DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("Agreement") is made and entered into as of this day of ______, 20__ ("Effective Date"), by and between the City of Florida Procurement Hub, Florida, a Florida municipal corporation, whose principal address is 1234 Strategic Sourcing Street, Florida Procurement Hub, FL 33333 ("City"), and [Design-Build Firm Name], a [State of Incorporation/Organization] [Type of Entity], authorized to do business in Florida, whose principal address is [Design-Build Firm Address] ("Design-Builder").

RECITALS

WHEREAS, the City desires to design and construct [**Project Name**] (the "Project"), as more particularly described in the City's Design Criteria Package (as defined herein); and

WHEREAS, the City has elected to use the design-build project delivery method for the Project, which combines design and construction services into a single contract with a single point of responsibility, pursuant to Florida Statutes, including but not limited to Sections 255.20 and 287.055; and

WHEREAS, the Design-Builder was selected by the City pursuant to the requirements of Section 287.055, Florida Statutes (Consultants Competitive Negotiation Act - CCNA), to provide the necessary design and construction services for the Project; and

WHEREAS, the Design-Builder represents that it, and its integrated team of design professionals and construction personnel, possess the requisite skills, experience, licenses (including appropriate architectural, engineering, and contractor licenses required by Florida law), and qualifications to provide comprehensive design and construction services for the Project, and is willing to perform such services in accordance with all applicable laws, industry standards, and the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: GENERAL PROVISIONS

1.1 Single Point of Responsibility:

Revised 04/01/2025

The Design-Builder shall be solely responsible for providing all design, architectural, engineering, and construction services necessary to complete the Project in accordance with this Agreement and the City's Design Criteria Package. The Design-Builder shall furnish all labor, materials, equipment, tools, and supervision necessary for both the design and construction of the Project.

1.2 Relationship of Parties:

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the City to exercise skill and judgment in furthering the best interests of the City. The Design-Builder agrees to furnish efficient business administration, professional design services, and construction superintendence, and to perform the Work in an expeditious and economical manner consistent with the interests and requirements of the City as set forth in the Contract Documents.

1.3 Definitions:

- **Contract Documents**: This Agreement, the City's Design Criteria Package, the Design-Builder's Proposal (to the extent consistent with the Design Criteria Package and this Agreement and as accepted by the City), Drawings and Specifications prepared by the Design-Builder and approved by the City, addenda, modifications, Change Orders, and any other documents listed in this Agreement or incorporated by reference. In case of conflict, the terms of this Agreement and the Design Criteria Package shall govern over the Design-Builder's Proposal unless specifically agreed otherwise in writing by the City.
- **Design Criteria Package**: The concise, performance-oriented drawings, specifications, and other documents prepared by or for the City, setting forth the City's program, scope, objectives, requirements, constraints, and criteria for the Project, including (as applicable) site information, space requirements, material quality standards, schematic layouts, conceptual design criteria, and performance requirements for the Project, pursuant to Section 287.055(2)(j), Florida Statutes. The Design Criteria Package is incorporated herein by reference as Exhibit A.

• **Drawings and Specifications**: The detailed design documents, construction drawings, specifications, and other documents prepared by the Design-Builder (or its subconsultants) based upon and in conformance with the Design Criteria Package, and approved by the City, setting forth in detail the requirements for construction of the Project.

- Work: The design, construction, and related services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Design-Builder to fulfill its obligations.
- **Contract Sum**: The total amount payable by the City to the Design-Builder for performance of the Work under the Contract Documents, as stated in Article 4.
- Day or Days: Calendar days unless otherwise specifically noted.

ARTICLE 2: DESIGN-BUILDER'S RESPONSIBILITIES AND SERVICES

2.1 General:

The Design-Builder shall be responsible for all design and construction services required to achieve Final Completion of the Project in accordance with the Design Criteria Package and all other Contract Documents. The Design-Builder shall exercise the standard of care, skill, and diligence normally provided by nationally recognized design-build firms in the performance of design and construction services on projects of similar size, scope, and complexity.

2.2 Design Services:

- **Design Development**: Based on the Design Criteria Package (Exhibit A), the Design-Builder shall prepare and submit to the City for review and approval, in phases as agreed (e.g., Schematic Design, Design Development Documents, Construction Documents), detailed Drawings and Specifications for the Project. These submissions shall be sufficiently detailed to describe the character, scope, and quality of the Project and all its components.
- **Professional Licensing**: All design services shall be performed by or under the direct supervision of architects and engineers licensed in the State of Florida and retained by the Design-Builder as part of its team.
- **Compliance with Laws and Design Criteria Package**: The Design-Builder warrants that the design shall comply with all applicable federal, state, and local laws, statutes, ordinances, codes, rules, and regulations, and with the requirements of the Design Criteria Package.

- **City Review and Approval**: The City (and its designated consultants) shall review the Design-Builder's design submissions for conformance with the Design Criteria Package and the City's objectives. Such review and approval shall not relieve the Design-Builder of its sole responsibility for the accuracy, completeness, and constructability of the design, nor for compliance with all applicable laws and the Design Criteria Package. The City's approval of a design submission shall not be deemed an acceptance of any error, omission, or inconsistency in the design for which the Design-Builder is responsible.
- **Coordination**: The Design-Builder shall coordinate all design elements, including architectural, civil, structural, mechanical, electrical, plumbing, and other disciplines.

2.3 Construction Services:

Upon the City's approval of the Construction Documents (or an agreed-upon phase thereof) and issuance of a Notice to Proceed for Construction, the Design-Builder shall furnish all supervision, labor, materials, equipment, tools, and services necessary to construct and complete the Project in strict accordance with the approved Drawings and Specifications and other Contract Documents.

Construction services shall include:

- **Project Management and Supervision**: Manage, supervise, and direct the Work. The Design-Builder shall be solely responsible for construction means, methods, techniques, sequences, and procedures.
- **Subcontractors and Suppliers**: Enter into contracts with subcontractors and suppliers ("Subcontractors") to perform various portions of the construction Work. The Design-Builder shall be responsible to the City for the acts and omissions of its Subcontractors.

Scheduling: Prepare and maintain a detailed critical path construction schedule, provide regular updates, and take appropriate action to maintain the schedule.

• **Quality Control**: Develop and implement a quality control program to ensure the Work is performed in accordance with the Contract Documents.

- **Safety Program**: Be responsible for initiating, maintaining, and supervising all safety precautions and programs.
- **Permits and Inspections**: Obtain and pay for all construction permits, licenses, and inspections necessary for the proper execution and completion of the Work.
- **Record Keeping and As-Built Drawings**: Maintain record documents at the site and provide accurate as-built drawings to the City upon completion.
- **Closeout**: Manage all Project closeout procedures.

ARTICLE 3: CITY'S RESPONSIBILITIES

3.1 Information and Services Provided by City:

The City shall provide, in a timely manner, information and services under its control as set forth in the Design Criteria Package or as otherwise necessary for the Design-Builder to perform its obligations.

3.2 Review and Approval:

The City shall review and approve or take other appropriate action upon the Design-Builder's submittals in a timely manner so as not to unreasonably delay the progress of the Work.

3.3 Access to Site:

The City shall provide access to the Project site as necessary for the Design-Builder to perform the Work.

3.4 Owner's Representative:

The City shall designate a representative authorized to act on its behalf with respect to the Project.

ARTICLE 4: CONTRACT SUM AND PAYMENTS

Revised 04/01/2025

4.1 Contract Sum:

The City agrees to pay the Design-Builder for the full and satisfactory performance of all design and construction Work under this Agreement a total fixed [Lump Sum/Guaranteed Maximum Price (GMP)] of \$______ (the "Contract Sum"), subject to additions and deductions as provided for in this Agreement.

Lump Sum will be based on the Design-Builder's proposal in response to the Design Criteria Package, incorporating the cost of both design and construction.

OR

GMP will be based on the Design-Builder's preparation and submission of a GMP proposal to the City when design documents are sufficiently complete (typically at 90% or 100% completion of construction documents). The City and Design-Builder shall negotiate in good faith to agree upon the GMP. Upon mutual agreement on the GMP, the terms of the GMP (including the price, Contract Time, assumptions, allowances, etc.) shall be incorporated into this Agreement via a written amendment executed by both parties.

4.2 Schedule of Values:

Prior to the first Application for Payment, the Design-Builder shall submit to the City a schedule of values allocating the Contract Sum to various portions of the Work (including design and construction phases/elements), prepared in such form and supported by such data as the City may require. This schedule, when approved by the City, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

4.3 Progress Payments

Applications for Payment shall be submitted monthly by the Design-Builder in a form acceptable to the City, detailing the value of design services performed and construction Work completed, less retainage.

Payments shall be made in compliance with Section 218.735, Florida Statutes (Local Government Prompt Payment Act). The City shall identify the agent/office for invoice submission per the Prompt Payment Act.

4.4 Retainage:

The City shall retain five percent (5%) of the amount of each progress payment as retainage until Final Completion and acceptance of the Project, unless otherwise modified by Florida law.

4.5 Final Payment:

Revised 04/01/2025

Final payment shall be made after the Design-Builder has fully performed all obligations under the Contract Documents, including submission of all closeout documents (warranties, as-built drawings, lien waivers, etc.), and the City has accepted the Project as complete.

ARTICLE 5: CHANGES IN THE WORK

- **5.1** The City may, without invalidating the Agreement, order changes in the Work or the Design Criteria Package. Such changes may result in an adjustment to the Contract Sum and/or the Contract Time and shall be authorized by a written Change Order signed by the City and the Design-Builder.
- **5.2** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design Criteria Package or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Design-Builder shall promptly provide notice to the City before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The City will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, will negotiate an equitable adjustment in the Contract Sum or Contract Time, or both.

ARTICLE 6: CONTRACT TIME

- **6.1 Design Phase Milestones:** The Design-Builder shall achieve design phase milestones as set forth in Exhibit B Project Schedule.
- 6.2 Substantial Completion (Construction): The Design-Builder shall achieve Substantial Completion of the entire Work not later than ______, 20___, 20___
- **6.3 Final Completion**: Final Completion shall be achieved within ____ calendar days after Substantial Completion.
- **6.4 Time is of the Essence**: Time is of the essence for this Agreement. Liquidated damages, if applicable, shall be as set forth in Exhibit B or an addendum for failure to meet the Substantial Completion Date.

ARTICLE 7: DESIGN-BUILDER'S DESIGN RESPONSIBILITY AND PROFESSIONAL LIABILITY

7.1 Standard of Care for Design:

The Design-Builder shall be responsible for all design services performed by it or its consultants. The Design-Builder warrants that all design services shall be performed in accordance with the standard of professional care, skill, and diligence exercised by nationally recognized design professionals performing services for projects of similar size, scope, and complexity, and in conformance with the Design Criteria Package and applicable laws.

7.2 Responsibility for Errors and Omissions:

The Design-Builder is responsible for the technical accuracy and completeness of its Drawings, Specifications, and other design services, and for any errors or omissions therein. The City's review, approval, acceptance, or payment for any design services shall not relieve the Design-Builder of this responsibility.

7.3 Professional Liability Insurance:

The Design-Builder shall maintain (or cause its design subconsultants to maintain) Professional Liability Insurance covering negligent acts, errors, or omissions in the performance of design services under this Agreement, with limits as specified in Article 8.

ARTICLE 8: BONDS AND INSURANCE

8.1 Performance and Payment Bonds:

The Design-Builder shall furnish Performance and Payment Bonds, each in an amount equal to 100% of the Contract Sum (or the construction portion thereof, if clearly delineated and agreed). These bonds shall be in a form acceptable to the City, issued by a surety acceptable to the City, and shall comply with Section 255.05, Florida Statutes. They shall be provided prior to commencement of any construction Work.

8.2 Insurance:

Revised 04/01/2025

The Design-Builder shall procure and maintain insurance coverage as set forth in Exhibit C – Insurance Requirements. This shall include, but not be limited to:

- Commercial General Liability (CGL)
- Automobile Liability (Auto)
- Workers' Compensation and Employer's Liability
- Professional Liability Insurance (Errors & Omissions)
- Builder's Risk Insurance (for the construction value).

The City shall be named as an Additional Insured on CGL and Auto policies. Certificates and endorsements must be provided.

ARTICLE 9: WARRANTIES

The Design-Builder warrants that all materials and equipment furnished will be new unless otherwise specified, and that all Work (both design and construction) will be of good quality, free from faults and defects, and performed in conformance with the Contract Documents. The construction warranty period shall be for one (1) year from the date of Substantial Completion, or longer if required. The Design-Builder shall promptly correct defective Work at its own expense.

ARTICLE 10: INDEMNIFICATION

To the fullest extent permitted by Florida law, including Section 725.06, Florida Statutes (for construction) and applicable common law principles for design services, the Design-Builder shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from:

(a) The performance of the construction Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions or other wrongful conduct of the Design-Builder, its subcontractors, or anyone directly or indirectly employed by them or for whose acts they may be liable.

(b) The negligent acts, errors, or omissions of the Design-Builder or its design consultants in the performance of professional design services under this

Agreement. This indemnification shall survive the termination or expiration of this Agreement.

ARTICLE 11: COMPLIANCE WITH LAWS

The Design-Builder shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, and orders, including but not limited to:

- Florida Building Code, OSHA, environmental laws, EEO.
- Florida Public Records Act, Chapter 119, Florida Statutes (including the public records notice language from Section 11.1 of the DESIGN-BUILDER agreement, with contact details for the City's custodian of records).
- Section 287.133, Florida Statutes (Public Entity Crimes).
- Section 287.135, Florida Statutes (Scrutinized Companies).
- Section 287.055, Florida Statutes (CCNA) as applicable to its selection and performance of professional services.
- All licensing requirements for design and construction professionals in Florida.

ARTICLE 12: TERMINATION OR SUSPENSION

- **12.1 Termination for Cause by City**: The City may terminate this Agreement, in whole or in part, for cause if the Design-Builder:
 - Persistently or repeatedly fails or refuses to supply enough properly skilled workers or proper materials;
 - Fails to make payment to Subcontractors and Consultants for materials or labor in accordance with the respective agreements between the Design-Builder and Subcontractors / Consultants;
 - Persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

- Fails to commence or complete the Work in accordance with the Contract Time provisions;
- Fails to perform the Work in accordance with the Contract Documents or otherwise is in material breach of any provision of this Agreement;
- Becomes insolvent, files for bankruptcy, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency.

The City shall provide the Design-Builder with written notice of its intent to terminate and the grounds therefor, and if the Design-Builder fails to cure such default within seven (7) calendar days after receipt of such notice (or such longer period as the City may allow if the default is not curable within seven days but the Design-Builder is diligently pursuing a cure), the City may terminate the Agreement. In case of termination for cause, the Design-Builder shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, including compensation for additional administrative and legal services, such excess shall be paid to the Design-Builder. If such expense exceeds such unpaid balance, the Design-Builder shall pay the difference to the City.

12.2 Termination for Convenience by City: The City may, at any time, terminate this Agreement, in whole or in part, for its convenience and without cause, by providing seven (7) calendar days' written notice to the Design-Builder. Upon receipt of such notice, the Design-Builder shall cease operations as directed by the City, take actions necessary for the protection and preservation of the Work, and terminate all existing subcontracts and purchase orders to the extent that they relate to the performance of the terminated Work. The Design-Builder shall be entitled to payment for Work satisfactorily performed and accepted up to the effective date of termination, but shall not be entitled to anticipated profits on unperformed Work.

ARTICLE 13: RECORDS AND AUDIT

13.1 The Design-Builder shall maintain complete and accurate books, records, documents, and other evidence pertaining to the costs and expenses of this Agreement ("Records") to the extent and in such detail as will properly reflect all

Revised 04/01/2025

costs of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature for which reimbursement is claimed or payment is made under this Agreement. The Design-Builder shall retain all such Records for a minimum of three (3) years following final payment and resolution of all pending matters related to this Agreement, or for any longer period required by law.

13.2 The City or its authorized representative shall have the right to access, inspect, examine, and audit such Records at all reasonable times during the retention period.

ARTICLE 14: DISPUTE RESOLUTION

14.1 Negotiation:

The parties shall attempt to resolve any dispute, claim, or controversy arising out of or relating to this Agreement through good faith negotiations between authorized representatives.

14.2 Mediation:

If negotiations are unsuccessful, the parties agree to endeavor to resolve the dispute by mediation administered by a mutually agreeable mediator in ______ County, Florida, before resorting to arbitration or litigation. The costs of mediation shall be shared equally by the parties.

14.3 Litigation:

If mediation does not resolve the dispute, any unresolved dispute shall be resolved by litigation in a court of competent jurisdiction in _____ County, Florida.

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

ARTICLE 15: MISCELLANEOUS

Revised 04/01/2025

15.1 Governing Law and Venue:

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. Venue for any legal action or proceeding arising out of or relating to this Agreement shall lie exclusively in the state or federal courts located in _____ County, Florida.

15.2 Independent Contractor:

The Design-Builder is, and shall perform this Agreement as, an independent contractor and not as an employee, agent, partner, or joint venturer of the City. The Design-Builder shall be solely responsible for the compensation, benefits, and taxes of its employees and for the means and methods of performing the Work.

15.3 No Waiver:

No failure or delay by the City in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. Any waiver by the City must be in writing and signed by an authorized representative and shall not constitute a waiver of any other term, condition, or future breach.

15.4 Entire Agreement:

This Agreement, including all exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements, understandings, negotiations, and discussions of the parties.

15.5 Amendments:

This Agreement may only be amended, modified, or supplemented by a written instrument duly executed by authorized representatives of both parties.

15.6 Severability:

If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

15.7 Notices:

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b) one business day after being sent by reputable overnight courier, service prepaid, or (c) three business days after being mailed by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Florida Procurement Hub John Doe, Chief Procurement Officer 1234 Strategic Sourcing Street Florida Procurement Hub, FL 33333 Email: <u>JDoe@FloridaProcurementHub.com</u> Phone: (111) 111-1111

With a copy to (if applicable):

City Attorney's Office 1234 Strategic Sourcing Street Florida Procurement Hub, FL 33333 Email: Legal@FloridaProcurementHub.com

If to Design-Builder:

[Design-Builder Firm Name]
Attn: [Design-Builder Contact Name/Title]
[Design-Builder Street Address]
[Design-Builder City, State, Zip Code]
Email:
Phone:

Or to such other address or email address as either party may designate by notice given in accordance with this section.

15.8 Assignment:

The Design-Builder shall not assign, transfer, convey, or otherwise dispose of this Agreement, or its right, title, or interest herein, or its power to execute such Agreement to any other person, company, or corporation, without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

15.9 Ownership of Documents:

Upon completion or termination, Drawings, Specifications, and other documents prepared by the Design-Builder as instruments of service shall become the property of the City for use on the Project, provided the Design-Builder is paid for its services. The Design-Builder may retain copies. Reuse by the City on other projects without the Design-Builder's involvement shall be at the City's sole risk.

15.10 Conflict of Interest:

The Design-Builder represents and warrants that it has no conflict of interest, direct or indirect, that would conflict in any manner with the performance of its obligations under this Agreement. The Design-Builder further agrees that it will not acquire any interest, direct or indirect, that would conflict in any manner with the performance of its obligations hereunder.

15.11 Drug-Free Workplace:

The Design-Builder shall comply with all applicable provisions of Section 440.102, Florida Statutes, regarding drug-free workplace programs if applicable.

15.12 Sovereign Immunity:

Nothing in this Agreement shall be deemed as a waiver of the City's sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes, or other applicable law. This Agreement shall not be construed to create any rights in third parties not a party to this Agreement.

15.13 Headings:

The headings in this Agreement are for convenience only and shall not affect its interpretation.

15.14 Counterparts:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures shall be deemed original signatures for purposes of this Agreement.

ARTICLE 16: ATTACHMENTS

The following Exhibits are attached hereto and incorporated herein by this reference:

Revised 04/01/2025

- Exhibit A Design Criteria Package (including Owner's Program and Project Requirements)
- Exhibit B Project Schedule (including Design Phase Milestones and Construction Completion Dates)
- Exhibit C Insurance Requirements
- Exhibit D Design-Builder's Key Personnel and Design Consultants
- Exhibit E Compensation and Payment Schedule Details / Schedule of Values Breakdown
- Exhibit F Certificate of Substantial Completion Form / Template
- Exhibit G Public Records Act Compliance Rider (if applicable)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the Effective Date.

CITY OF FLORIDA PROCUREMENT HUB
Ву:
Print Name:
Title:
Date:
ATTEST (if required by City Charter/Ordinance): By:
Print Name: <u>City Clerk (or designee)</u>
Title: City Clerk
Date:
(CITY SEAL if applicable)

[DESIGN-BUILD FIRM NAME]

Ву:	
(Authorized Signature)	
Print Name:	
Title:	\sim
Date:	-
WITNESS (for Design-Builder, if required):	IBI
By:	
Print Name:	-
(CORPORATE SEAL if applicable)	
UNAUTHORIE	5