

11/6/14

**ENGINEER PROCURE CONSTRUCT CONTRACT
BETWEEN OWNER AND DESIGN BUILDER**

THIS CONTRACT IS BY AND BETWEEN:

**CITY OF GAINESVILLE d/b/a GAINESVILLE REGIONAL UTILITIES A MUNICIPAL CORPORATION
DULY INCORPORATED AND VALIDLY EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA
("Owner")**

and

**BURNS & MCDONNELL ENGINEERING COMPANY, INC., A MISSOURI CORPORATION ("Design
Builder")**

Owner and Design Builder, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – THE WORK

1.01. Design Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Plan, design, procure, and construct a Central Utility Plant ("CUP") to support the Project Campus. This Contract will include the delivery of electric grid power, Essential Power, Standby Power generation, chilled water, steam, and medical gas distribution and storage infrastructure. This Contract will provide the Energy Commodities Services ("ECS") required by Shands and will include construction of direct buried piping and duct banks connecting the CUP to future facilities on the Project Campus.

ARTICLE 2 - THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The Work required for all necessary infrastructure, buildings and equipment to provide a CUP to support the Project Campus based upon design loads provided to Design Builder by Owner.

ARTICLE 3 - CONTRACT TIMES

3.01. Time of the Essence

Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are material considerations of the Contract.

3.02. Dates for Construction Utilities and Substantial Completion

A By December 1, 2008 (unless otherwise extended), the Work will be capable, or the Design Builder shall have otherwise arranged for, the providing of service at levels appropriate to support the Project Campus buildings construction activities, not to exceed the CUP Design Loads.

B. By June 1, 2009 (unless otherwise extended), the "Substantial Completion of the CUP Date" (date of "heads in beds") the CUP will be available for Beneficial Use to provide ECS, be available for testing related to Performance Guarantees, Exhibit E, and begin undertaking Final Completion activities of 13.08 of the General Conditions.

C. Delays necessary to accommodate coordination with Project Campus, or the failure of Project Campus or Shands to timely take ECS when CUP is available and capable, or failure of Project Campus or Shands to take or facilitate necessary test loads to accommodate Final Completion, or the timely authorization by Owner for additional

Work to provide temporary facilities and equipment to provide test loads, shall entitle Design Builder to a Change Order for costs and time under 11.02 of the General Conditions, and otherwise excuse Design Builder for damages associated with timely performance.

3.03. Schedule, Performance Guarantee and Liquidated Damages

A. Owner and Shands recognize that the Service Lines that connect the Project Campus with the CUP are essential for the cost effective delivery of ECS Services to the Project Campus. During the initial phase of construction of the CUP and Project Campus, Shands shall be responsible for ensuring that the Owner is afforded access and a place and condition of work as required to construct the Service Lines within the utility corridor connecting the CUP and initial phase of the Project Campus for a period of not more than 6 months beginning not later than June 1, 2008. Design Builder shall be afforded day-for-day schedule extension from the commencement of Liquidated Damages in the event that Owner is not afforded access after such date. Owner and Shands shall use best efforts to coordinate work to ensure completion in an expedient manner.

B. During the initial phase of construction, GRU and Shands recognize that the timing of the commencement of construction for the parking structure will have a material impact on the schedule and cost of construction for the CUP, which is essential for the cost effective delivery of ECS Services to the Project Campus. During the initial phase of construction of the CUP and Project Campus, the site of the future parking structure East of the CUP shall be available for use by GRU for contractor parking and construction lay down until not sooner than October 1 2008, or such earlier date as mutually agreed in writing by Shands and GRU.

C. Design Builder and Owner recognize that time is of the essence of this Contract and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02.A above, plus any extensions thereof allowed in accordance with paragraph 3.03 A, 303 B and 11.02 of the General Conditions. The parties also recognize the delays, expenses, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design Builder agree that as Liquidated Damages for delay Design Builder shall pay Owner five thousand dollars (US \$5,000.00) per day [estimated to be the reasonable daily cost for the supply of temporary utilities] for each day that expires after the time specified in paragraph 3.02.A to support the Project Campus buildings construction, unless Design Builder has made other provisions to meet or supply utility demands of construction operations until Substantial Completion is achieved. If Design Builder shall neglect, refuse, or fail to meet the Substantial Completion of the CUP Date within the time specified in paragraph 3.02.B for completion or any proper extension thereof granted by Owner, Design Builder shall then pay Owner for each calendar day that expires after the time specified in paragraph 3.02.B as Liquidated Damage fifty thousand dollars (US \$50,000) per day for the first 2 weeks and increasing by fifty thousand dollars (US \$50,000) every 2 weeks. Liquidated Damages, as provided herein, shall be the Design Builder's sole obligation, and Owner's sole remedy for damages associated with delay, and not otherwise excusable as provided by this Contract. Liquidated Damages as applied to Performance Guarantees are specified in Exhibit F, and shall be the Design Builder's sole obligation, and Owner's sole remedy for damages associated with performance, and not otherwise excusable as provided by this Contract. The total and aggregate amount of all Liquidated Damages herein shall be capped at three million dollars (US \$3,000,000.00).

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design Builder for completion of the Work in accordance with the Contract Documents on a Cost Plus Basis, Open Book, through Owner's acceptance of Preliminary design based upon fifty percent (50%) design drawings, and an offer by Design Builder of a Guaranteed Maximum Price ("GMP") for the completion of the project. The Design Builder shall be one hundred percent (100%) responsible for Cost of Work (except as provided by 4.01 C below) that exceed the GMP, and not otherwise adjusted by Change Order. GMP is an amount equal to the sum of the amounts determined pursuant to paragraphs 4.01.A, 4.01.B, and 4.01.C below:

A. For all Work other than Rate Sheet Work, the Cost of the Work subject to Design Builder's fee which shall be determined as provided in Articles 5 and 6 below, subject to additions and deletions as provided in the Contract Documents and subject to the limitations set forth in Article 8 below.

B. Design Builder's fee for overhead and profit in accordance with Article 6.

C. Certain line items so identified in Exhibit H have not had estimates sufficiently validated at the time the GMP amount of 7.01 was established. These items are those included in the Exhibit H, "***Contingency; In-house Estimate". The Owner has directed that only a five percent (5%) contingency allowance be applied and included in these line items. The Owner assumes one hundred percent (100%) of the risk that the Cost of Work associated with these line items may be exceeded, and any such excess costs shall entitle the Design Builder to an increase in GMP. Any portion of the five percent (5%) contingency allowance applied and included in these line items that is not used for the construction of the Work associated for these items shall be a decrease in the GMP. Any savings to these items beyond the five percent (5%) contingency allowance shall be subject to the fifty-fifty (50/50) GMP savings split between the Owner and Design Builder. Examples of potential cost overages and savings related to this contingency are as follows:

As shown in Exhibit H, The GMP value is twenty-five million, two-hundred seventy-one thousand, nine hundred ninety-four dollars (US \$25,271,994). The total GMP value of the items covered by paragraph 4.01.C. is ten million, twenty-three thousand, eight dollars (US \$10,023,008). The contingency on these items is five hundred one thousand, one hundred fifty dollars (US \$501,150.00).

Cost Overage Example: If the total constructed value of the items covered by these items is eleven million dollars (US \$11,000,000), the GMP shall be increased by four hundred seventy-five thousand, eight hundred forty-two dollars, (US \$475,842.00) to twenty-five million, seven hundred forty-seven thousand, eight hundred thirty-six dollars (US \$25,747,836.00). eleven million dollars (US \$11,000,000) actual cost minus ten million, twenty-three thousand, eight dollars (US \$10,023,008) estimated cost equals nine hundred seventy-six thousand, nine hundred ninety-two dollars (US \$976,992.00) difference. Nine hundred seventy-six thousand, nine hundred ninety-two dollars (US \$976,992.00) cost beyond estimate. Five hundred one thousand, one hundred fifty dollars (US \$501,150.00) contingency equals four hundred seventy-five thousand, eighth hundred forty-two dollars (US \$475,842.00).

Cost Savings Example: If the total constructed value of the items covered by these items is nine million, nine hundred thousand dollars (US \$9,900,000), the GMP will be reduced by the five hundred one thousand, one hundred fifty dollars (US \$501,150.00) value of the unused contingency. The remaining one hundred twenty-three thousand, eight dollars (US \$123,008.00), ten million, twenty-three thousand, eight dollars minus nine million, nine hundred thousand dollars (US \$10,023,008.00 - \$9,900,000.00) savings will be split fifty-fifty (50/50) between the Owner and the Design Builder.

ARTICLE 5 - COST OF THE WORK

5.01. Cost of the Work shall be determined as provided in paragraph 10.01 of the General Conditions, inclusive of Design Builder's Fee, but, in addition to any limitations therein set forth, Design Builder shall not be due costs in excess of any GMP as set forth in Article 7 hereof.

ARTICLE 6 - DESIGN BUILDER'S FEE

6.01. The Design Builder's fee shall be determined as follows:

A fee based on the following percentages of the various portions of the Cost of the Work:

1. Payroll costs for
 - a. Employees of Design Builder (see paragraph 10.01.A.1.b of the General Conditions) as per Rate Sheet (attached) inclusive of overhead and profit: costs plus zero (0) percent.
2. Design/ Builder's material and equipment costs amounts (see paragraphs 10.01.A.2 of the General Conditions): costs plus five (5) percent.
3. Amounts paid to Subcontractors (see paragraphs 10.01.A.3 and 10.01.A.4 of the General Conditions): costs plus five (5) percent.

4. Amounts paid to Subconsultants and special consultants and supplemental costs (see paragraphs 10.01.A.5 and 10.01.A.6 of the General Conditions): costs plus ten (10) percent.

5. No fee shall be paid for costs listed in paragraph 10.01.B of the General Conditions, or that are otherwise covered by Rate Sheets.

ARTICLE 7 - GUARANTEED MAXIMUM PRICE-

7.01. Design Builder guarantees that the maximum obligation of Owner for the sum of the Cost of the Work plus the Design Builder's fee under Article 6 will not exceed twenty-five million two hundred seventy-one thousand nine hundred and ninety-four dollars (US \$25,271,994). GMP may be subject to adjustment as provided for in this Contract.

7.02. If the Cost of Work is less than the GMP, Owner shall pay Design Builder 50 percent of the difference of the GMP and the Cost of Work. One half of this amount, as adjusted for unrecovered correction costs, shall be due six (6) months after Final Completion. The remainder of such payment, as adjusted for unrecovered correction costs, shall become due at the end of the correction period in accordance with paragraph 12.07 of the General Conditions.

ARTICLE 8 - CHANGES IN THE GUARANTEED MAXIMUM PRICE

8.01. The amount of any increases or decreases in GMP which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

Wherever there is a GMP:

1. In the case of net additions in the Work, the amount of any increase in the GMP shall be determined in accordance with paragraph 10.01 of the General Conditions.
2. In the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with paragraph 10.02.C of the General Conditions, and any GMP shall be reduced by mutual agreement.

ARTICLE 9 - PAYMENT PROCEDURES

9.01. Submittal and Processing of Payments

Design Builder shall submit, and Owner shall process, Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will indicate the amount of the Design Builder's fee then payable.

9.02. Milestone Payments; Retainage

1. Owner shall make milestone payments on account of the Cost of Work on the basis of Design Builder's Applications for Payment which are to be submitted on or about the thirtieth (30th) day of each month during performance of the Work as provided in paragraphs 9.02.A.1 and 9.02.A.2 below. Any payments measured by the Schedule of Values (if any) as may be established in paragraph 2.06.A.3 of the General Conditions shall be applicable in assessing progress payments for Work or Changes agreed to be performed on a Lump Sum basis and not otherwise subject to open book reporting (and in the case of Unit Price Work based on the number of units completed).

For Cost of Work, Milestone payments on account of the cost of the Work will be made:

- a. Prior to Substantial Completion one hundred percent 100% of the Cost of the Work completed, in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions. Withholding under 13.03 B of the General Conditions shall apply to all Work including materials and equipment not incorporated in the Work as provided in paragraph 13.02 A of the General Conditions.

1. Ninety (90) percent of invoiced Cost of the Work completed (with the balance being retainage) applied only to Work performed by Subcontractor(s) as provided in paragraph 10.01 A 3. of the General Conditions ("Subcontractor Work"). If Subcontractor(s) Work has been 50% completed as determined by Owner, and if the character and progress of the Subcontractor(s) Work has been satisfactory to Owner, Owner may determine in the exercise of Owner's sole discretion that, as long as the character and progress of the Subcontractor(s) Work remain satisfactory, there will be no additional retainage on account of Subcontractor(s) Work subsequently completed, in which case the remaining payments prior to Substantial Completion will be in an amount equal to 100% of the remaining Subcontractor(s) Work completed less the aggregate of payments previously made. To facilitate Subcontractor closeout, Owner may in the exercise of Owner's sole discretion, release all retainage applicable to any specific Subcontract being presented as finally complete to Design-Builder, and accepted by Owner.

2. One hundred (100) percent of supplier or manufacturer invoices for costs of equipment and materials directly procured by Design Builder and for which Design Builder is committed, or otherwise is appropriate to facilitate beneficial pricing and/or timely delivery. Design Builder shall provide monthly invoices for equipment between the cost of twenty-five thousand dollars- one hundred thousand dollars (US \$25,000-\$100,000).

b. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design Builder to 100 percent of the Contract Price (with the balance being retainage), less such amounts as Owner shall determine that Owner may withhold, in accordance with paragraph 13.03.B of the General Conditions.

9.03. Final Payment

Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price plus fifty (50) percent of the difference of the GMP minus the Contract Price (if a positive balance arises), as provided in 7.02 above.

ARTICLE 10 - INTEREST

10.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of 1.5% per month.

ARTICLE 11 - DESIGN BUILDER'S REPRESENTATIONS

11.01. To induce Owner to enter into this Contract, Design Builder makes the following representations:

- A. Design Builder has examined and carefully studied the Contract Documents (including Exhibits A-I)
- B. Design Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Design Builder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Design Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions (if any) at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified or made available by Owner.
- E. Design Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

F. Design Builder has correlated the information known to Design Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

G. Design Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design Builder.

H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

I. All Design Builders' Work is done in reliance on the completeness, accuracy, and efficacy of the information and requirements provided by Owner and contained in the Shands Document. Design Builder is not responsible to verify or validate such information and requirements, and any such activity is beyond the scope of Design Builder's Work. Any such validation, verification, or change requested or necessary to [documents] and otherwise impacting the efficient and planned design, procurement, and construction of the Work shall entitle Design Builder to an equitable adjustment in Contract Price and Contract Times.

ARTICLE 12 - ACCOUNTING RECORDS

12.01. Design Builder shall keep such full and detailed accounts of all materials, equipment, and labor entering into the Work as may be necessary for proper financial management under this Contract, and the accounting methods shall be satisfactory to Owner. Owner shall be afforded access to all Design Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and other similar data relating to the Cost of the Work and Design Builder's fee. Design Builder shall preserve all such documents for a period of three years after final payment by Owner.

ARTICLE 13 - CONTRACT DOCUMENTS

13.01. The Contract Documents comprise the entire Contract between Owner and Design Builder. The Contract Documents are limited to the Contract, and any and all Attachments, Exhibits, Addenda or Amendments thereto.

13.02. Upon mutual written agreement signed by the Owner and Design Builder, the Contract Documents may be modified by an Amendment.

ARTICLE 14 - MISCELLANEOUS

14.01. The Standard General Conditions of the Contract between Owner and Design Builder are referred to herein as the General Conditions.

14.02. Terms used in this Contract will have the meanings indicated in the General Conditions.

14.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.04. Owner and Design Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

14.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design Builder, who agree that the Contract Documents shall be reformed to replace such stricken

provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 15 – PUBLIC RELATIONS

15.01 Signage. Any and all signage to be located on or about the CUP and any and all signage with Shands' name, logo or likeness, must be approved in writing by Shands prior to placement.

15.02 Name. The CUP facility shall be formally named the GRU South Energy Center.

15.03 Press Releases and Media Placement. Each Party shall notify the other of any press releases, media placements, conference, seminar or other educational or informational materials, whether written or verbal, that mention the other Party and both Parties shall agree to what is presented in any such copy. Media Placement refers to anything in the public-including advertising and website; Shands' PR department, along with Legal, will approve. Receiving Party has 7 days to get back with the requesting Party and if they do not, then it can be deemed approved. In addition, each Party shall notify the other of any inquiries by the media.

IN WITNESS WHEREOF, Owner and Design Builder have signed this Contract in duplicate. One counterpart each has been delivered to Owner and Design Builder. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Design Builder.

This Contract will be effective on October 6, 2006 (which is the Effective Date of the Contract).

CITY OF GAINESVILLE, FL D/B/A GAINESVILLE
REGIONAL UTILITIES

By: Karen S. Johnson Date: 7/24/07
Karen S. Johnson
General Manager

BURNS & MCDONNELL ENGINEERING
COMPANY, INC.

By: Donald F. Greenwood Date: 7/24/07
Donald F. Greenwood
President, Construction Group
11/16/07
7/24/07

Approved as to Form and Legality

By: Raymond O. Marasco, Jr. Date: July 24, 2007
Raymond O. Marasco, Jr.
Utilities Attorney

EXHIBIT A

**SHANDS CENTRAL UTILITY PLANT
STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
GRU AND BMCD**

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**STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
OWNER AND DESIGN BUILDER**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01. Defined Terms

Wherever used in the Contract Documents and printed with first letter capital, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. Addenda – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

2. Application for Payment – The form required by this contract which is to be used by Design Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

3. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

4. Beneficial Use - shall have the meaning as further defined in section 13.06 of these General Conditions.

5. Bonds – Performance and payment bonds and other instruments of security.

6. Central Utility Plant (“CUP”) The building cooling, heating, power total energy system to be constructed on the eastern side of the Project Campus and operated by GRU to provide ECS Services to Shands and similar services to others. Services include electric power, Essential Power, Standby Power, chilled water, steam and Medical Gas infrastructure. The CUP will include all of the facilities to be constructed within the plant and associated Service Lines.

7. Change Order – A written order which is signed by Design Builder and Owner which authorizes an addition, deletion or revision in the Work, and/or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.

8. Chilled Water Performance Guarantee- shall have the meaning as further defined in Exhibit F.

9. Claim – A demand or assertion by Owner or Design Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

10. Combined Heat and Power (“CHP”)- The facilities, which are part of the CUP, consisting of an electrical generating turbine fueled with natural gas that will produce waste heat which in turn will be converted into steam in a heat recovery steam generator (“HRSG”) to either be used directly or to produce chilled water. Additional natural gas may be duct-fired in the HRSG for supplemental steam production. The CHP facility will be dispatched by GRU as a must run generating unit.

11. Contract – The entire and integrated written agreement between Owner and Design Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, Requests for Proposal, and Proposals, whether written or oral.

12. Contractor Drawings- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared, specified, reviewed, recommended, approved, or provided by or through Design Builder and submitted by Design Builder as required.

13. **Contract Price** – The moneys payable by Owner to Design Builder for completion of the Work in accordance with the Contract Documents as detailed in Exhibit H attached hereto.

14. **Contract Times** – The numbers of days or the dates stated in the Contract to (i) achieve Milestones of Substantial Completion and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.

15. **Construction** – The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

16. **Construction Subcontract** – A written agreement between Design Builder and a construction Subcontractor for provision of construction.

17. **Delivery**- means delivery of the equipment to the Site. Contractor will be responsible for unloading and handling at the Site.

18. **Design Builder** – (BMCD) – Burns & McDonnell Engineering Company, Inc. with whom Owner has entered into the Contract.

19. **Design Professional Services** – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Design, Bidding/Negotiating, Procurement, or Construction.

20. **Design Subcontract** – A written contract between Design Builder and a design professional for provision of Design Professional Services.

21. **Drawings** – That part of the Contract Documents prepared or approved by or on behalf of Owner (except those prepared by Design Builder), which graphically shows the scope, extent, and character of the Work to be performed by Design Builder. Contractor Drawings and other Design Builder submittal are not Drawings as so defined.

22. **Effective Date of the Contract** – The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

23. **Energy Commodities Services**- The provision of electric power service, backup emergency power, chilled water service and steam service.

24. **Essential Power**- The power supplied from on site power generation sources which is utilized for code mandated life safety and essential loads.

25. **Field Order** – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

26. **Final Completion**-shall be as defined in Article 13.08.

27. **Grid Power**- The power supplied from off site generation sources via the GRU utility grid.

28. **Guaranteed Maximum Price**- shall have the meaning as further defined in Exhibit H.

29. **Hazardous Environmental Condition** – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

30. **Hazardous Waste** – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

31. **Laws or Regulations** – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

32. **Liens** – Charges, security interests or encumbrances upon real property or personal property.

33. **Medical Gas Infrastructure**-The built environment for the structural support, visual screening, and conduit for conveyance of the gases to the hospital facility. This excluded the storage, process equipment, filling equipment, pumping equipment, valves and other fixtures which are the responsibility of the medical gas supplier and provided by others.

34. **Medical Gases**- Liquid oxygen, liquid nitrogen and nitrous oxide to be stored at and delivered from the CUP.

35. **Milestone** – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

36. **Milestone Payment**- as utilized between the Owner and Design Builder, shall mean the payment expected as result of invoiced Cost of Work – as utilized in reference to Subcontractor Work performed on Lump Sum basis, it shall mean those payments applicable to Subcontractor achieving a milestone, or on agreed upon progress against the Schedule of Values established with the Subcontractor.

37. **Milestone Schedule** – A schedule prepared and maintained by the Design Builder, describing the sequence and duration of the activities comprising the Design Builder's plan to accomplish the Work within the Contract Times.

38. **Notice of Award** – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Contract.

39. **Notice to Proceed** – A written notice given by Owner to Design Builder fixing the date on which the Contract Times will commence to run and on which Design Builder shall start to perform the Work.

40. **Owner** – The individual or entity with whom Design Builder has entered into the Agreement and for whom the Work is to be performed; City of Gainesville, a Florida municipal corporation doing business as Gainesville Regional Utilities (GRU).

41. **Owner's Consultant** – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project.

42. **Partial Utilization** – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

43. **PCBs** – Polychlorinated biphenyls.

44. **Petroleum** – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

45. **Progress Schedule** – A schedule prepared and maintained by the Design Builder, describing the sequence and duration of the activities comprising the Design Builder's plan to accomplish the Work within the Contract Times.

46. **Project** – The Work contained in the Agreement for the engineering design, procurement and construction of a Central Utility Plant at the Project Campus.

47. **Project Campus**- The hospital and ancillary facilities to be constructed by Shands on property owned by, or under the control of, Shands in the area generally bounded on the north by Southwest Archer Road, on the east by Southwest 13th Street, on the south by Southwest 26th Avenue, and on the west by Southwest 16th Street.

48. **Proposal** – The documents submitted by Design Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.

49. **Radioactive Material** – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

50. **Request for Proposals** – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

51. **Resident Project Representative** – The authorized representative of Owner who may be assigned to the Site or any part thereof.

52. **Service Lines**-The wiring, conduit and piping furnished, owned, operated and maintained by GRU within the Project Campus as required for the conveyance of services from the CUP to Shands and retail customers.

53. **Site** - Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design Builder.

54. **Specifications** - The part of the Contract Documents prepared by or for Design Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

55. **Standby Power**- The power supplied from on site power generation sources which is utilized for non-Essential Power loads.

56. **Steam Performance Guarantee**- shall have the meaning as further defined in Exhibit F.

57. **Subconsultant** – An individual or entity other than the Design Builder having a direct contract with the Design Builder or any other Subconsultant for the performance of a part of the Subconsultant Work. Subconsultant Work is not Subcontractor Work.

58. **Subconsultant Work** – Work performed by entities under separate contract with the Design Builder to perform or furnish "Design Professional Services" of the Work, including the performing or furnishing various technical or professional services of engineering or design, or related to, or in support of, the engineering and design functions of the Work.

59. **Subcontractor** – An individual or entity other than a Supplier having a direct contract with Design Builder or with any other Subcontractor for the performance of a part of the Subcontractor Work.

60. **Subcontractor Work**- Work performed by entities under separate contract with Design Builder to provide and supervise craft and trade labor, including the necessary equipment and tools to perform that work related to and in support of the building, fabrication, installation, erection, or otherwise incorporating the tangible equipment and materials to construct the CHP. Subcontractor Work is not Subconsultant Work.

61. **Submittal** – A written or graphic document prepared by or for Design Builder which is required by the Contract Documents to be submitted to Owner by Design Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

62. Substantial Completion – shall be as defined in Article 13.06

63. Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design Builder or any Subcontractor.

64. Temporary Services- The provision of ECS from any backup, alternative or temporary source either to meet Initial Operation Dates or because of the failure or disruption of On-site Electric Power Service, Chilled Water Service or Steam Service (including but not limited to permanent or portable backup electric generators steam boilers and electric chillers).

65. Underground Facilities or Infrastructure – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

66. Unit Price Work – Work to be paid for on the basis of unit prices.

67. Work – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction as set forth in the Contract Documents and specifically established in the Scope of Work.

68. Work Change Directive – A written directive to Design Builder, issued on or after the Effective Date of the Contract and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies.

1.02. Terminology

A. Following words or terms are not defined but, when used in the Contract Documents have the following meaning

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed," or terms of like effect or import to authorize an exercise of reasonable judgment by the Owner. It is intended that such exercise of judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents. The use of any such term or adjective is not intended to and shall not be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work.

2. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

3. The word "defective," when modifying the word "Work" refers to *Subcontractor* Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

4. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

5. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

6. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

7. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design Builder, "provide" is implied.

8. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01. Delivery of Bonds and Evidence of Insurance

A. Within five (5) business days of Design Builder delivering the executed counterparts of the Contracts to Owner, Design Builder shall also deliver to Owner such Bonds as Design Builder may be required to furnish in accordance with paragraph 5.01.A.

B. Evidence of Insurance – Before any Work at the Site is started, Design Builder and Owner shall each deliver to the other, with copies to each additional insured identified herein, certificates of insurance and/or other evidence of insurance (not including the actual policies) which either of them or any additional insured may reasonably request which Contractor and Owner respectively are required to provide and maintain in accordance with Article 5.

2.02. Commencement of Contract Times; Notice to Proceed

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Contract. unless agreed to in writing by Owner and Design Builder, the Contract Times will commence to run no later than the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

2.03. Starting the Work

Design Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04. Before Starting the Work

A. Design Builder's Review of Contract Documents: Before undertaking each part of the Work, Design Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design Builder knew or reasonably should have known thereof acceptance of GMP.

B. Preliminary Schedules: Within 15 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

3. A preliminary cash flow projection estimating that portion of the Contract Price is required upon Owner's request, however no more than 6 requests per year.

2.05. Initial Conference within twenty days after the Contract Times start to run, Design Builder will arrange a conference by Owner and Design Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraph 8.01.A.6 and other matters.

2.06. Initial Acceptance of Schedules

At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design Builder will arrange a conference attended by Design Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04.B. Design Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design Builder until the acceptable schedules are submitted to Owner.

The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design Builder from Design Builder's full responsibility therefor.

Design Builder's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.

Design Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01. Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02. Reference Standards, Specifications, Codes, Laws or Regulations.

- A. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03. Resolving Discrepancies

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04. Amending and Supplementing Contract Documents

Upon mutual agreement the Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including, as applicable, an equitable adjustment in Contract Price, GMP, Design Builder's Fee, or Milestone Schedule, in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);
2. A Work Change Directive;
3. A Change Order;
4. A Field Order.

3.05. Reuse of Documents

All documents including Drawings and Specifications prepared or furnished by Design Builder pursuant to this Contract are for Design Builder's use in completing the Work, and Design Builder shall, with the exception of Design Builder's standard or proprietary drawings and specifications, transfer ownership and property interest therein to the Owner whether or not the Project is completed. Owner may make any use of said documents it so deems. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination will be at Owner's sole risk and without liability or legal exposure to Design Builder and Owner shall indemnify and hold harmless Design Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

3.06. Electronic Data

A. In performing services under this Contract, Design Builder shall be entitled to rely on all information, including electronic media, provided by or on behalf of Owner, or anyone for whom Owner is responsible, hereunder. Equally, Owner shall be entitled to rely on all information, including electronic media, provided by or on behalf of Design Builder, or anyone for whom Design Builder is responsible, hereunder. Design Builder shall not be responsible or liable in any manner for any defect or deficiency in the information supplied or for defects or deficiencies in Design Builder's performance or services to the extent they result from Design Builder's reliance on information provided by or on behalf of Owner.

B. Electronic media, including magnetic and optical disks and magnetic tapes, submitted by Design Builder to Owner or Owner to Design Builder under this Contract are intended to operate on a system of hardware and software identical to that utilized by Design Builder or Owner to produce such media. Neither Design Builder nor Owner warrants or represents the capability of such media to operate on any other system of hardware or software. Design Builder and Owner acknowledge that, with the passage of time, the system on which the electronic media was produced may be changed and updated and agrees that, as applicable, Design Builder and Owner are under no obligation to maintain electronic media for this Project to operate on these systems.

C. Neither party shall be responsible to the other for the effects of computer viruses transmitted through the exchange of electronic media.

**ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS;
HAZARDOUS ENVIRONMENTAL CONDITIONS**

4.01. Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design Builder may make a Claim therefore as provided in Article 9.

B. Upon reasonable written request, Owner shall furnish Design Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws or Regulations.

C. Design Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02. Differing Site Conditions

A. Design Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Design Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03. Reference Points

Design Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to paragraph 8.01.A and shall make no changes or relocations without the prior written approval of Owner. Design Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04. Hazardous Environmental Condition at Site

A. Design Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design Builder, Subcontractors, Suppliers or anyone else for whom Design Builder is responsible.

B. If Design Builder encounters a Hazardous Environmental Condition, Design Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

E. To the fullest extent permitted by law, the Owner shall indemnify, defend and hold harmless the Contractor, Subcontractors of any tier, Architect, Architect's or Contractor's consultants and agents and employees of any of them from and against claims (including without limitation, all penalties, fines and administrative or civil sanctions arising out of or related to such claim), costs, damages, judgments, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to the regulation and/or protection of the environment, including without limitation, losses incurred in connection with characterization, handling, transportation storage, removal, remediation, disturbance or disposal of or the bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent such claim, damage or cost is due to the negligence of the party seeking indemnity.

F. To the fullest extent permitted by Laws or Regulations, Design Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by hazardous material introduced to the project site by Design Builder or anyone for whom Design Builder is responsible. Nothing in this paragraph 4.04.F shall obligate Design Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01. Performance, Payment and Other Bonds

A. Design Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. All Bonds will be in the prescribed or pre-approved forms and executed by a surety acceptable to Owner who is licensed to conduct business in the State of Florida having a Best Rating of at least "A-VII". Design Builder shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Design Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B and 5.02, Design Builder shall within twenty days thereafter substitute another Bond and surety or a form of Letter of Credit in an amount equal to the Bond and surety which shall comply with the requirements of paragraphs 5.01.B and 5.02

D The costs of providing the Bonds so specified in this Contract shall be a reimbursable item included in the Cost of Work.

5.02. Licensed Sureties and Insurers.

All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required.

5.03. Certificates of Insurance

A. Design Builder shall deliver to Owner, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Design Builder is required to purchase and maintain.

B. Owner shall deliver to Design Builder, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance requested by Design Builder or any other additional insured) which Owner is required to purchase and maintain.

5.04. Design Builder's Liability Insurance

Design Builder shall purchase policies of insurance as described in this Article, with insurance carriers authorized to do business in the State of Florida having a Best Rating of at least "A-:VII":

The insurance required by paragraph 5.04:

1. Workers' Compensation:

- | | |
|---|-----------|
| (a) State | Statutory |
| (b) Applicable Federal (e.g., Longshoremen's) | Statutory |

Employer's Liability:

\$1,000,000	Per Accident
\$1,000,000	Each Employee

Disease, Policy Limit

\$1,000,000	Disease
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2. Commercial General Liability including Premises-Operations; Independent Contractor's Liability; Products and Completed Operations; Minimum limit of \$2,000,000 total per project aggregate.

Umbrella excess liability shall be \$10,000,000 over primary insurance per project aggregate.

A. Design Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design Builder's performance of the Work and Design Builder's other obligations under the Contract Documents, whether it is to be performed by Design Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

- 1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;**
- 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design Builder's employees;**
- 3. Claims for damages because of property damage, bodily injury, sickness or disease, or death of any person other than Design Builder's employees.**
- 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design Builder, or (ii) by any other person for any other reason;**
- 5. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.**

B. The policies of insurance required by paragraph 5.04.A shall:

- 1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.5 inclusive, (subject to any customary exclusion in respect of Professional Liability, Workers Compensation, and Employers Liability) include as additional insureds Owner and Shands, and include coverage for the respective officers, directors, partners, and employees, agents, of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby to the extent such losses are caused by Design Builder's negligence. A provision similar to this including Design Builder as an additional insured, in a reciprocal manner, in all contracts entered into by Owner with Owner's other consultants and subcontractors shall be required, and is a condition precedent of enforcement of this obligation upon Design Builder in favor of those other consultants and subcontractors. These mutual additional insured provisions shall be applicable for three (3) years following Final Completion.**
- 2. Include at least the specific coverages and be written for not less than the limits of liability provided above or required by Laws or Regulations, whichever is greater;**
- 3. Include contractual liability insurance covering Design Builder's indemnity obligations under paragraphs 6.11.A.3 and 6.21;**
- 4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated herein to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design Builder pursuant to paragraph 5.03 will so provide);**
- 5. Remain in effect at least until final payment and at all times thereafter when Design Builder may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and**
- 6. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design Builder shall furnish Owner and each other additional insured indicated herein to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).**

5.05. Owner's Liability Insurance

In addition to the insurance required to be provided by Design Builder under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06. Property Insurance

5.06.1. Design Builder-Furnished Insurance.

Design Builder shall procure and maintain in full force and effect at all times from the effective date of the Notice to Proceed to Final Completion (with the exception of Builder's Risk below which shall run through Substantial Completion CHP Date) policies of insurance as described in this Article, with insurance carriers authorized to do business in the State of Florida having a Best Rating of at least "A-:VII":

5.06.2. Builder's Risk

A. Builder's Risk Insurance on an "all risk" basis (excluding Design Builder's equipment and property not intended to be incorporated into the Work except as agreed by Design Builder and Owner), including but not limited to coverage against damage or loss caused by earth movement, flood, windstorm, and operational testing; fire and extended coverage; and coverage of mechanical breakdown and electrical malfunction. Such insurance shall be written on a replacement cost basis. The policy will include hot test coverage for start-up. The policy shall also list Design Builder as an insured, and Owner and Design Builder's Subcontractors as additional insureds, and provide, in amounts reasonably acceptable to Design Builder, for (1) coverage for removal of debris, (2) transit coverage, not including ocean marine coverage, and (3) off-site storage coverage. The procurement of the Builder's Risk insurance policy shall be included as a reimbursable Cost of the Work.

B. Marine Cargo Insurance written on a form acceptable to Design Builder, insuring equipment to be installed against loss or damage arising from customary "all risk" marine perils while in transit, if applicable, at Design Builder's request and at Owner's cost (over and above the Contract Price as of the effective date of this Contract). Such insurance shall be written in amounts acceptable to Design Builder.

5.06.3. Owner Furnished Insurance

Owner shall procure and maintain in full force and effect at all times property insurance for existing facility and assets, including those which become assets at the time risk of loss is to transfer to Owner for the portions of Work have reached Substantial Completion.

5.06.4. Provisions Applicable to both Design Builder and Owner

A. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Article 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Design Builder and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Article 5.07.

B. Owner shall be responsible for purchasing and maintaining any property insurance specified in this Article 5.06 to protect the interests of Design Builder, Subcontractor, or others in the Work to the extent of any deductible amounts that are identified herein. The risk of loss within such identified deductible amount will be borne by Owner or Shands, as applicable.

C. If Design Builder requests in writing that other special insurance be included in the property insurance policies provided under Article 5.06, Owner shall, if possible and commercially reasonable, include such insurance, and the cost thereof will be charged to Design Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design Builder whether or not such other insurance has been procured by Owner.

5.07. Waiver of Rights

A. Owner and Design Builder intend that all policies required by paragraph 5.06 will protect Owner, Owner's Consultant, Design Builder, Subcontractors, Suppliers, and all other individuals or entities identified herein as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner, Design Builder and Shands (as provided in the GRU/Shands contract documents, including, but not limited to Article X, paragraph H, as Design Builder is a GRU subcontractor) waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work and the Project Campus, and, in addition, waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner (and Shands to the extent provided to Owner in the GRU/Shands Agreement) waives all rights against Design Builder, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner (or Shands as applicable); and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner (or completed Project Campus or part thereof by Shands) during partial utilization pursuant to paragraph 13.06, after Substantial Completion pursuant to paragraph 13.05, or after final payment pursuant to paragraph 13.08.

C. Any insurance policy maintained by Owner (or Shands to the extent provided in the GRU/Shands Agreement) covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design Builder, Subcontractors, Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08. Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 that are purchased or maintained by Owner, or required to be provided by Owner, will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08 B. Owner shall deposit in a separate account any money so received, and shall distribute any money so received in accordance with the terms of the insurance policy. The damaged work shall be repaired or replaced. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary as provided for directly above, shall have power to adjust and settle any loss with their insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with their insurers in accordance with such contract as the parties in interest may reach. If no such contract among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09. Acceptance of Bonds and Insurance; Option to Replace

If either Owner, Shands, or Design Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.01B. Owner and Design Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10. Owner Obligations to Design Builder; Design Builder's limitation of obligation and liability to Shands:

Owner shall hold harmless Design Builder for any damages in excess of the Limits of Liability as provided for in Article 18, that Shands may claim, or Design Builder may pay directly to Shands, any liabilities incurred or damages associated with claims Shands may make against Design Builder (whether insured or not), or Design Builder may be required to indemnify Shands, or claims made by GRU on behalf of Shands, shall be included in the Design Builder's aggregate limits of liability so contained in this Contract.

ARTICLE 6 – DESIGN BUILDER'S RESPONSIBILITIES

6.01. Design Professional Services

A. **Standard of Care.** The standard of care for Design Professional Services performed or furnished under this Contract will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

B. **Preliminary Design Phase.** After the Contract Times commence to run, Design Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design Builder with whom consultation is to be undertaken in connection with the Project;
4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Design Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and
7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. **Final Design Phase.** After written acceptance by Owner of the preliminary design phase documents Design Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design Builder and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);

2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02. Supervision and Superintendence of Construction

A. Design Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design Builder's representative at the Site and shall have authority to act on behalf of Design Builder.

6.03. Labor, Working Hours

A. Design Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04. Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, , light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work. GRU shall provide, at no cost to BMCD, electrical power for the duration of the construction project.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Document. All warranties and guarantees specifically called for by the Contract Documents shall run expressly and be assigned directly to the Owner. If reasonably required by Owner, Design Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

C. Any Owner furnished or procured services, materials, or equipment shall conform to the above requirements, and shall be delivered as indicated on the Progress Schedule, or otherwise in a timely matter so as to not impact the planned or efficient progress of the Work.

6.05. Progress Schedule

A. Design Builder shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time as provided below:

1. Design Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule. Such adjustments will conform generally to the progress schedule then in effect.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones), or Contract Costs shall be submitted in accordance with the requirements of Article 11.02, as soon as such impacts are reasonably discernable and the cost can be reasonably estimated or liquidated.. Such adjustments may only be made by a Change Order.

6.06. Concerning Subcontractors, Suppliers, and Others

A. Design Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design Builder shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Design Builder has reasonable objection.

B. Design Builder shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design Builder is responsible for Design Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design Builder.

D. Design Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design Builder.

E. All Work performed for Design Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subcontract or Construction Subcontract between Design Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such contract is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the contract between the Design Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design Builder will obtain the same.

F. All work performed for the Design Builder by a Subcontractor will be pursuant to an appropriate agreement between the Design Builder and Subcontractor. Design Builder shall make a good faith effort to ensure that all major subcontracts shall bind the Subcontractor to at least the following pass down terms and conditions of the Contract Documents:

5.07 A.	Waiver of Rights
6.03	Labor, Scheduled Working Hours
6.10	Taxes
6.13	Safety and Protection
6.21 A.	Indemnification
15.01	Dispute Resolution
16.06	Controlling Law
18.02	Indemnity Liability
Exhibit C	Living Wage Ordinance

Additionally Design Builder shall pass down the terms and conditions of 5.04 Design Builder's Liability Insurance to Subcontractors except that required amounts may be reduced by the Design Builder based upon the size of the subcontract and work to be performed.

6.0.7 Patent Fees and Royalties

A. Design Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. To the fullest extent permitted by Laws or Regulations, Design Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device identified in the Conceptual Documents and incorporated in to the Work..

6.08. Permits.

Unless otherwise provided in the Contract Documents, Design Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the construction of the Work. Owner shall assist Design Builder, when necessary, in obtaining such permits, licenses and approvals. Design Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto. Owner shall be solely responsible for any environmental permits or licenses or permits relating to the operation or occupancy of the facility.

6.09. Laws or Regulations

A. Design Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design Builder's compliance with any Laws or Regulations.

B. If Design Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.