

# **STANDARD FIXED PRICE AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER**

This Standard Fixed Price Agreement Between Owner and Design-Builder (this "Agreement") made by and between Marion County, a political subdivision of the State of Florida, (hereinafter referred to as the "OWNER") and **Art Walker Construction, Inc.**, located at 2889 NW 63<sup>rd</sup> Street, Ocala, FL 34475, possessing FEIN# 59-3417034 (hereinafter referred to as the "DESIGN-BUILDER") under seal for **SW 40<sup>th</sup> Ave/SW 49<sup>th</sup> Ave Phase I** (hereinafter referred to as the "Project"). OWNER and DESIGN-BUILDER hereby agree as follows:

## **ARTICLE 1 THE CONTRACT AND THE CONTRACT DOCUMENTS**

### **1.1 THE CONTRACT**

The contract between OWNER and DESIGN-BUILDER, of which this Agreement is a part, consists of the Contract Documents. This Agreement shall be effective on the date of the last signature below.

### **1.2 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the Specifications, the Drawings, all Work Orders/Notices of Change, and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

**Marion County Bid #25Q-002 – SW 40<sup>th</sup> Ave/SW 49<sup>th</sup> Ave Phase I, Project Bid Scope and/or Specifications, Plans and drawings, Any/all Addenda as issued in support of this Bid, Recorded Bonds as required, Certificate of Insurance, Notice to Proceed**

### **1.3 THE CONTRACT PRICE**

OWNER shall pay, and DESIGN-BUILDER shall accept, as full and complete payment for all of the Work required herein, the sum of **Fifteen Million, Three Hundred and Fifty Three Thousand, Seven Hundred and Seventy Two with Zero Cents (\$15,353,772.00)**. The sum set forth in this Paragraph shall constitute the "Contract Price," which shall not be modified except by Change Order as provided in this Agreement.

### **1.4 ENTIRE AGREEMENT**

The Contract Documents constitute the entire and exclusive agreement between OWNER and DESIGN-BUILDER and supersede prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by a writing.

### **1.5 NO PRIVACY WITH OTHERS**

Nothing contained in the Contract Documents shall create, or be interpreted to create, privacy or any other contractual agreement between OWNER and any other person or entity other than DESIGN-BUILDER.

### **1.6 INTENT AND INTERPRETATION**

- 1.6.1 The intent of this Agreement is to require complete, correct and timely execution of the Work. Any Work that may be required implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by DESIGN-BUILDER for the Contract Price.
- 1.6.2 This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by this Agreement.
- 1.6.3 When a word, term or phrase is used in this Agreement, it shall be interpreted or construed, first as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.6.4 The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation."
- 1.6.5 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Agreement shall not imply that any other, non-specified act, failure,

refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Agreement.

- 1.6.6 Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context or their usage clearly requires a contrary meaning.
- 1.6.7 DESIGN-BUILDER shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to OWNER of any inconsistency, ambiguity, error or omission which DESIGN-BUILDER may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by OWNER of the Contract Documents, Shop Drawings, or Product Data shall not relieve DESIGN-BUILDER of the continuing duties imposed hereby, nor shall any such approval be evidence of DESIGN-BUILDER's compliance with this Agreement.
- 1.6.8 DESIGN-BUILDER shall prepare the Final Construction Drawings and Construction Specifications for the Project and they are to be accurate, adequate, consistent, coordinated and sufficient for construction. By the execution hereof, DESIGN-BUILDER acknowledges and represents that it has received, reviewed and carefully examined the Conceptual Bid documents provided by OWNER and has found them to be complete, generally accurate, adequate, consistent, coordinated and sufficient to develop final documents for construction. DESIGN-BUILDER has not, does not, and will not rely upon any representation or warranties by OWNER concerning such documents as no such representation or warranties have been or are hereby made.
- 1.6.9 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.
- 1.6.10 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control DESIGN-BUILDER in dividing the Work or in establishing the extent or scope of the Work to be performed by subcontractors.

## **1.7 OWNERSHIP OF CONTRACT DOCUMENTS**

The drawings, specifications, documentation, and electronic data furnished by DESIGN-BUILDER are design work product. OWNER shall keep copies of all design work product for record. DESIGN-BUILDER agrees that all design work product may be used by OWNER or others on other projects, for additions on this Project, or for completion of this Project by others, granting unlimited license to OWNER for that use.

## **ARTICLE II THE WORK**

- 2.1 DESIGN-BUILDER shall perform all of the Work required, implied or reasonably inferable from the Contract Documents.
- 2.2 The term "Work" shall mean whatever is done by or required of DESIGN-BUILDER to perform and complete its duties under the Contract Documents, including the following: design, permitting, and construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of DESIGN-BUILDER, fuel, heat, light, cooling and all other utilities as required by this Agreement. The Work to be performed by DESIGN-BUILDER is generally described in 15P-161, according to the plans and specifications furnished by OWNER.

## **ARTICLE III CONTRACT TIME**

### **3.1 TIME AND LIQUIDATED DAMAGES**

- 3.1.1 DESIGN-BUILDER shall be expected to start work on date of the Notice to Proceed. DESIGN-BUILDER shall be issued the Notice to Proceed after all Contract Documents are filed and recorded to OWNER's satisfaction and permits issued and shall achieve Final Completion of the Work **no later than 552 calendar days**. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Completion Time, shall constitute the "Contract Time."
- 3.1.2 No Work is permitted during any holiday, weekend day or outside the established workday timeframe, unless approved by OWNER forty-eight (48) hours in advance. Failure to complete Work within the

- Contract Time will result in the imposition of liquidated damages per calendar day of delay. At the Pre-Construction Conference, DESIGN-BUILDER shall submit a schedule for performing the Work. The schedule shall be within the Contract Time allotted for this Project and shall include tentative dates of performance. The Notice to Proceed will not be issued until all required documentation is received by OWNER. Time shall begin for each Phase upon issuance of a Notice to Proceed by OWNER.
- 3.1.3 Beginning on the first date after scheduled Substantial Completion, Liquidated Damages shall accrue at **\$4,687 per day**. When OWNER reasonably believes that Substantial Completion will be inexcusably delayed, OWNER shall be entitled, but not required, to withhold from any amounts otherwise due DESIGN-BUILDER an amount then believed by OWNER to be adequate to recover liquidated damages applicable to such delays. If and when DESIGN-BUILDER overcomes the delay in achieving Substantial Completion, or any party thereof, for which OWNER has withheld payment, OWNER shall promptly release to DESIGN-BUILDER those funds withheld, but no longer applicable, as liquidated damages.

### 3.2 TIME IS OF THE ESSENCE

All limitations of time set forth in the Contract Documents are of the essence in this Agreement.

## ARTICLE IV INSURANCE

### 4.1 INSURANCE

- 4.1.1 **PROVISIONS FOR INSURANCE:** DESIGN-BUILDER shall purchase and maintain at its own expense, during the term of this Agreement the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to OWNER:

SCHEDULE	LIMITS
Workers' Compensation	Florida Statutory Coverage
Employers Liability.....	\$100,000. Each Accident
(including Appropriate Federal Acts)...	\$500,000. Disease Policy Limit
	\$100,000. Each Employee/Disease
Commercial General Liability .....	\$2,000,000. General Aggregate
Premises-Operations.....	\$2,000,000. Products/Comp Ops
Aggregate Products-Completed	
Operation.....	\$1,000,000
Personal/Advertising Injury Blanket	
Contractual Liability.....	\$1,000,000. Each Occurrence
Independent Contractors.....	\$50,000. Fire Damage
	\$5,000. Medical

("Marion County, a political subdivision of the State of Florida" shall be named as an additional insured under all of the above coverages.)

Auto Liability.....	\$1,000,000. CSL
All autos-owned, hired or no-owned (Symbol 1 Coverage)	
Umbrella Liability.....	\$1,000,000. Per Occurrence
	\$2,000,000. Aggregate
Professional Liability.....	\$1,000,000. (Project Specific)
(Errors & Omissions)	
DESIGN-BUILDER's	
Pollution Liability.....	\$1,000,000. Per Loss
	\$2,000,000. Annual Aggregate

**ARTICLE V**  
**PAYMENT OF THE CONTRACT PRICE**

**5.1 SCHEDULE OF VALUES**

Within ten (10) calendar days of the receipt of Work and Scope of Services for each Phase or Project, DESIGN-BUILDER shall submit to OWNER a Schedule of Values allocating the Contract Price to the various portions of the Work. Each Schedule of Values shall be prepared in such form, with such detail, and supported by such data as OWNER may require substantiating its accuracy. DESIGN-BUILDER shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by DESIGN-BUILDER shall constitute a material breach of this Agreement. The Schedule of Values shall be used only as a basis for DESIGN-BUILDER's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by OWNER. Additionally, the accuracy of the quantity calculations in the Schedule of Values is the responsibility of DESIGN-BUILDER.

**5.2 PAYMENT PROCEDURE**

- 5.2.1 OWNER shall pay the Contract Price, by making progress payments to DESIGN-BUILDER as provided below.
- 5.2.2 **PROGRESS PAYMENTS** – Based upon DESIGN-BUILDER's Application for Payment submitted to OWNER and upon Certificates for Payment, OWNER shall make progress payments to DESIGN-BUILDER on account of the Contract Price.
- 5.2.3 On or before the 20<sup>th</sup> day of each month after commencement of the Work, DESIGN-BUILDER shall submit an Application for Payment for the period ending the last working day of the month to OWNER in such form and manner, and with such supporting data and content, as OWNER may require. Therein, DESIGN-BUILDER may request payment for ninety-five percent (95%) of that portion of the Contract Price properly allocable to Agreement requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety-five percent (95%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by OWNER) for subsequent incorporation in the Work, less the total amount of previous payments received from OWNER. Amount of retainage withheld to be no less than five percent (5%), but no more than ten percent (10%) will be at OWNER's discretion.
- (a.) Payment for stored materials and equipment shall be conditioned upon DESIGN-BUILDER's proof satisfactory to OWNER, that OWNER has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by DESIGN-BUILDER and shall constitute DESIGN-BUILDER's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Agreement, and that DESIGN-BUILDER knows of no reason why payment should not be made as requested. Thereafter, OWNER will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Agreement.
- (b.) OWNER shall make progress payments on account of the Contract Price to DESIGN-BUILDER within thirty (30) days following the OWNER's receipt of each Application for Payment. The amount of each progress payment shall be the amount certified for payment by OWNER less such amounts, if any, otherwise owing by DESIGN-BUILDER to OWNER or which OWNER shall have the right to withhold as authorized by this Agreement. OWNER's certification of DESIGN-BUILDER's Application for Payment shall not preclude OWNER from the exercise of any of its rights as set forth herein below.
- 5.2.4 DESIGN-BUILDER warrants that title to all Work covered by an Application for Payment will pass to OWNER no later than the time of payment. DESIGN-BUILDER further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from OWNER shall be free and clear of liens, claims, security interest or other encumbrances in favor of DESIGN-BUILDER or any other person or entity whatsoever.
- 5.2.5 DESIGN-BUILDER shall promptly pay each subcontractor out of the amount paid to DESIGN-BUILDER on account of such subcontractor's work, the amount to which such subcontractor is entitled. In the event OWNER becomes informed that DESIGN-BUILDER has not paid a subcontractor as herein provided, OWNER shall have the right, but not the duty, to issue future checks in payment to DESIGN-BUILDER



of amounts otherwise due hereunder naming DESIGN-BUILDER and such subcontractor as joint payees. Such joint check procedure, if employed by OWNER, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit OWNER to repeat the procedure in the future.

- 5.2.6 No progress payment, nor any use or occupancy of the Project by OWNER, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement.

### **5.3 WITHHELD PAYMENT**

- 5.3.1 OWNER may decline to make payment, may withhold funds, and, if necessary, demand the return of some or all of the amounts previously paid to DESIGN-BUILDER, to protect OWNER from loss because of:

- (a.) defective Work not remedied by DESIGN-BUILDER nor, in the opinion of OWNER, likely to be remedied by DESIGN-BUILDER;
- (b.) claims of third parties against OWNER or OWNER's property or reasonable evidence indicating probable filing of such claims;
- (c.) failure by DESIGN-BUILDER to pay subcontractors or others in a prompt and proper fashion;
- (d.) evidence that the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Contract Price;
- (e.) evidence that the Work will not be completed in the time required for Substantial Completion or final completion;
- (f.) persistent failure to carry out the Work in accordance with the Contract Documents; or,
- (g.) damage to OWNER or a third party to whom OWNER is, or may be, liable.

- 5.3.2 In the event OWNER makes written demand upon DESIGN-BUILDER for amounts previously paid by OWNER as contemplated in this Subparagraph, DESIGN-BUILDER shall promptly comply with such demand.

### **5.4 UNEXCUSED FAILURE TO PAY**

If within ten (10) days after the date established herein for payment to DESIGN-BUILDER by OWNER, without cause or basis hereunder, fails to pay DESIGN-BUILDER any amount then due and payable to DESIGN-BUILDER, then DESIGN-BUILDER may after seven (7) additional days written notice to OWNER and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from OWNER have been received. Any payment not made within ten (10) days after the date due shall bear interest at the rate of one and a half percent (1.5%) per annum.

### **5.5 SUBSTANTIAL COMPLETION**

- 5.5.1 When DESIGN-BUILDER believes that the Work is substantially complete, DESIGN-BUILDER shall submit to OWNER a list of items to be completed or corrected. When OWNER on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of OWNER and DESIGN-BUILDER for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which DESIGN-BUILDER shall complete the items listed therein. Upon Substantial Completion of the Work, and execution by both OWNER and DESIGN-BUILDER of the Certificate of Substantial Completion, OWNER shall pay DESIGN-BUILDER an amount sufficient to increase total payments to DESIGN-BUILDER to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by OWNER for completing all incomplete Work, correcting and bring into conformance all defective and nonconforming Work, and handling all unsettled claims.

- 5.5.2 "Substantial Completion" shall mean that date in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that OWNER can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

### **5.6 COMPLETION AND FINAL PAYMENT**

- 5.6.1 Close Out is defined as having all work complete, all Punch list items corrected, As-Built Survey submitted, Final Inspection complete (and accepted), and Final Releases of Liens and Final Invoice submitted. When all of the Work is finally complete and DESIGN-BUILDER is ready for a final inspection, it shall notify OWNER thereof in writing. Thereupon, OWNER will make final inspection of

the Work and, if the Work is complete in full accordance with the Contract Documents and this Agreement has been fully performed, OWNER will promptly issue a final Certificate for Payment certifying that the Project is complete and DESIGN-BUILDER is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Agreement. If OWNER is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, DESIGN-BUILDER shall bear the cost of such repeat final inspection(s) which cost may be deducted by OWNER from DESIGN-BUILDER's final payment.

- 5.6.2 If DESIGN-BUILDER fails to achieve final completion on or before **36** days after the Substantial Completion date, DESIGN-BUILDER shall pay OWNER liquidated damages the sum of **\$4,687** per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by DESIGN-BUILDER shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by OWNER. When OWNER reasonably believes that final completion will be inexcusable delayed, OWNER shall be entitled, but not required, to withhold from any amounts otherwise due DESIGN-BUILDER an amount then believed by OWNER to be adequate to recover liquidated damages applicable to such delays, if any. When DESIGN-BUILDER overcomes the delay in achieving final completion, or any part thereof, for which OWNER has withheld payment, OWNER shall promptly release to DESIGN-BUILDER those funds withheld, but no longer applicable, as liquidated damages.
- 5.6.3 DESIGN-BUILDER shall not be entitled to final payment unless and until it submits to OWNER its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which OWNER, or OWNER's property might be responsible, have been fully paid or otherwise satisfied. Releases and waivers of lien from all subcontractors of DESIGN-BUILDER who filed a Notice to Owner with OWNER and all other parties required by OWNER including consent of surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by OWNER, DESIGN-BUILDER shall furnish a bond satisfactory to OWNER to discharge any such lien or indemnify OWNER from liability.

## **ARTICLE VI OWNER**

### **6.1 INFORMATION, SERVICES AND ITEMS REQUIRED FROM OWNER**

- 6.1.1 OWNER shall furnish to DESIGN-BUILDER, at the time of executing this Agreement, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to DESIGN-BUILDER only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, OWNER does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. OWNER shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.
- 6.1.2 Excluding permits and fees normally the responsibility of DESIGN-BUILDER, OWNER shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 6.1.3 OWNER shall furnish DESIGN-BUILDER, free of charge, four (4) copies of the Contract Documents for execution of the Work. DESIGN-BUILDER will be charged, and shall pay OWNER, all actual costs for each additional set of Contract Documents which DESIGN-BUILDER may require.

### **6.2 RIGHT TO STOP WORK**

If DESIGN-BUILDER persistently fails or refuses to perform the Work in accordance with this Agreement, OWNER may order DESIGN-BUILDER to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or OWNER orders that Work be resumed. In such event, DESIGN-BUILDER shall immediately obey such order.

### **6.3 OWNER'S RIGHT TO PERFORM WORK**

If DESIGN-BUILDER's Work is stopped by OWNER, and DESIGN-BUILDER fails within seven (7) days of such stoppage to provide adequate assurance to OWNER that the cause of such stoppage will be eliminated or corrected, then OWNER may, without prejudice to any other rights or remedies OWNER may have against DESIGN-BUILDER, proceed to carry out the subject Work. In such a situation, an

appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for OWNER's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due OWNER, DESIGN-BUILDER shall pay the difference to OWNER.

## **ARTICLE VII DESIGN-BUILDER**

- 7.1** DESIGN-BUILDER is again reminded of its continuing duty and shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If DESIGN-BUILDER performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to OWNER, DESIGN-BUILDER shall bear the responsibility for such performance and shall bear the cost of correction.
- 7.2** DESIGN-BUILDER shall perform the Work strictly in accordance with this Agreement.
- 7.3** DESIGN-BUILDER shall supervise and direct the Work using DESIGN-BUILDER's best skill, effort and attention. DESIGN-BUILDER shall be responsible to OWNER for any and all acts or omissions of DESIGN-BUILDER, its employees and others engaged in the Work on behalf of DESIGN-BUILDER.
- 7.4** **WARRANTY**  
DESIGN-BUILDER warrants to OWNER that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Agreement, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Agreement. All work not conforming to these requirements may be considered defective. When not specifically identified in the bid documents, the warranty shall commence upon release of final retainage by OWNER and shall be for a period of one (1) year.
- 7.5** **PERMITS AND FEES**  
DESIGN-BUILDER shall obtain and pay for all permits, fees and licenses necessary for the Work. DESIGN-BUILDER shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.
- 7.6** **INDEMNITY**
- 7.6.1** To the fullest extent permitted by law, DESIGN-BUILDER shall indemnify and hold harmless OWNER from and against liability, claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of DESIGN-BUILDER, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- 7.6.2** In claims against any person or entity indemnified under this Paragraph by an employee of DESIGN-BUILDER, a subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount of type or damages, compensation or benefits payable by or for DESIGN-BUILDER or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 7.7** **ENVIRONMENTAL SERVICES**
- 7.7.1** DESIGN-BUILDER shall ensure that all efforts are made to reduce mitigation costs relating to endangered species.

## **ARTICLE VIII CONTRACT ADMINISTRATION**

- 8.1** **OWNER**  
Marion County Office of the County Engineer shall be OWNER's representative for the duration of this Agreement.
- 8.2** **OWNER ADMINISTRATION**
- 8.2.1** OWNER will perform those duties and discharge those responsibilities allocated to OWNER as set forth in this Contract.



- 8.2.2 OWNER shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by DESIGN-BUILDER. OWNER shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of DESIGN-BUILDER.
- 8.2.3 OWNER will review DESIGN-BUILDER's Applications for Payment and will certify for payment to DESIGN-BUILDER, those amounts then due DESIGN-BUILDER as provided in this Agreement.
- 8.2.4 OWNER shall have authority to reject Work that is defective or does not conform to the requirements of the Contract Documents. If OWNER deems it necessary or advisable, OWNER shall have authority to require additional inspection or testing of the Work for compliance with the Contract Documents.
- 8.2.5 OWNER will review and approve, or take other appropriate action as necessary, concerning DESIGN-BUILDER's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.
- 8.2.6 OWNER will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.
- 8.2.7 OWNER shall, upon written request from DESIGN-BUILDER, conduct inspections to determine the date of Substantial Completion and the date of final completion, review written warranties and related documents required by the Contract Documents and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 8.2.8 OWNER's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.
- 8.3 CLAIMS BY DESIGN-BUILDER**
- 8.3.1 All DESIGN-BUILDER claims shall be initiated by written notice and claim to OWNER. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 8.3.2 Pending final resolution of any claim of DESIGN-BUILDER, DESIGN-BUILDER shall diligently proceed with performance of this Contract and OWNER shall continue to make payments to DESIGN-BUILDER in accordance with this Contract. The resolution of any claim under this Paragraph shall be reflected by a Change Order executed by OWNER and DESIGN-BUILDER.
- 8.3.3 **Claims for Concealed and Unknown Conditions** – Notwithstanding anything in the Contract Documents to the contrary, DESIGN-BUILDER assumes all risks with respect to the conditions which are encountered at the Project site, including all (i) subsurface or otherwise concealed physical conditions of any nature, whether or not they differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. DESIGN-BUILDER will not be entitled to any adjustment to the Lump Sum Price of the Contract Time as a result of any site conditions encountered.
- 8.3.4 **Claims for Additional Cost** – If DESIGN-BUILDER wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of OWNER therefore, DESIGN-BUILDER shall give OWNER written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by DESIGN-BUILDER before proceeding to execute any additional or changed Work. The failure by DESIGN-BUILDER to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- (a.) In connection with any claim by DESIGN-BUILDER against OWNER for compensation in excess of the Contract Price, any liability of OWNER for DESIGN-BUILDER's cost shall be strictly limited to direct costs incurred by DESIGN-BUILDER and shall in no event include indirect costs or consequential damages of DESIGN-BUILDER. OWNER shall not be liable to DESIGN-BUILDER for claims of third parties, including subcontractors, unless and until liability of DESIGN-BUILDER for claims of third parties has been established therefore in a court of competent jurisdiction.
- 8.3.5 **Claims for Additional Time** – If DESIGN-BUILDER is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by OWNER or someone acting in OWNER's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond DESIGN-BUILDER's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of DESIGN-BUILDER to OWNER, for such reasonable time as OWNER may determine. Any notice and claim for an extension of time by



DESIGN-BUILDER shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail DESIGN-BUILDER's basis for requiring additional time in which to complete the Project. In the event the delay to DESIGN-BUILDER is a continuing one, only one notice and claim for additional time shall be necessary. If DESIGN-BUILDER fails to make such claim as required in this Subparagraph, any claim for extension of time shall be waived.

#### **8.4 FIELD ORDERS**

OWNER shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by field order ("Field Order") and shall be binding upon DESIGN-BUILDER. DESIGN-BUILDER shall carry out such Field Orders promptly.

### **ARTICLE IX SUBCONTRACTORS**

#### **9.1 DEFINITION**

A subcontractor is an entity which has a direct contract with DESIGN-BUILDER to perform a portion of the Work.

#### **9.2 AWARD OF SUBCONTRACTORS**

9.2.1 Upon execution of this Agreement, DESIGN-BUILDER shall furnish OWNER, in writing, the names of persons or entities proposed by DESIGN-BUILDER to act as a subcontractor on the Project. OWNER shall promptly reply to DESIGN-BUILDER, in writing, stating any objections OWNER may have to such proposed subcontractor. DESIGN-BUILDER shall not subcontract with any party to whom OWNER has objections.

9.2.2 All subcontracts shall afford DESIGN-BUILDER rights against the subcontractor which correspond to those rights afforded to OWNER against DESIGN-BUILDER herein, including those rights afforded to OWNER.

### **ARTICLE X CHANGES IN THE WORK**

#### **10.1 CHANGES PERMITTED**

Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Agreement, by Change Order or by Field Order.

#### **10.2 WORK ORDER/NOTICE OF CHANGE ("CHANGE ORDER") DEFINED**

Change Orders shall mean a written order to DESIGN-BUILDER executed by OWNER, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by the Change Order.

#### **10.3 CHANGES IN THE CONTRACT PRICES**

10.3.1 Any changes in the Contract Unit Prices resulting from a Change Order shall be determined as follows: (a) by mutual agreement between OWNER and DESIGN-BUILDER as evidenced by (1) the change in the Contract Unit Prices being set forth in the Change Order, (2) such change in the Contract Unit Prices, together with any conditions or requirements related thereto, being initialed by both parties and (3) DESIGN-BUILDER's execution of the Change Order, or (b) if no mutual agreement occurs between OWNER and DESIGN-BUILDER, then, as provided below.

10.3.2 If no mutual agreement occurs between OWNER and DESIGN-BUILDER as contemplated above, the change in the Contract Unit Prices, if any, shall then be determined by OWNER on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, DESIGN-BUILDER shall present, in such form and with such content as OWNER requires, an itemized accounting of such expenditures or savings plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery, costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, fringe benefits required by agreement or custom, and

workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from DESIGN-BUILDER or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with DESIGN-BUILDER's home office or other non-job site overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures of savings to OWNER, payments on account shall be made to DESIGN-BUILDER on the Certificate for Payment.

- 10.3.3 If unit prices are provided in this Agreement, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to OWNER or to DESIGN-BUILDER, the applicable unit prices shall be equitably adjusted.

**10.4 EFFECT OF EXECUTED CHANGE ORDER**

The execution of a Change Order by DESIGN-BUILDER shall constitute conclusive evidence of DESIGN-BUILDER's agreement to this contract as thus amended, the Contract Price, Contact Time and the changes in the Work. DESIGN-BUILDER, by executing the Change Order, waives any forever releases any claim against OWNER for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

**10.5 NOTICE OF SURETY; CONSENT**

DESIGN-BUILDER shall notify and obtain the consent and approval of DESIGN-BUILDER's surety with reference to all Change Orders if such notice, consent or approvals are required by DESIGN-BUILDER's surety or by law. DESIGN-BUILDER's execution of the Change Order shall constitute DESIGN-BUILDER's warranty to OWNER that the surety has been notified of and consents to have expressly consented thereto.

**ARTICLE XI  
UNCOVERING AND CORRECTING WORK**

**11.1 UNCOVERING WORK**

- 11.1.1 If any of the Work is covered contrary to OWNER's request or to any provisions of this Agreement, it shall, if required by OWNER, be uncovered for OWNER's inspection and shall be properly replaced at DESIGN-BUILDER's expense without change in the Contract Time.
- 11.1.2 DESIGN-BUILDER shall immediately proceed to correct Work rejected by OWNER as defective or failing to conform to the Contract Documents. DESIGN-BUILDER shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to OWNER for expenses made necessary thereby.
- 11.1.3 If within one (1) year after release of final retainage any of the Work is found to be defective or not in accordance with the Contract Documents, DESIGN-BUILDER shall correct it promptly upon receipt of written notice from OWNER. This obligation shall survive final payment by OWNER and termination of this Agreement. With respect to Work first performed and completed after Substantial Completion, this one (1) year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.
- 11.1.4 Nothing contained in this Paragraph shall establish any period of limitation with respect to other obligations which DESIGN-BUILDER has under the Contract Documents. Establishment of the one year time period relates only to the duty of DESIGN-BUILDER to specifically correct the Work.

**11.2 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK**

If OWNER chooses to accept defective or nonconforming Work, OWNER may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate OWNER for its acceptance of defective or nonconforming Work, DESIGN-BUILDER shall, upon written demand from OWNER, pay OWNER such remaining compensation for accepting defective or nonconforming Work.

**ARTICLE XII  
CONTRACT TERMINATION**

**12.1 TERMINATION BY OWNER**

**12.1.1 FOR CONVENIENCE**

- (a.) OWNER may for any reason whatsoever terminate performance under this Agreement by DESIGN-BUILDER for convenience. OWNER shall give written notice of such termination to DESIGN-BUILDER to specify when termination becomes effective.
- (b.) DESIGN-BUILDER shall incur no further obligations in connection with the Work and DESIGN-BUILDER shall stop Work when such termination becomes effective. DESIGN-BUILDER shall also terminate outstanding orders and subcontractors. DESIGN-BUILDER shall settle the liabilities and claims arising out of the termination of subcontracts and orders. OWNER may direct DESIGN-BUILDER to assign DESIGN-BUILDER's right, title and interest under terminated orders or subcontracts to OWNER or its designee.
- (c.) DESIGN-BUILDER shall transfer title and deliver to OWNER such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as DESIGN-BUILDER has.
- (d.) DESIGN-BUILDER shall submit a termination claim to OWNER specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by OWNER. If DESIGN-BUILDER fails to file a termination claim within one (1) year from the effective date of termination, OWNER shall pay DESIGN-BUILDER, an amount derived in accordance with the subparagraph below.
- (e.) OWNER and DESIGN-BUILDER may agree to the compensation, if any, due to DESIGN-BUILDER hereunder.
- (f.) Absent agreement to the amount due to DESIGN-BUILDER, OWNER shall pay DESIGN-BUILDER the following amounts:
  - (1.) Prices for labor, materials, equipment and other services accepted under this Agreement.
  - (2.) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating DESIGN-BUILDER's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that DESIGN-BUILDER would have not profited or would have sustained a loss if the entirety of this Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and,
  - (3.) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders. These costs shall not include amounts paid in accordance with other provisions hereof. This total sum to be paid DESIGN-BUILDER shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

**12.1.2 FOR CAUSE**

- (a.) If DESIGN-BUILDER persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Agreement, then OWNER may provide written notice to DESIGN-BUILDER, without prejudice to any other right or remedy, terminate the employment of DESIGN-BUILDER and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by DESIGN-BUILDER any may finish the Work by whatever methods it may deem expedient. In such case, DESIGN-BUILDER shall not be entitled to receive any further payment until the Work is finished.
- (b.) In the event the employment of DESIGN-BUILDER is terminated by OWNER for cause and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience and the referenced provisions shall apply.

**12.1.3 FOR LOSS OF FUNDING/CANCELLATION FOR UNAPPROPRIATED FUNDS:**



DESIGN-BUILDER acknowledges that during any fiscal year the OWNER shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Consequently, any agreement, verbal or written, the OWNER may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The OWNER may enter into agreements whose duration exceeds one (1) year, however any such agreement shall be executory only for the value of the services to be rendered which the OWNER agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the OWNER's performance and obligation to pay DESIGN-BUILDER under this Agreement is contingent upon annual appropriations being made for that purpose. If during the term of this Agreement OWNER does not make an annual appropriation necessary to continue its performance under this Agreement, then this Agreement shall terminate. The parties will execute an amendment to this Agreement that confirms any termination required by this Section.

## **ARTICLE XIII MISCELLANEOUS**

### **13.1 GOVERNING LAW**

The Contract Documents shall be governed by the law of Florida.

### **13.2 SUCCESSORS AND ASSIGNS**

OWNER and DESIGN-BUILDER bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. DESIGN-BUILDER shall not assign this Agreement without written consent of OWNER.

### **13.3 SURETY BONDS**

DESIGN-BUILDER shall, if required, acquire, record with the County Clerk, and furnish separate payment and performance bonds to OWNER. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by DESIGN-BUILDER shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by DESIGN-BUILDER, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The payment and performance bonds furnished by DESIGN-BUILDER shall be in form suitable to OWNER and shall be executed by a surety, or sureties, reasonably suitable to OWNER, and shall be filed with the Marion County Clerk of Court.

### **13.4 DAMAGE TO PROPERTY**

DESIGN-BUILDER shall be responsible for all material, equipment and supplies sold and delivered to OWNER under this Agreement and until final inspection of the Work and acceptance thereof by OWNER. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed prior to final inspection and acceptance, DESIGN-BUILDER shall replace the same without additional cost to OWNER.

### **13.5 USE OF OTHER CONTRACTS**

OWNER reserves the right to utilize any OWNER contract, State of Florida Contract, city or county governmental agencies, school board, community college/state university system or cooperative bid agreement. OWNER reserves the right to separately bid any single order or to purchase any item on this solicitation and/or this Agreement if it is in the best interest of the OWNER.

### **13.6 E-VERIFY PURSUANT TO § 448.095, FLA. STAT.** Section 448.095, Florida Statutes (2023), requires FIRM to be registered and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits FIRM from entering into the Agreement unless it is in compliance therewith. Information provided by FIRM is subject to review for the most current version of the State or Federal policies at the time of the award of the Agreement.

A. COUNTY hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.

B. FIRM has agreed to perform in accordance with the requirements of this Section and agrees as follows:

- It certifies and assures COUNTY that FIRM is currently in full compliance with Section 448.095, Florida Statutes (2023), it is registered and uses the E-Verify System to verify work authorization status of all newly hired employees.

- COUNTY shall immediately terminate the Agreement if COUNTY has a good faith belief that FIRM has knowingly violated Section 448.09(1), Florida Statutes (2023), that is, that FIRM knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
- When FIRM enters into a contract with an employee, a FIRM or a sub FIRM, FIRM shall obtain from that contracting party ("Contracting Party") an affidavit stating that the Contracting Party does not employ, contract with, or subcontract with an unauthorized alien.
- FIRM shall maintain a copy of such affidavit for the duration of the Agreement and provide it to COUNTY upon request.
- FIRM shall immediately terminate the Contracting Party if FIRM has a good faith belief that the Contracting Party has knowingly violated Section 448.09(1), Florida Statutes (2023), as set forth above.
- If COUNTY has a good faith belief that FIRM's Contracting Party has knowingly violated Section 448.095, Florida Statutes (2023), but that FIRM has otherwise complied, COUNTY shall promptly order FIRM to terminate the Contracting Party. FIRM agrees that upon such an order, FIRM shall immediately terminate the Contracting Party. FIRM agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate FIRM.
- If COUNTY terminates the Agreement with FIRM, FIRM may not be awarded a public contract for at least one (1) year after the date of termination.
- FIRM is liable for any additional costs incurred by COUNTY as a result of a termination under this Section.
- Any such termination under this Section is not a breach of the Agreement and may not be considered as such.
- FIRM shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its sub FIRMS, and to make such records available to COUNTY or other authorized governmental entity.
- To comply with the terms of this Employment Eligibility Verification provision is made an express condition of the Agreement and COUNTY may treat a failure to comply as a material breach of the Agreement.

#### **13.7 FORCE MAJEURE**

Neither DESIGN-BUILDER nor OWNER shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control and not a result of the fault or negligence of, the affected party (a "Force Majeure Event"). If a party is prevented or delayed in the performance of any such obligations by a Force Majeure Event, such party shall immediately provide notice to the other party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. A Force Majeure Event shall include, but not be limited to acts of civil or military authority (including courts or regulatory agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, hurricanes and severe floods.

#### **13.8 COUNTERPARTS**

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. OWNER shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

#### **13.9 AUTHORITY TO OBLIGATE**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing and bind and obligate such party with respect to all provisions contained in this Agreement.

**13.10 NOTICES**

Except as otherwise provided herein, all notices and other communications provided for hereunder shall be in writing and sent by certified mail return receipt requested, or by hand delivery, and shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid or if hand delivered, when personally handed to the party to whom the notice or other communication is addressed, with signed proof of delivery. OWNER's and DESIGN-BUILDER's representatives for notice purposes are:

Marion County, a political subdivision of the State of Florida  
601 SE 25<sup>th</sup> Ave., Ocala, FL 34471

WITH COPY TO: Procurement Services Director  
Marion County Procurement Services Department  
2631 SE 3rd St., Ocala, FL 34471  
Email: [Procurement@marionfl.org](mailto:Procurement@marionfl.org)

DESIGN-BUILDER: Art Walker Construction, Inc.  
2889 NW 63<sup>rd</sup> Street  
Ocala, FL 34475  
CONTACT PERSON: Tarrah Walker  
Ph: 352-629-1466 - Email: [Office@artwalkerconstruction.com](mailto:Office@artwalkerconstruction.com)

**13.11 SUPERVISION**

13.11.1 DESIGN-BUILDER shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from DESIGN-BUILDER to the contrary, the superintendent shall be deemed DESIGN-BUILDER's authorized representative at the site and shall be authorized to receive and accept any and all communications from OWNER.

13.11.2 Key supervisory personnel assigned by DESIGN-BUILDER to the Project are as follows:

NAME	FUNCTION
Tim Walker	Project Manager
Todd Walker	General Superintendent
Paul Walker	Project Foreman

**13.12 PUBLIC RECORDS COMPLIANCE**

DESIGN-BUILDER'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S., DESIGN-BUILDER agrees to comply with all public records laws, specifically to:

1. Upon request from OWNER's custodian of public records, provide OWNER with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided for by law.
2. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if DESIGN-BUILDER does not transfer the records to OWNER.
3. Upon completion of this Agreement, transfer, at no cost, to OWNER all public records in possession of DESIGN-BUILDER or keep and maintain public records required by OWNER to perform the Work. If DESIGN-BUILDER transfers all public records to OWNER upon completion of this Agreement, DESIGN-BUILDER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If DESIGN-BUILDER keeps and maintains public records upon the completion of this Agreement, DESIGN-BUILDER shall meet all applicable requirements for retaining public records. All records kept electronically must be provided to OWNER, upon request from OWNER's custodian of public records, in a format that is compatible with the information technology systems of OWNER.



**IF DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Office of Public Information  
601 SE 25<sup>th</sup> Ave., Ocala, FL 34471  
Phone: 352-438-2300 | Fax: 352-438-2309  
Email: publicrecords@marionfl.org**

If DESIGN-BUILDER fails to provide the public records to OWNER within a reasonable time DESIGN-BUILDER may also be subjected to penalties under Section 119.10 Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY.

**13.13 DESIGN-BUILDER Conduct:** These Guidelines govern DESIGN-BUILDER while doing work on OWNER property, as well as its employees, agents, consultants, and others on OWNER property in connection with the DESIGN-BUILDER's work or at the DESIGN-BUILDER's express or implied invitation.

- **Courtesy and Respect:** OWNER is a diverse government institution and it is critical that DESIGN-BUILDER and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
- **Language and Behavior:** DESIGN-BUILDER and its employees cannot engage in behavior that is rude, threatening, or offensive. Use of profane or insulting language is prohibited. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior cannot be tolerated. Roughhousing, fighting, fisticuffs, physical threats, destruction of property, vandalism, littering, or physical abuse of anyone on OWNER property is not permitted under any circumstance.
- **No Weapons, Alcohol, or Drugs:** The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by DESIGN-BUILDER or its employees is prohibited. Offenders will be removed from OWNER property and/or reported to law enforcement.
- **Smoking:** DESIGN-BUILDER and its employees are not permitted to smoke in or near any OWNER buildings.
- **Fraternization:** DESIGN-BUILDER and its employees may not fraternize or socialize with OWNER staff.
- **Appearance:** DESIGN-BUILDER and its employees are required to wear appropriate work wear, hard hats and safety footwear, as the case may be, while on the job. Articles of clothing must be neat and tidy in appearance, and cannot display offensive or inappropriate language, symbols or graphics. OWNER has the right to decide if such clothing is inappropriate.
- **Reporting:** DESIGN-BUILDER is required to report any matter involving a violation of these rules or any matter involving health or safety, including any altercations, to OWNER's Procurement Services immediately.

DESIGN-BUILDER is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, DESIGN-BUILDER will take all necessary steps to stop and prevent any future occurrence. Any breach of these conditions will result in the removal of the person responsible from OWNER property and prohibited actions could result in the immediate termination of any or all of DESIGN-BUILDER's contracts with OWNER.

**13.14 PROMPT PAYMENT ACT:** FIRM acknowledges that notwithstanding anything to the contrary set forth in the Agreement, COUNTY's obligations and responsibilities for payment and non-payment under the Agreement, including, but not limited to, the accrual of interest thereon if any, are governed by Chapter 218, Part VII, Florida Statutes, Local Government Prompt Payment Act (2023).

**13.15 TAX EXEMPT:** Notwithstanding anything to the contrary set forth in the Agreement, FIRM acknowledges receipt of COUNTY's Consumer Certificate of Exemption from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.

**13.16 UNILATERAL TERMINATION:** If FIRM fails to provide the public records to COUNTY within a reasonable time or otherwise fails to comply with this Section, FIRM may be subject to penalties under Section 119.10, Florida Statutes (2023) and may be subject to unilateral cancellation of the Agreement by COUNTY.

**13.17 SCRUTINIZED COMPANIES PURSUANT TO § 287.135, FLA. STAT.**

**A. Certification.**

1. If the Agreement is for One Million Dollars or more, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
  - a. On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes (2023), or
  - b. Engaged in business operations in Cuba or Syria.
2. If the Agreement is for any amount, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
  - a. On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes (2023), or
  - b. Engaged in a boycott of Israel.

**B. Termination, Threshold Amount.** COUNTY may, entirely at its option, terminate the Agreement if it is for One Million Dollars or more and FIRM meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and FIRM is found to meet any of the following prohibitions:
  - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes (2023), or
  - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes.
2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and FIRM is found to meet any of the following prohibitions:
  - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
  - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
  - c. Been engaged in business operations in Cuba or Syria.
3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and FIRM is found to meet any of the following conditions:
  - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
  - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes;
  - c. Been engaged in business operations in Cuba or Syria; or
  - d. Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.
4. Was entered into or renewed on or after July 1, 2018, and FIRM is found to meet any of the following prohibitions:
  - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
  - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
  - c. Been engaged in business operations in Cuba or Syria.

**C. Termination, Any Amount.** COUNTY may, entirely at its option, terminate the Agreement if it is for any amount and meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2018, and
2. FIRM is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.



- D. **Comply; Inoperative.** The Parties agree to comply with Section 287.135, Florida Statutes, as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

**13.18 DISCRIMINATORY VENDOR LIST, CONVICTED VENDOR LIST, ANTITRUST VIOLATOR VENDOR LIST.** FIRM certifies and assures COUNTY that FIRM and its affiliate, if any and as defined under the pertinent statutes, has not been placed on the Discriminatory Vendor List pursuant to Section 287.134, Florida Statutes (2023), the Convicted Vendor List pursuant to Section 287.133, Florida Statutes (2023), and the Antitrust Violator Vendor List pursuant to Section 287.137, Florida Statutes (2023). FIRM acknowledges that absent certain conditions set forth in the respective statutes, those that have been placed on such lists 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 FIRM, supplier or subFIRM under a contract with a public entity, may not transact business with a public entity, and may not benefit from certain economic incentives.

**13.19 SOVEREIGN IMMUNITY.** Nothing in the Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. Notwithstanding anything to the contrary set forth in the Agreement, COUNTY's obligation to indemnify FIRM, if any, for any reason or purpose, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes (2023). All liability of COUNTY shall be limited to the limits set forth therein, whether sounding in contract, tort, or otherwise. This Section shall survive the termination of the Agreement.

**Rights of Third Parties.** Nothing in the Agreement, whether express or implied, is intended to confer any rights or remedies under or because of the Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in the Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to the Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to the Agreement.

**13.20 WAIVER.** Notwithstanding anything set forth to the contrary in the Agreement, no waiver of any default by either Party shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

**13.21 SEVERABILITY.** If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

**13.22 ATTORNEYS' FEES.** Notwithstanding anything to the contrary set forth in the Agreement, if a civil action or other legal proceeding is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, a reasonable attorneys' fees for litigating the issue of the amount of fees to be awarded, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges that would be reasonably billed by the attorney to the prevailing party. Such award is limited to only those instances involving a legal proceeding, not a collection effort.

**13.23 APPLICABLE LAW/JURISDICTION/VENUE.** The Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. Notwithstanding



anything to the contrary set forth in the Agreement, the venue for any legal proceeding arising out of the Agreement, shall be in the State or Federal courts of Marion County, Florida.

**13.24 WAIVER OF JURY TRIAL.** EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.

**13.25 SURVIVAL.** Sections 13-20 of this ATC shall survive the termination of the Agreement, or any duties or obligations thereunder, and shall be fully binding until any proceeding which may be brought under this Agreement is barred by the applicable statute of limitations. In addition, any other provisions, or parts thereof, of this ATC which, by their nature, should survive termination or cancellation shall survive.

**13.26 HEADINGS.** Section headings contained in this ATC are for convenience only and are not to be deemed or construed to be part of the Agreement.

**13.27 AUTHORITY TO EXECUTE AGREEMENT.** The signature by any person to the Agreement and this ATC shall be deemed a personal warranty by that person that she/he has the full power and authority to bind the entity for which that person is signing.

**13.28 TRANSACTING BUSINESS IN FLORIDA.** As of the date of entering this Agreement, FIRM represents that FIRM has been issued a certificate of authority issued by the Florida Department of State, required to transact business in Florida, pursuant to Section 607.1501, Florida Statutes, or a determination has been made by FIRM and its legal advisor that performance of this Agreement will not require any act constituting transacting business in Florida. In the event COUNTY, at its sole discretion, determines that FIRM is transacting business in Florida without a certificate of authority issued by the Florida Department of State, COUNTY may immediately terminate this Agreement. In the event of such termination, FIRM shall immediately repay all amounts provided to FIRM under this Agreement.

**13.29 NO OTHER NEGATIONS OR CHANGES.** No other terms or conditions of the Agreement are negated or changed as a result of this ATC.

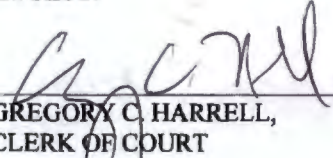
**13.30 ENTIRE AGREEMENT.** The Agreement and this ATC collectively contain the entire agreement between the Parties related to the matters specified herein, and supersede any prior oral or written statements or agreements between the Parties related to such matters. Any amendment thereto shall be made in writing and signed by both Parties.

**13.31 EXHIBITS.** Exhibit A – Design Build Scope of Work and Fees.


**[Remainder of this page left intentionally blank]**

IN WITNESS WHEREOF the parties have entered into this Agreement, approved by the Marion County Board of County Commissioners, on the date of the last signature below.

ATTEST:

  
GREGORY C. HARRELL, DATE 12/17/2024  
CLERK OF COURT

MARION COUNTY, A POLITICAL SUB-  
DIVISION OF THE STATE OF FLORIDA

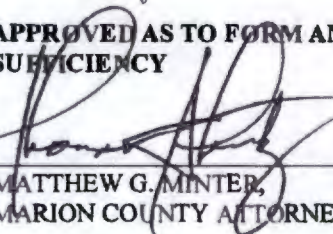
  
KATHY BRYANT, DATE 12/17/2024  
CHAIRMAN

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY


BCC APPROVED:

December 17, 2024


25Q-002 SW 40<sup>th</sup> Ave/SW 49<sup>th</sup> Ave Phase I

*For:*   
MATTHEW G. MINTER, DATE 12/16/24  
MARION COUNTY ATTORNEY

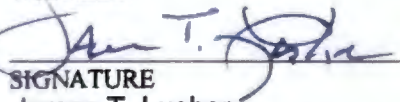
WITNESS:

  
SIGNATURE  
Tim Walker  
PRINTED NAME

ART WALKER CONSTRUCTION, INC.

  
BY: DATE 12/23/24  
Tarrah Walker  
PRINTED:  
Vice President  
ITS: (TITLE)

WITNESS:

  
SIGNATURE  
James T. Lusher  
PRINTED NAME



**Art Walker Construction, Inc.**  
P.O. Box 267 • Lowell, FL 32663  
Phone: 352-629-1466  
Email: office@artwalkerconstruction.com



## DESIGN-BUILD SCOPE OF WORK AND FEES

**Design and Construction for SW 49<sup>th</sup> Ave./SW 40<sup>th</sup> Ave. from SW 66<sup>th</sup> St. Rd. to SW 43<sup>rd</sup> St. Rd.**

### PURPOSE

The purpose of this document is to describe the scope of work and the responsibilities of the DESIGN-BUILD FIRM and the COUNTY for the performance of engineering design, permitting and construction for the proposed SW 40<sup>th</sup> Ave./SW 49<sup>th</sup> Ave. Improvements from SW 66<sup>th</sup> St. to SW 43<sup>rd</sup> St. Rd. and the intersection improvements for SW 49<sup>th</sup> Ave. @ 66<sup>th</sup> St. (the "PROJECT"). Our project understanding is summarized below:

1. Purpose – complete the design and construct a 4-lane divided urban roadway within the project limits and complete the design and construct intersection improvements at the SW 49<sup>th</sup> Ave/SW 66<sup>th</sup> St. intersection at the south end of the project. The improvements are to also include the construction of a 2-lane temporary access roadway from the existing cul-de-sac along SW 40<sup>th</sup> Ave. to a proposed site development (parcel #23877-000-00) entrance approximately 350 feet south. The design and construction requirements are to be in conformance with County's RFQ # 25Q-002 Sections 6, 7 and 8.
2. Project Limits – The limits along SW 40<sup>th</sup> Ave./SW 49<sup>th</sup> Ave. are from 250 feet south of the intersection of SW 49<sup>th</sup> Ave. at SW 66<sup>th</sup> St. to the south side of SW 40<sup>th</sup> Ave. at SW 43<sup>rd</sup> St. Rd. (approximately 1.6 miles).
3. Construction Schedule – The PROJECT is to be constructed and completed by May 31, 2026, in conformance with the County's RFQ # 25Q-002.
4. The COUNTY will provide the previously prepared 90% plans (dated 5/16/24) for SW 40<sup>th</sup>/49<sup>th</sup> Avenue Improvements – Phase 1. The DESIGN-BUILD FIRM will be responsible for completing these plans. The COUNTY will also provide the previously prepared plans for SW 66<sup>th</sup> Street @ SW 49<sup>th</sup> Ave (Roadway, Signing and Pavement Markings and Signalization) for use and/or modification by the DESIGN-BUILD FIRM.
5. City of Ocala Water and Sewer Construction – the DESIGN-BUILD FIRM, provided the COUNTY/City of Ocala Agreement is approved, would construct these proposed waterline and sewer line construction shown in the City of Ocala's plans (dated 10/21/21) titled SW 49<sup>th</sup>/40<sup>th</sup> AVENUE PHASE 1 – WATER & SEWER FOR MARION COUNTY. This OPTIONAL SERVICES work is contingent upon the City/County approval and will require a separate written notice-to-proceed at a later date.
6. The COUNTY will acquire the additional right-of-way and easements required for construction of the proposed project improvements. The DESIGN-BUILD FIRM will assist the COUNTY by providing updated appraisals and/or expert witness services.
7. The PROJECT will require coordination and permitting with the Southwest Florida Water Management District (SWFWMD). The improvements will require an Environmental Resource Permit (ERP) to be obtained. The COUNTY has submitted an ERP application for the project, however; the DESIGN-BUILD FIRM will need to complete and coordinate with SWFWMD to obtain the ERP.
8. The DESIGN-BUILD firm shall provide the services necessary to construct the SW 49<sup>th</sup>/SW 40<sup>th</sup> AVENUE PHASE 1 project, as outlined in RFQ #25Q-002 and Addendums 1-4. This includes furnishing all services, labor, materials, equipment, supplies, tools, transportation, and coordination required to perform all surveying, geotechnical services, scheduling, permitting, procurement, construction, utility coordination, demolition, material disposal and any other services necessary to construct the project.
9. The DESIGN BUILD firm shall honor all signed agreements between the County and the Public that have been disclosed in RFQ #25Q-002.

Marion County FL BOCC – Design-Build for SW 40<sup>th</sup>/49<sup>th</sup> Ave. Improvements – Phase 1  
Design-Build Scope of Work and Fees

Page 1 of 2





Art Walker Construction, Inc.

P.O. Box 267 • Lowell, FL 32663

Phone: 352-629-1466

Email: office@artwalkerconstruction.com

## PROVISIONS FOR WORK

- A. **Governing Documents:** the following documents (latest version) will be utilized in the development of the proposed design plans:

See the manuals and guidelines included in section 6.1 of the RFQ # 25Q-002.

## FEE

The DESIGN-BUILD FIRM will perform the services described above as follows (Lump Sum):

Design, Construction and Permitting of the PROJECT  
(not including OPTIONAL SERVICES) =

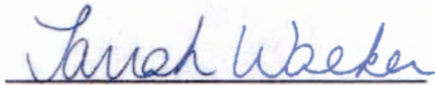
\$ 15,353,772.00 LUMP SUM

OPTIONAL SERVICES – Construction of City of Ocala  
Water and Sewer Improvements =

\$ 2,195,280.22 UNIT PRICE

Services provided under this task order will be invoiced monthly based upon the percentage of services performed or actual services performed. All invoices will include a description of the services provided.

ART WALKER CONSTRUCTION, INC.

BY: 

TITLE: Vice President

DATE: November 25, 2024