shelters shall be determined during the design phase. The trash receptacles shall closely resemble the existing ones at Driftwood Estates Park.

MINI PICNIC SHELTERS

Haskell will provide two (2) Poligon steel mini picnic shelters measuring approximately twelve feet by twelve feet (12' x 12'). These mini-shelters shall be located as shown on the Master Plan. Color shall match that of the existing rest room building roof at Driftwood Estates Park. A 4" thick reinforced concrete broom finished floor slab with a thickened edge will be installed for each mini shelter. A border around the shelter slab shall be painted with safety yellow paint.

Haskell will provide fully enclosed lighting fixtures in each of the two mini-picnic shelters and one (1) exterior waterproof duplex 110V receptacle.

Haskell will provide each of the mini-shelters with one (1) eight foot (8') long hardwood picnic table. Finish

to be selected by Owner from the manufacturer's full range of standard finishes. Each mini-shelter shall be equipped with one 30 gallon minimum waste receptacle with liner. The trash receptacles shall closely resemble the existing ones at Driftwood Estates Park.

Haskell will provide each mini picnic shelter provide with one (1) stationary pedestal grills with a minimum of 300 sq. in. of cooking surface. The grills shall be steel plate with heat resistant black enamel finish. The exact location of the grills near the mini picnic shelters shall be determined during the design phase.

BICYCLE RACK

Haskell will provide one (1) eight foot (8') long bicycle rack. The new bicycle rack shall resemble the existing bicycle rack at Driftwood Estates Park. The exact location shall be determined during the design phase.

IRRIGATION

All areas of the multipurpose sports field shall be irrigated with 50% overlap providing 100% coverage, utilizing Rainbird or Toro sprinkler heads. The exact head shall be selected during the design process. A portion of the proposed multipurpose field irrigation is existing and will remain. Haskell assumed that water pressure is adequate to extend the existing irrigation system and has not included costs for water supply improvements of any kind. Town of Davie will verify for Haskell that existing system is functional before irrigation work begins.

STORM DRAINAGE

Haskell assumed that the removal of the existing asphalt surface would approximately equal the surface area of the new pavements to be installed. Based on conversations with CBDD, we do not believe additional drainage control facilities will be required. No new drainage retention, piping, pumping or catch basins facilities are included in this proposal. The multipurpose field will be designed to drain toward existing and new swale areas within the park to percolate naturally. All other facilities installed will be drained to adjacent soils for natural percolation.

CHAIN LINK FENCING

Perimeter fencing shall be provided and installed where shown on the RFP Master Plan. Perimeter fencing shall be six feet (6') high galvanized fabric and Schedule 40 pipe. The fabric shall be 2-1/8". The top rail shall be 1 5/8". Trusses and cross braces shall be 1 5/8". Bottom tension wire shall be 7 gauge. Steel hog rings and tie wires shall be 9 gauge. Haskell will provide two (2) four foot (4') wide personnel gates. The exact location of the personnel gates shall be determined during the design phase.

ASPHALT RECREATIONAL PATHS

Haskell will install 6' wide paved asphalt paths in the approximate locations shown on RFP Master Plan. Path shall be 1" Florida D.O.T. Type III asphalt concrete over primed 6" compacted lime rock base, compacted to 98% of T-180 over well compacted sub-base.

LIGHTING FOR RECREATIONAL PATHS

Lighting for recreational paths has previously been provided under a separate contract.

LANDSCAPING

The combination baseball/ softball and soccer / football field shall be sprigged with Bermuda 419. Haskell will provide three trees. Trees shall be Florida Number 1 grade, a minimum of three (3) inch caliper, and twelve to fourteen (12'-14') foot height. The trees shall be live oak, red bay and red maple and their locations shall be determined during the design phase. Any elements of the existing landscaping or areas of existing grass that have been damaged by the Contractor's forces shall be returned to their original condition at the contractor's expense.

Haskell will relocate trees required for sports field construction. If the tree dies even after Contractor exhibits due care in its relocation, the Town of Davie will pay for its replacement.

DEMOLITION

Haskell will remove and dispose of existing asphalt paving and chain link fencing shown on RFP Master Plan.

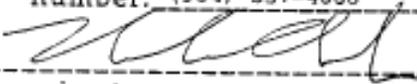
PRICING PAGE
 (Include in "Envelope B")
DESIGN/BUILD
"DRIFTWOOD ESTATES PARK IMPROVEMENTS" PROJECT

	Amount
Chain Link Fencing	\$ 3,297.00
Demolition	\$ 7,344.75
Grading /Drainage /Site Preparation	\$ 18,438.70
Irrigation	\$ 8,400.00
Landscaping	\$ 5,370.62
Multipurpose Field	\$ 20,948.36
Recreational Path	\$ 10,417.68
Picnic Shelters (1- 24' x 24' and 2- 12' x 12')	\$ 25,566.95
(Include new concrete slabs, concrete coating, and electrical)	
Plumbing (water fountain, hose bib)	\$ 3,150.00
Site Furnishings	\$ 2,601.47
(including picnic tables, alum. benches, trash receptacles, bicycle rack, grills)	
Sports Lighting	\$ 42,769.65
Base Price	\$ 148,305.18
General Conditions	\$ 33,745.93
Contingency	\$ 0.00
Architectural / Engineering Fees	\$ 17,900.00
TOTAL BASE BID	\$ 199,951.11

Bidder: The Haskell Company

Address: 111 Riverside Avenue, Jacksonville, FL 32202

Telephone number: (904) 357-4868

By: 
signature

Title: Project Director

Date: May 5, 2000

REQUEST FOR PROPOSALS
DESIGN/BUILD "DRIFTWOOD ESTATES PARK IMPROVEMENTS"
Town of Davie, Florida
Bid No. B - 00 - 57

NATURE OF REQUEST: Pursuant to Florida Statutes, Chapter 287.055 (Consultants Competitive Negotiation Act) the Town of Davie invites qualified design/build firms or joint ventures between an Architect / Engineer, and a General Contractor to submit proposals for consideration to construct the "Driftwood Estates Park Improvements" project. As part of the proposal, the design / build firms are asked to submit statements of qualifications and experience in the design and construction of this type of project, and Standard Forms 254 and 255.

BACKGROUND: The proposed project is called "Driftwood Estates Park Improvements". This project is funded by a Florida Department of Environmental Protection's Florida Recreation Development Assistance Program (FRDAP) grant. The Town is proposing the development of one (1) combination field (baseball / softball and football / soccer), two (2) 12' x 12' mini picnic shelters, one (1) large (24' x 24') picnic shelter, an asphalt recreational path, lighting for an existing tennis court, and providing and installing a drinking fountain and some site furnishings. In support of these sports facilities the following will be included in the development: grading, drainage, landscaping, and irrigation systems.

The Town of Davie's objective is to hire a qualified and competent independent contractor to provide all necessary professional design services and all labor, materials and equipment necessary to construct the "Driftwood Estates Park Improvements" project. The Contractor shall provide and install all improvements as detailed in this document.

SCOPE OF WORK: Provide professional services, labor, materials, equipment, insurance, and incidentals for the design and construction of the Driftwood Estates Park Improvements. The entrance to the park is located at 3300 NW 77th Avenue, Davie, Florida. All Work shall be completed in compliance with the latest editions of all applicable codes, including, but not limited to, South Florida Building Code, Town of Davie Land Development Code, Town of Davie Code of Ordinances, Broward County Code of Ordinance, ADA, and NFPA 101. All lighting shall comply with the standards of the latest edition of the Illuminating Engineering Society of North America and the Town of Davie Lighting Code.

The design/build firm will perform each of the tasks customary to the practices of architecture and engineering for the preparation of the documents for the "Driftwood Estates Park Improvements" project, including preparation of schematic design of the project, and upon approval by the Town of Davie, preparation of a full set of construction drawings and specifications. All applicable architectural, electrical, plumbing, civil, and landscape architectural sub-consultants shall be supervised, coordinated, and paid for by the Design / Build team. Also, all necessary soil borings, proctors, concrete and other testing shall be paid for by the design build team. It will be the responsibility of the selected contractor to acquire the necessary permits for this project. All "town issued" permits will be paid for by the Town of

Davie. The design/build firm will work in close coordination with the Town of Davie staff in carrying out the project.

The attached Master Plan illustrates the layout of the park elements. The new elements in the park shall match the same general elevations of the existing amenities in Driftwood Estates Park. "As Built" plans of existing facilities are available in the Community Services Department.

The proposed budget for this project is \$200,000.00

CONSTRUCTION SCHEDULE: The design / construction schedule deadline for this project shall be one hundred and twenty (120) calendar days after Notice to Proceed. It is mutually agreed between the parties hereto that time is of the essence in this Contract, and in the event construction of the work is not completed within the time herein specified, it is agreed that from the compensation otherwise to be paid to the Contractor, the Owner may retain liquidated damages at a rate of two hundred dollars (\$200.00) per day for each day thereafter, Sundays and Holidays included, that the work remains uncompleted, which sum shall represent the actual damages which the Owner will have sustained per day by failure of the Contractor to complete the work within the time stipulated, and this sum is not a penalty, being the liquidated damages the Owner will have sustained in the event of such default by the Contractor.

The elements required for the project will include the following:

• **ONE (1) MULTIPURPOSE SPORTS FIELD**

Provide one combination baseball / softball and football / soccer multipurpose sports field as indicated on the attached Master Plan. Elevations of the fields shall be planned so as to allow for positive drainage of rain water off of the fields to adjacent swales. The Design / Build team shall design and construct new on-site retention areas to allow for the natural percolation of rain water outside of the play areas. Refer to the attached plan the location of the ball fields. No ponding water, standing water, nor "bird baths" on the fields will be accepted. Infield material on the baseball / softball field shall be sprigged with Bermuda 419 grass. Outfields will also be sprigged with Bermuda 419. Base lines shall be scalped and finished with clay. The entire grassed area of the multipurpose field shall be irrigated. The size of the outfield shall be 230'. The diamond dimensions on each side shall be 80'. The size of the play area for the soccer / football field shall be at least 180' x 260'.

Remove vegetation, debris, unsatisfactory soil materials, obstructions, and deleterious materials from the area of the multipurpose field. A backstop shall be provided for the ball field. The baseball / softball fields shall be provided with a backstop consisting of three panels 16' wide, one panel centered on home plate and the other two panels on each end flaring out at an angle of 30 degrees with the center panel. Each panel shall be 20' high, all in the vertical plane. The upright and cross pieces for each panel shall be galvanized steel. Backstop shall be 6 gauge, 2" maximum black vinyl covered mesh. Mesh shall be black vinyl covered and 2" max. mesh size.

"Dugouts" shall be provided. To prevent drainage problems, "dugouts" need not be recessed into the ground. The "dugout" shall consist of two 4" reinforced concrete pad with a continuous thickened edge. The slab shall be designed for the player's benches specified below. It shall be protected from the ball field by a six foot (6') high chain link sideline fence, which shall extend around the back off the slab as well as the front, and shall have two 4' wide openings for player access to the field. The sideline fencing shall continue beyond first and third base.

Provide bases and home plate for the baseball / softball field.

Provide and install two (2) lightweight aluminum combination football / soccer goals.

Note that the lighting for the new multipurpose sports field has been previously provided under a separate contract.

• **ALUMINUM BENCHES:**

Provide and install two (2) portable aluminum player's benches with backs, one for each of two teams. Each bench shall be 15' long. Frames shall be 2- 3/8" O.D. high strength schedule 40 pipe, hot dip galvanized after fabrication. Player bench seat and back planks shall be of all aluminum construction. Seat planks and back planks shall be 2" x 10" 6063-T6 extruded aluminum which is clear anodized to a standard 204-R1 specification. Provide anodized aluminum end caps. Aluminum benches shall be model no. 152PG-A as manufactured by Kay Park Recreation in Janesville, IA (phone 1-800-553-2476) or approved equal. Install benches on new broom finished concrete pads.

SPORTS LIGHTING:

Provide sports lighting system for one (1) tennis court. The tennis court lights shall be pre-aimed metal halide fixtures, either 1000W or 1500W. Electrical service has been provided for the tennis court lighting under a separate contract. Refer to attached electrical riser diagram and information provided on existing "Panel LCE". The panel, and other existing equipment have been mounted to the east wall of the existing racquetball court. Refer to the Master Plan for its location. Also, an underground 1" PVC conduit and pull string has been provided under an earlier project. The conduit has been capped and stubbed at the northeast corner of the tennis court. Refer to the attached Master Plan for the approximate location. The tennis courts lights shall be operated by a time clock with a key switch. Refer to the attached "Existing Lighting Control Diagram".

All lighting equipment shall comply with the Codes specified herein, including, but not limited to:

National Fire Protection Association (NFPA) 780 Lightning Protection
National Electrical Code
Underwriter's Laboratory (UL)
National Electrical Manufacturer's Association (NEMA) Standard 250-1991 for
Enclosures for Electrical Equipment

The Design Build team shall provide lighting on the primary playing area to meet or exceed the following criteria. Minimum Average Initial Light Levels shall be 50 footcandles. Average Target (Maintained) Light Levels shall be 40 fc average and 30 footcandles minimum.

Light loss factor used to determine the target light levels shall be a maintenance factor of 0.8 multiplied by the lamp tilt factor as calculated per I.E.S. Manual RP-6-88, p. 92.

The uniformities of the court shall be measured by comparing the maximum reading to the minimum reading. The ratio shall not exceed 2.0 : 1 within the lines and 2.5 within the primary playing area.

Spill Light :

Spill light from all sports lighting shall limit objectionable spill lighting outside of the play areas. Light levels shall not exceed the designated maximum foot candles or average foot candles specified herein. These levels shall be measured out to the property line from the boundary of the court in any direction. Spill light shall be measured horizontally along the property line at 30' intervals and at a height of Z = 0'-0", and vertically at 30' intervals with the meter aimed toward the brightest bank of lights at Z= 5'-0". Spill light, both horizontally and vertically shall not exceed 0.5 fc.

Point by Point Analysis shall be provided by the manufacturer for approval by the Town of Davie. Measurements of light shall be demonstrated on a computer generated model based on 110,000 lumens for 1000W and on 155,000-160,000 lumens per lamp for 1500 W lamps, which consists of a grid of a specified number of points covering a specified area on an equally spaced grid. The grid spacing on the court shall be 10' x 10' and the minimum number of points shall be 55.

Manufacturer's Responsibility for Not Meeting Performance Specifications - In order to assure compliance with these specifications, at the substantial completion stage of this portion of the work, and in the presence of the Contractor, Project Engineer, Owner's Representatives, Manufacturer's Representative and Homeowner's Association Representative, an actual light performance meter reading test shall be performed and verified. If in the opinion of the Town of Davie or its appointed representatives, the actual minimum performance levels including foot candles, and uniformity ratios, and the actual maximum performance levels including kilowatt consumption, spill light and glare light are not in compliance with the performance specification, the manufacturer shall be liable for, at his / her own expense, modifying any and all elements of the sports lighting system until it does meet the performance specifications. The manufacturer shall, at his / her own expense, provide field service work and materials, up to and including additional fixtures, necessary to meet these standards. If additional fixtures are required, associated poles and electrical service shall be added as required to adequately support any additional fixture load, both structurally and electrically.

Poles - Provide direct bury round prestressed spun concrete poles of appropriate heights for tennis court. Acceptable quality poles are those manufactured by Accord Industries, or approved equal. To ensure proper pole stress allowance, the pole

analysis and design will be based on the American Association of State Highway and Transportation Officials (AASHTO) design criteria and "ASCE 7 With Commentary". The lighting system shall be designed so that the foundation will withstand winds of 125 mph based upon ASCE-B building code standards utilizing the 50 year mean recurrent isotach wind map data. The manufacturer shall supply foundation plans and calculations signed and sealed by a Florida Licensed Professional Engineer.

Crossarm - To prevent misalignment of any luminaires or damage to the crossarms or its components, the crossarm, reflector, and its attachment to the pole shall be able to structurally withstand winds of 125 mph with a 1.3 gust factor. The design shall comply with the requirements of AASHTO (American Society of State Highway Transportation Officials) Standard Specifications and the wind load requirements of "ASCE 7 With Commentary", published by the American Society of Civil Engineers. Luminaires shall be attached to the crossarm by a minimum of two bolts, which shall be stainless steel and coated with Empigard or equal.

Remote Ballasts and Electrical Component Enclosure - To prevent crossarms from sagging and to reduce stress on entire electrical system, the ballasts shall be located in an electrical component on the pole separate from the fixture mounting. The electrical component enclosure shall be located approximately ten feet above grade at the pole foundation. The enclosure shall be fabricated of heavy gauge aluminum coated with a polyurethane powder coat paint, (to provide protection from oxidation of the aluminum), stainless steel, or powder coated galvanized steel.

For easy identification, each ballast, capacitor, and fuse shall be labeled to identify the fixture it services. Individual fuses shall be provided for each ballast conductor except neutral conductors.

All wiring shall be enclosed within the crossarm or pole and protected from the elements. Internal wiring shall be routed away from the ballast cores, rated for at least 90 degrees C, and suitable for the amperage involved. Luminaire manufacturer shall supply U.L. temperature test of electrical component enclosure.

Aiming Recapturing Devices shall be provided for each fixture. This shall assure the automatic repositioning of the aiming of the fixture after re-lamping. There shall be a stainless steel bolt and nut to secure the alignment.

Momentary Power Interruption Fixtures shall be provided. The MPI system shall operate when electricity has been restored after a power failure and during the initial start-up phase of the metal halide fixtures. The MPI fixtures operate on the same lighting circuit as the metal halide fixtures. The system logic is as follows:

a. When the lighting circuit is initially energized, the MPI fixtures supply immediate lighting to the subject area. As the metal halide fixtures come into full power, a current sensitive relay inside the ballast box detects when ample lighting is being supplied by the metal halide fixtures. The current sensitive relay then opens and the MPI fixtures are extinguished.

b. In the event of power failure, whether it be very brief or for an extended amount of time, all fixtures will be extinguished. Once power is restored, the MPI fixtures will immediately ignite. The MPI fixtures will operate until the metal

halide fixtures have had the opportunity to cool down, reignite, and again reach a level to where ample lighting is being provided. When ample lighting is being supplied, the relay inside the ballast box will open and extinguish the MPI fixtures. Provide two (2) MPI fixtures on each and every Baseball / Softball and T-Ball Field. Provide one (1) MPI fixture for each roller hockey court, tennis court, and basketball court. MPI fixtures shall closely resemble the other fixtures utilized on this project.

Lightning Protection -All structures shall be equipped with lightning protection meeting standards developed by NFPA 780.

Lamps - Lamps for halide. Lamps for tennis court shall be 1500 W or 1000W metal halide. Lamp replacements for fixtures shall be readily commercially available, and supplied by a minimum of two different Broward County electrical supply houses, in addition to through the manufacturer's representative.

A **disconnect** shall be provided on each pole. The breaker shall be located in a compartment separate from any capacitors or ballasts. The manufacturer shall provide a set of factory wired distribution terminal blocks to provide for termination of all ballast connection wiring. Also, an electrical enclosure equipped with a UL listed **thermal magnetic circuit breaker** shall be provided at the panel location that disengages the power to the panel with the operation of one switch.

Wire harness shall be factory assembled as a part of the lighting equipment and shall be covered under the manufacturer's equipment warranty. It shall be mechanically attached to the pole by an enclosed snap hook. The wire harness shall be continuously spiral wound. Support wire harness from top of pole by a **stainless steel wire mesh grip** matched to the size of the harness. There shall be not more than 13 conductors supported by a single wire mesh grip. If the harness is longer than 70 feet, an interim wire mesh grip support shall be located approximately half way down the pole.

Maintenance Diagnostic Test System shall be provided capable of diagnosing maintenance problems at the bottom of the pole. The diagnostic test system shall be integrated into each ballast box. It shall utilize a quick connect multi-pin connector to isolate and test for failed ballast, shorted lamp condition, failed capacitors or fuses, with all incoming power off. All test results shall be shown by use of indicator lights on the hand held analyzer. Analyzer shall be UL listed for its intended use. Acceptable manufacturers and products are:

Qualite's "Maintenance Diagnostic System" or comparable multi-test testing equipment as approved by the Town of Davie prior to submittal of Envelope "B".

Manufacturer's warranty shall be provided on the luminaire assembly for a period of ten (10) years from date of substantial completion of the system, which is defined as the date when commissioning is complete, the light test has proven that the performance specifications have been met, and the Owner has started to realize beneficial use of the system. A parts and labor warranty shall be provided for the first five (5) years after substantial completion, and a parts replacement warranty for the second five (5) years. The alignment of luminaires shall be warrantied against movement from the pre-aimed position for ten (10) years. The warranty shall cover all defective parts and workmanship of hardware as supplied from the factory.

Additionally, provide a lamp warranty for two (2) years parts and labor and two (2) years parts only.

Acceptable manufacturers and products are:

The Musco TLC fixture or Musco Level 8, the Qualite International fixture or the Qualite PS45V, or others as approved in writing by the Town of Davie prior to the submission of Envelope "B". It shall be at the Town of Davie's sole discretion whether or not to accept an alternate product.

All manufacturers and products other than those named above shall be approved in writing by the Town of Davie prior to the submittal of Envelope "B" of this proposal package. Compliance with the criteria set out in this "Request for Proposals" shall be demonstrated by documentation which shall be solely determined by the Town of Davie. Submittals shall be received at least five (5) working days prior to the date for submitting Envelope "B". The Town of Davie or its representatives shall notify all bidders of any additional approved manufacturers via addendum.

Failure to provide any of the required information within the required time frame shall be grounds for rejection of approval.

• **ONE LARGE (1) PICNIC SHELTER:**

Provide one (1) 24' min. x 24' min. picnic shelter. The shelter shall be constructed of painted, powder coated steel frames and shall have conventional pitched roof structures with a standing seam aluminum roofs painted the same color green as the existing shelter Driftwood Estates Park. The paint shall be Kynar 500 or approved equal, capable of providing long term durability and low maintenance. Prefabricated shelters are acceptable. Prefabricated shelters shall be "Poligon" Model SQ-24, fabricated by W.H. Porter, Inc. of Holland, MI (1-800-354-7721), or equal as approved in writing by the Town of Davie.

A 24' x 36' concrete floor slab is existing. The shelter shall be located to one side of the existing concrete slab. The existing concrete slab shall be resurfaced and sealed with an exterior concrete dressing compound such as ARDEX CD (phone (404) 222-0429), or approved equal. Follow manufacturer's installation instructions. Broom finish. A border around the floor slab shall be painted with safety yellow paint.

Provide vandal proof lighting fixtures in the large picnic shelter to enable its use in the evenings for picnics, meetings, or similar activities. The large picnic shelter shall be provided with two (2) exterior type waterproof duplex 110V receptacles. Note that there is an existing 3/4" PVC conduit with a pull string which is stubbed up and capped near the northeast corner of the existing concrete slab. This feeds to existing electrical panel "LC", which is mounted on the east side of the existing racquetball courts. The shelter lighting shall be operated by a timer with a key switch at the panel. Refer to the attached electrical riser diagrams and Master Plan for the existing electrical components.

Adjacent to the large picnic shelter supply one (1) ADA compliant water fountain equal to those manufactured by "Most Dependable Fountains", 4697 Winchester,

Memphis, Tennessee, 38118. The large picnic shelter shall have one (1) lockable **hose bib** to facilitate clean up. The exact location of the water fountain and hose bib shall be determined in the field. Note that this concrete slab which previously housed a wooden rest room building. There are existing underground water lines to the slab. Locate the existing water lines and reuse them, if practical, to supply water for the water fountain and the hose bib. The existing grill shall remain.

Inside the large picnic shelter supply four (4) - six foot long picnic tables. The **picnic tables** shall be made of hardwood, and be similar in appearance to the existing picnic tables at Driftwood Estates Park. Finish to be selected by Owner from the manufacturer's full range of standard options.

The large picnic shelter shall be provided with two (2) **trash receptacles**. These trash receptacles shall be equipped with 30 gallon minimum liner. The exact location adjacent to the picnic shelters shall be determined during the design phase. The trash receptacles shall closely resemble the existing ones at Driftwood Estates Park.

• **TWO (2) MINI PICNIC SHELTERS:**

Provide two (2) aluminum and steel mini picnic shelters measuring approximately twelve feet by twelve feet (12' x 12'). These mini-shelters shall be located as shown on the Master Plan. The mini shelters shall be supported by two columns with the picnic table fitting lengthwise in between the columns. The shelters shall be Model No. (SQ12-2H) manufactured by Poligon Park Architecture, telephone 1-800-354-7721, or equal as approved by the Town of Davie in writing. All metal parts shall be powder coated. Standing seam metal roof to be painted with Kynar 500 or equal. Color shall match that of the existing rest room building roof at Driftwood Estates Park. Provide a 4" sealed concrete broom finished **floor slab** with a thickened edge for each mini shelter. Concrete shall be reinforced to minimize the possibility of future cracking. The concrete shall have a light broom finish. A border around the shelter slab shall be painted with safety yellow paint.

Provide vandal proof **lighting fixtures** in each of the two mini-picnic shelters to enable their use in the evenings for picnics. Each mini-picnic shelter shall be provided with one (1) exterior type waterproof duplex 110V receptacle. Note that there is an existing 3/4" PVC conduit with a pull string which is stubbed up and capped near each of the locations for the mini picnic shelters. These feed to the existing electrical panel "LC", which is mounted on the east side of the existing racquetball courts. The shelter lighting shall be operated by a timer with a key switch at the panel. Refer to the attached electrical riser diagrams and Master Plan for the existing electrical components.

Each of the mini-shelters shall be equipped with one (1) eight foot (8') long hardwood **picnic table**. Finish to be selected by Owner from the manufacturer's full range of standard finishes. Each mini-shelter shall be equipped with one 30 gallon minimum waste receptacle with liner. The trash receptacles shall closely resemble the existing ones at Driftwood Estates Park.

For each mini picnic shelter provide and install one (1) stationary **pedestal grills** with a minimum of 300 sq. in. of cooking surface. The grills shall be steel plate with heat resistant black enamel finish. The cooking surface shall be steel bar with coiled

steel grips on the handles and shall have four adjustable positions. Provide stainless steel charcoal tray for each grill. The support post shall be steel pipe, and shall be permanently embedded in the ground. The exact location of the grills near the mini picnic shelters shall be determined during the design phase.

- **BICYCLE RACK**

Provide one (1) eight foot (8') long wood and painted metal bicycle rack. The new bicycle rack shall resemble the existing bicycle rack at Driftwood Estates Park. The exact location shall be determined during the design phase.

- **IRRIGATION:**

All areas of the multipurpose sports field shall be irrigated with 50% overlap providing 100% coverage, utilizing Toro 600 Series, 640 series or 2001 Series Ball Drive or Part Circle Rotors. The exact head shall be selected during the design process. A portion of the proposed multipurpose field irrigation is existing. Water pressure is believed to be adequate to extend the existing irrigation system. Additionally, any elements of the existing sprinkler system that are damaged or affected by the new construction shall be reconfigured and / or repaired as required to return the area to full coverage, at the Contractor's expense and without taking the existing system out of working order.

- **STORM DRAINAGE:**

The multipurpose field, shelters and the recreational path shall be designed to drain into new retention areas within the park to percolate naturally.

- **CHAIN LINK FENCING:**

Perimeter fencing shall be provided and installed where shown on the Master Plan. Perimeter fencing shall be six feet (6') high galvanized fabric and Schedule 40 pipe. The fabric shall be 2-1/8". The top rail shall be 1 5/8". Trusses and cross braces shall be 1 5/8". Bottom tension wire shall be 7 gauge. Steel hog rings and tie wires shall be 9 gauge. Provide two (2) four foot (4') wide personnel gates. The exact location of the personnel gates shall be determined during the design phase.

- **ASPHALT RECREATIONAL PATHS:**

Install 6' wide paved asphalt paths where indicated on attached Master Plan. Path shall be 1" Florida D.O.T. Type III asphaltic concrete over primed 6" compacted lime rock base, compacted to 98% of T-180 over well compacted sub-base. Remove vegetation, debris, unsatisfactory soil materials, obstructions, and deleterious materials from path area.

- **LIGHTING FOR RECREATIONAL PATHS:**

Lighting for recreational paths has previously been provided under a separate contract.

- **LANDSCAPING:**

The combination baseball/ softball and soccer / football field's infield and outfield shall be sprigged with Bermuda 419. All other areas of the sports complex which have been damaged or disturbed by the Contractor's operations and are not in paved or hard surface shall be sodded with Argentina Bahia Sod.

Tree material shall be Florida Number 1 grade, a minimum of three (3) inch caliper, and twelve to fourteen (12'-14') foot height. The trees shall be live oak, red bay and red maple and their locations shall be determined during the design phase. At a minimum the landscaping shall include three (3) new trees.

Additionally, any elements of the existing landscaping or areas of existing sod that have been damaged by the Contractor's forces shall be returned to their original condition at the contractor's expense.

Existing trees to be relocated are shown on the Master Plan. If the tree is damaged by the Contractor during the relocation, or the Contractor does not show due care, the Contractor shall be responsible for installing a replacement tree of the same species and size as the one that was relocated. If the tree dies even after Contractor exhibits due care in its relocation, the Town of Davie will pay for its replacement.

• **DEMOLITION:**

In the northeast corner of the site there is an area old asphalt paving that shall be removed and disposed of. Refer to the attached Master Plan for the approximate location. Additionally, a portion of the existing chain link fencing shall be removed and disposed of. Refer to the attached Master Plan for the location.

PUBLIC ENTITY CRIMES INFORMATION:

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 287.0171, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

INDEMNIFICATION:

The contractor agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

INSURANCE:

The Contractor shall furnish proof of Worker's Compensation, Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance. The Contractor shall carry in force at all times the insurance coverage and the Town will be included as "Additional Insured".

A. **WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE**

Limits:

Worker's Compensation	- Statutory
Employer Liability	- \$100,000 each accident
Disease	- \$500,000 policy limit
Disease	- \$100,000 each employee

B. COMMERCIAL GENERAL LIABILITY INSURANCE - coverage shall provide minimum limits of Liability of \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:

- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Independent Contractors

C. BUSINESS AUTO LIABILITY - coverage shall provide minimum limits of liability of \$1,00,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for: owned autos, hired autos, non-owned autos.

D. PROFESSIONAL LIABILITY INSURANCE - coverage shall provide minimum limit of liability of \$500,000 per occurrence.

Each policy shall state that the Town will be given fifteen (15) days written notice of any cancellation or material change in any policy. Insurance must be furnished to the Town's Purchasing Division and notification received of its approval PRIOR TO THE COMMENCEMENT of any work. Failure to do so will result in the recommendation to terminate the contract immediately.

SELECTION PROCESS:

A. The Selection/Negotiating Committee will first evaluate all Bidder qualifications, and references as contained in Envelope "A" (see page 12). The Committee will select and short list qualified design/build firms.

B. If your team is short listed, you will be asked to prepare Envelope "B" (see page 12 and 13) containing the price proposals of the short listed firms, estimated time of completion, schematic design, technical submittal and bid bond. Envelope "B" will be requested only after completion of the short listing process set forth in paragraph "A" above.

C. The Committee's evaluation process will include presentations by the short listed firms and consideration of price proposals.

D. The Committee will negotiate a final agreement with the best evaluated Bidder.

E. Upon completion of successful negotiations a recommendation of award will be submitted to the Town Council for approval.

EVALUATION: Proposals will be evaluated in accordance with criteria listed below:

- Technical Proposal
- Consistency of Schematic Drawings with Design Principles
- Firm Qualifications and References
- Estimated Time to Complete Project
- Project Cost

The contract shall be awarded to the responsible Bidder whose Proposal is determined to be the most advantageous to the Town of Davie, taking into consideration the aforesaid evaluation criteria.

As the best interest of the Town may require, the right is reserved to reject any and all proposals or waive any minor irregularity or technicality in proposals received. Bidders are cautioned to make no assumptions unless their proposal has been evaluated as being responsive.

BONDING: Each bid must be accompanied by a certified check or acceptable bid bond in the amount of five percent (5%) of the total bid price as guarantee that the bidder, if awarded the Contract, will within seven (7) consecutive days after prescribed forms are presented to him for signature, enter into a contract with the Town of Davie in accordance with the accepted bid. The selected Design / Build team shall also give a performance and payment bond satisfactory to the Town, equal to one hundred percent (100%) of the total contract price.

CONTENT OF PROPOSAL:

Proposals should include but not be limited to the following information:

Envelope "A" shall include:

1. Name, address and telephone number/fax, number of your firm.
2. Type of organization, (i.e. individual, partnership, corporation, joint venture, etc.), year established and General Contractor's License Number.
3. Principal of firm.
4. Name of contact person at firm.
5. Description of Firm or Team: Standard Form 254 and 255 - Proposer is encouraged to provide supplemental information, as appropriate, to demonstrate firm or team capabilities.
6. Recent projects best illustrating current qualifications for this project, including contact persons and prime design consultant on each project (w/address and telephone number).
7. Previous Projects: Standard Form 254 and 255 - provide highlights of your previous relevant work experience, photos, photocopies or graphics, as appropriate.
8. Name, address and telephone number of prime design consultant for this projects, including list of previous completed projects of like work.
9. Any other information you feel is appropriate to assist in contract selection.

Envelope "B" shall include:

1. Total project cost (include project budget breakdown with base costs, contingency and architectural/engineering fees).
2. Estimated time required to complete project (design, permitting, site work and construction) along with bar chart or critical path method project schedule. Allow 7 days for design reviews by the Town of Davie. Allow 7 days for permitting by the Town of Davie.
3. Bid bond submission. The bidder will submit along with his bid (a) evidence that he / she is licensed to perform the work and services or qualified by examination or reciprocity to be so licensed and (b) a certified check or bid bond in the amount of five percent (5%) of the bid as a guarantee that the Bidder, if awarded the contract will within seven (7) consecutive days after written notice be given of such award enter into a written contract with the Town of Davie,

Florida, in accordance with his / her written bid. The successful bidder will submit a Payment and Performance Bond satisfactory to the Town of Davie, Florida, equal to one hundred percent (100%) of the contract price, and will submit other required documents as needed.

4. Brief summary of design concepts and construction materials for the sports lighting system, site furnishings, and picnic shelters.
5. If the proposed overall site plan is different in any way from the Master Site Plan provided with this proposal, provide a detailed drawing of the proposed modifications.

SUBMITTAL OF PROPOSALS:

Interested firms shall submit their proposal by 2:00 p.m. on _____, 2000. Seven (7) copies of the proposal consisting of one (1) envelope marked "A" should be submitted to:

Herb Hyman, Procurement Manager
Town of Davie
6591 Orange Drive
Davie, Florida 33314-3399

Mark the front of envelope:

**"SEALED PROPOSAL DESIGN/BUILD
DRIFTWOOD ESTATES PARK IMPROVEMENTS"
Project No. PBI -
Bid No. 00 -
Envelope "A"**

PRICING PAGE

(Include in "Envelope B)

DESIGN/BUILD

"DRIFTWOOD ESTATES PARK IMPROVEMENTS" PROJECT

	Amount
Chain Link Fencing	\$ _____
Demolition	\$ _____
Grading /Drainage /Site Preparation	\$ _____
Irrigation	\$ _____
Landscaping	\$ _____
Multipurpose Field	\$ _____
Recreational Path	\$ _____
Picnic Shelters (1- 24' x 24' and 2- 12' x 12')	\$ _____
(Include new concrete slabs, concrete coating, and electrical)	
Plumbing (water fountain, hose bib)	\$ _____
Site Furnishings	\$ _____
(including picnic tables, alum. benches, trash receptacles, bicycle rack, grills)	
Sports Lighting	\$ _____
Base Price	\$ _____
Contingency	\$ _____
Architectural / Engineering Fees	\$ _____
TOTAL BASE BID	\$ _____

Bidder: _____

Address: _____

Telephone number: _____

By: _____
signature

Title: _____

Date: _____