

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Contract No: N/A  
 Bid No: N/A



**AGC DOCUMENT NO. 410**  
**STANDARD FORM OF DESIGN-BUILD**  
**AGREEMENT AND GENERAL CONDITIONS**  
**BETWEEN OWNER AND DESIGN-BUILDER**  
**(Where the Basis of Payment is the Cost of the Work**  
**Plus a Fee with a Guaranteed Maximum Price)**

*This standard form agreement was developed with the advice and cooperation of the AGC Private Industry Advisory Council, a number of Fortune 500 owners' design and construction managers who have been meeting with AGC contractors to discuss issues of mutual concern. AGC gratefully acknowledges the contributions of these owners' staff who participated in this effort to produce a basic agreement for construction.*

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**AMENDMENT NO. 1**

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

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**ARTICLE 1**

**AGREEMENT**

This Agreement is made this 31<sup>st</sup> <sup>of</sup> day of July <sup>October</sup> in the year 2007

by and between the

**OWNER**

(Name and Address)

The Board of County Commissioners, Nassau County, Florida  
96160 Nassau Place  
Yulee, Florida 32097

and the

**DESIGN-BUILDER**

(Name and Address)

C. Young Construction, L.L.C.  
9640 Sunbeam Center Drive, Suite 1  
Jacksonville, Florida 32257

for services in connection with the following

**PROJECT**

(Name, location and brief description)

Design-Build Services  
Building Department Facility  
Nassau County, Florida

**Notice to the parties shall be given at the above addresses.**

## ARTICLE 2

### GENERAL PROVISIONS

**2.1 TEAM RELATIONSHIP** The Owner and the Design-Builder agree to proceed with the Project on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion if they are established by Amendment No. 1. The Design-Builder agrees to procure or furnish, as permitted by the law of the state where the project is located, the design phase services and construction phase services as set forth below.

**2.1.1** The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

**2.1.2** Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

**2.2 ARCHITECT/ENGINEER** Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or as permitted by the law of the state where the Project is located. The standard of care for architectural and engineering services performed under this Agreement shall be the care and skill ordinarily used by members of the architectural and engineering professions practicing under similar conditions at the same time and locality. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is VRL Architects, Inc. ♦

**2.3 EXTENT OF AGREEMENT** This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Owner and the Design-Builder agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision is for the exclusive benefit of the Owner and the Design-Builder and not for the benefit of any third party nor any third party beneficiary, except to the extent expressly provided in the Agreement.

## 2.4 DEFINITIONS

**.1** The *Contract Documents* consist of:

a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Owner and the Design-Builder, including Amendment No. 1 if executed;

b. this Agreement except for the existing Contract Documents set forth in item e. below;

c. the most current documents approved by the Owner pursuant to Subparagraph 3.1.4, 3.1.6 or 3.1.7 ;

d. the information provided by the Owner pursuant to Clause 4.1.2.1;

e. the Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;

f. the Owner's Program provided pursuant to Subparagraph 4.1.1;

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

**.2** The term *day* shall mean calendar day, unless otherwise specifically defined.

**.3** *Design-Builder's Fee* means the compensation paid to the Design-Builder for salaries and other mandatory or customary compensation of the Design-Builder's employees at its principal and branch offices except employees listed in Subparagraph 8.2.2, general and administrative expenses of the Design-Builder's principal and branch offices other than the field office, and the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work, and profit.

**.4** *Defective Work* is any portion of the Work not in conformance with the Contract Documents as more fully described in Paragraph 3.8.

**.5** The term *Fast-track* means accelerated scheduling which involves commencing construction prior to the completion of drawings and specifications and then using means such as bid packages and efficient coordination to compress the overall schedule.

.6 *Final Completion* occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.

.7 A *Material Supplier* is a party or entity retained by the Design-Builder to provide material and equipment for the Work.

.8 *Others* means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

.9 The *Owner* is the person or entity identified as such in this Agreement and includes the Owner's Representative.

.10 The *Owner's Program* is an initial description of the Owner's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

.11 The *Project*, as identified in Article 1, is the building, facility and/or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.

.12 A *Subcontractor* is a party or entity retained by the Design-Builder as an independent contractor to provide the on-site labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Owner or any separate contractor's subcontractors.

.13 *Substantial Completion of the Work*, or of a designated portion, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Owner can or does occupy or utilize the Project, or a designated portion, for the use for which it is intended, in accordance with Paragraph 10.4. The issuance of a Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and the Design-Builder. The Certificate shall state the respective responsibilities of the Owner and the Design-Builder for security, maintenance, heat,

utilities, damage to the Work, and insurance. The Certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the time frame, if any, established in Amendment No. 1 for the Date of Final Completion.

.14 A *Subsubcontractor* is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

.15 The *Work* is the Design Phase Services procured or furnished in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

.16 *Worksite* means the geographical area at the location mentioned in Article 1 where the Work is to be performed.

### ARTICLE 3

#### DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program, as such Program may be modified by the Owner during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in Paragraph 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal.

The Design-Builder and the Owner may establish a Fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a Fast-track approach and the Schedule of the Work shall be included as an exhibit to this Agreement. In the absence of such agreement, the parties shall proceed in accordance with Paragraphs 3.1 and 3.3 below.

3.1 **DESIGN PHASE SERVICES**  
(See GMP proposal dated June 21, 2007 (Exhibit 2) for project specific scope)

3.1.1 **PRELIMINARY EVALUATION** The Design-Builder shall review the Owner's Program to ascertain the requirements of the Project and shall verify such requirements with the Owner. The Design-Builder's review shall also provide to the Owner a preliminary evaluation of the site

with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, to determine the most desirable approach on the basis of cost, technology, quality and speed of delivery. The Design-Builder will also review existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its Preliminary Evaluation. Based upon its review and verification of the Owner's Program and other relevant information the Design-Builder shall provide a Preliminary Evaluation of the Project's feasibility for the Owner's acceptance. The Design-Builder's Preliminary Evaluation shall specifically identify any deviations from the Owner's Program.

**3.1.2 PRELIMINARY SCHEDULE** The Design-Builder shall prepare a preliminary schedule of the Work. The Owner shall provide written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of the Owner, the Architect/Engineer and the Design-Builder necessary to meet the Owner's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Design-Builder shall recommend corrective action to the Owner in writing.

**3.1.3 PRELIMINARY ESTIMATE** When sufficient Project information has been identified, the Design-Builder shall prepare for the Owner's acceptance a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Owner's budget, the Design-Builder shall make recommendations to the Owner.

**3.1.4 SCHEMATIC DESIGN DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Schematic Design Documents, based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design-Builder's Preliminary Evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and estimate based on the Schematic Design Documents.

**3.1.5 PLANNING PERMITS** The Design-Builder shall obtain and ~~the Owner shall~~ pay for all planning permits necessary for the construction of the Project.

**3.1.6 DESIGN DEVELOPMENT DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. The Design-Builder shall update the schedule and estimate based on the Design Development Documents.

**3.1.7 CONSTRUCTION DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws and regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Owner prior to commencement of construction. If a GMP has not been established, the Design-Builder shall prepare a further update of the schedule and estimate based on the Construction Documents.

**3.1.8 OWNERSHIP OF DOCUMENTS** Upon the making of payment pursuant to Paragraph 10.5, the Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by the Design-Builder, its Architect/Engineer, Subcontractors and consultants and distributed to the Owner for this Project. ("Design-Build Documents")

.1 If this Agreement is terminated pursuant to Paragraph 12.2, the Owner shall receive ownership of the property rights, except for copyrights, of the Design-Build Documents upon payment for all Work performed in accordance with this Agreement, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.

.2 If this Agreement is terminated pursuant to Paragraph 12.3, the Owner shall receive ownership of the property rights, except for copyrights, of the Design-Build Documents upon payment of all sums provided in Paragraph 12.3, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.

.3 The Owner may use, reproduce and make derivative works from the Design-Build Documents for subsequent renovation and remodeling of the Work, but shall not use, reproduce or make derivative works from the Design-Build Documents for other projects without the written authorization of the Design-Builder, who shall not unreasonably withhold consent.

.4 The Owner's use of the Design-Build Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligation pursuant to Paragraph 3.7, and the Owner shall defend, indemnify and hold harmless the Design-Builder, its Architect/Engineer, Subcontractors and consultants, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from the Owner's use of the Design-Build Documents.

.5 The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.

## 3.2 GUARANTEED MAXIMUM PRICE (GMP)

**3.2.1 GMP PROPOSAL** At such time as the Owner and the Design-Builder jointly agree, the Design-Builder shall submit a GMP Proposal in a format acceptable to the Owner. Unless the parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in Article 8 and the Design-Builder's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9.

**3.2.1.1** If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to the Owner, the Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with the Owner's Program. Such further development does not

include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

**3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE** The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

.2 a list of allowances and a statement of their basis;

.3 a list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

.4 the Date of Substantial Completion and/or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion and/or the Date of Final Completion is based;

.5 a schedule of applicable alternate prices;

.6 a schedule of applicable unit prices;

.7 a statement of Additional Services included, if any;

.8 the time limit for acceptance of the GMP proposal;

.9 the Design-Builder's Contingency as provided in Subparagraph 3.2.7;

.10 a statement of any work to be self-performed by the Design-Builder; and

.11 a statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

**3.2.3 REVIEW AND ADJUSTMENT TO GMP PROPOSAL** The Design-Builder shall meet with the Owner to review the GMP Proposal. In the event that the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Design-Builder, who shall make appropriate adjustments to the GMP, its basis or both.

**3.2.4 ACCEPTANCE OF GMP PROPOSAL** Upon acceptance by the Owner of the GMP Proposal, as may be amended by the Design-Builder in accordance with Subparagraph 3.2.3, the GMP and its basis shall be set forth in Amendment No. 1. The GMP and the Date of Substantial Completion and/or the Date of Final Completion shall be subject to modification in Article 9.

**3.2.5 FAILURE TO ACCEPT THE GMP PROPOSAL** Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Design-Builder, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

- .1 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with Subparagraph 3.2.4;
- .2 Direct the Design-Builder to proceed on the basis of reimbursement as provided in Articles 7 and 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or
- .3 Terminate the Agreement for convenience in accordance with Paragraph 12.3.

In the absence of a GMP the parties may establish a Date of Substantial Completion and/or a Date of Final Completion.

**3.2.6 PRE-GMP WORK** Prior to the Owner's acceptance of the GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

**3.2.7 DESIGN-BUILDER'S CONTINGENCY** The GMP Proposal will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Owner for use at the Design-Builder's discretion to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

### 3.3 CONSTRUCTION PHASE SERVICES

**3.3.1** The Construction Phase will commence upon the issuance by the Owner of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, the Design-Builder shall prepare for the Owner's written approval a list of the documents that are applicable to the part of the Work which the Owner has authorized, which list shall be included in the Owner's written notice to proceed.

**3.3.2** In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and sub-contracted items.

**3.3.3** The Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

**3.3.4** The Design-Builder shall obtain and the Owner shall pay for the building permits necessary for the construction of the Project.

**3.3.5** The Design-Builder shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

**3.3.6** The Design-Builder shall provide periodic written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by the Owner and the Design-Builder.

**3.3.7** The Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals.

**3.3.8** The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

**3.3.9** The Design-Builder shall prepare and submit to the Owner:

final marked up as-built drawings  
and

updated electronic data

~~(Cross out one of the above)~~

in general documenting how the various elements of the Work including changes were actually constructed or installed, or as defined by the parties by attachment to this Agreement.

**3.4 SCHEDULE OF THE WORK** The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be revised as required by the conditions of the Work.

**3.5 SAFETY OF PERSONS AND PROPERTY**

**3.5.1 SAFETY PRECAUTIONS AND PROGRAMS** The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Paragraph establish the responsibility for safety between the Owner and the Design-Builder, they do not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

**3.5.2** The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1 its employees and other persons at the Worksite;
- .2 materials, supplies and equipment stored at the Worksite for use in performance of the Work; and
- .3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

**3.5.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE** The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

**3.5.4** The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by law or regulation. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

**3.5.5** Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

**3.5.6** If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in Article 8. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

**3.6 HAZARDOUS MATERIALS**

**3.6.1** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Design-Builder shall not be obligated to commence or continue work until all Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory approved by the appropriate government agency.

**3.6.2** If after the commencement of the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.

**3.6.3** The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

**3.6.4** The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work of the Design-Builder. The Design-



Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

**3.6.5** If the Design-Builder incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion.

**3.6.6** Provided the Design-Builder, its Subcontractors, Material Suppliers and Subsubcontractors, and the agents, officers, directors and employees of each of them, have not, acting under their own authority, knowingly entered upon any portion of the Work containing Hazardous Materials, and to the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors, Material Suppliers and Subsubcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

**3.6.7** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

**3.6.8** During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this Paragraph for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

**3.6.9** The terms of this Paragraph 3.6 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

**3.7 ROYALTIES, PATENTS AND COPYRIGHTS** The Design-Builder shall pay all royalties and license fees which

may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Design-Builder harmless from all suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

### **3.8 WARRANTIES AND COMPLETION**

**3.8.1** The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion. The Design-Builder agrees to correct all construction performed under this Agreement which is defective in workmanship or materials within a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

**3.8.2** To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. To the extent products, equipment, systems or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.**

**3.8.3** The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

**3.8.4** The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

**3.8.5** With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start up operations, and adjusting and balancing of systems and equipment for readiness.

**3.9 CONFIDENTIALITY** The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Subsubcontractors and the Architect/Engineer as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement.

**3.10 ADDITIONAL SERVICES** The Design-Builder shall provide or procure the following Additional Services upon the request of the Owner. A written agreement between the Owner and the Design-Builder shall define the extent of such Additional Services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment No. 1.

.1 Development of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

.3 Surveys, site evaluations, legal descriptions and aerial photographs.

.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of Owner-provided drawings and information.

.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.

.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Subsubcontractors or the Architect/Engineer.

.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of the Work.

.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder.

.14 The premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work.

.15 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, the Design-Builder's office, the Owner's office and the Worksite.

.16 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up.

.17 Services for tenant or rental spaces not a part of this Agreement.

.18 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

.19 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

.20 Document reproduction exceeding the limits provided for in this Agreement.

**3.11 DESIGN-BUILDER'S REPRESENTATIVE** The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is Jeremy Isbell

## ARTICLE 4

### OWNER'S RESPONSIBILITIES

#### 4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including the Owner's Program and other relevant information.

4.1.2 The Owner shall provide:

.1 all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;

.2 inspection and testing services during construction as required by law or as mutually agreed; and

.3 unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.3 The Owner shall provide reasonable evidence satisfactory to the Design-Builder, prior to commencing the Work and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including a reasonable allowance for changes in the Work as may be approved in the course of the Work. Unless such reasonable evidence is provided, the Design-Builder shall not be required to commence or continue the Work. The Design-Builder may stop Work after seven (7) days written notice to the Owner if such evidence is not presented within a reasonable time. The failure of the Design-Builder to insist upon the providing of this evidence at any one time

shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Design-Builder's right to require that such evidence be provided at a later date.

4.1.4 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

#### 4.2 RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Owner shall provide the Owner's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1, and the GMP Proposal as set forth in Paragraph 3.2.

#### 4.3 RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Owner shall review the Schedule of the Work as set forth in Paragraph 3.4 and timely approve the milestone dates set forth.

4.3.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder.

4.3.3 The Owner shall communicate with the Design-Builder's Subcontractors, Material Suppliers and the Architect/Engineer only through or in the presence of the Design-Builder. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.

4.3.4 The Owner shall provide insurance for the Project as provided in Article 11.

**4.4 OWNER'S REPRESENTATIVE** The Owner's Representative is Whitey Moran, Building Official

The Representative:

.1 shall be fully acquainted with the Project;

.2 agrees to furnish the information and services required of the Owner pursuant to Paragraph 4.1 so as not to delay the Design-Builder's Work; and

.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its

representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

**4.5 TAX EXEMPTION** If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall defend, indemnify and hold the Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

## ARTICLE 5

### SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Architect/Engineer.

**5.1 RETAINING SUBCONTRACTORS** The Design-Builder shall not retain any subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to compensate the Design-Builder for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

**5.2 MANAGEMENT OF SUBCONTRACTORS** The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

**5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS** The Design-Builder shall provide for assignment of subcontract agreements in the event that the Owner terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties.

**5.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

**5.5 LABOR RELATIONS** (Insert here or attach as exhibit as necessary any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended.)

None

## ARTICLE 6

### TIME

**6.1 DATE OF COMMENCEMENT** The Date of Commencement is the effective date of this Agreement as first written in Article 1 unless otherwise set forth below: (Insert here any special provisions concerning Notices to Proceed and the Date of Commencement.)

Owner shall issue a written Notice to Proceed upon final execution of this agreement to establish the Date of Commencement.

The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

**6.2 SUBSTANTIAL/FINAL COMPLETION** Unless the parties agree otherwise, the Date of Substantial Completion and/or the Date of Final Completion shall be established in Amendment No. 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Design-Builder may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion and/or Date of Final Completion of the Work shall be established in Amendment No. 1. If a GMP is not established and the parties desire to establish a Date of Substantial Completion and/or Date of Final Completion, it shall be set forth in Amendment No. 1.

**6.2.1** Time limits stated in the Contract Documents are of the essence.

**6.2.2** Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder or the Owner.

## 6.3 DELAYS IN THE WORK

6.3.1 If causes beyond the Design-Builder's control delay the progress of the Work, then the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or Others, the Owner preventing the Design-Builder from performing the Work pending dispute resolution, Hazardous Materials or differing site conditions. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of the Design-Builder, Subcontractors, Sub-subcontractors, Material Suppliers or the Architect/Engineer.

6.3.2 To the extent a delay in the progress of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the Project but not specifically related to the Worksite, governmental agencies, or unavoidable accidents or circumstances, the Design-Builder shall only be entitled to its actual costs without fee and an extension of the Date of Substantial Completion and/or the Date of Final Completion.

6.3.3 In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

## ARTICLE 7

### COMPENSATION

#### 7.1 DESIGN PHASE COMPENSATION

7.1.1 To the extent required by applicable law, the cost of services performed directly by the Architect/Engineer is computed separately and is independent from the Design-Builder's compensation for work or services performed directly by the Design-Builder; these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Design-Builder, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Design-Builder and the Architect/Engineer.

7.1.2 The Owner shall compensate the Design-Builder for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP Proposal, if applicable, as described in Paragraph 3.2, as follows:

(State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)

Stipulated sum of One Hundred Thirty Two Thousand Dollars (\$132,000.00) to be paid on a percentage of completion basis. See Design Phase

Service fees as identified in C. Young Construction proposal dated June 21, 2007 which is considered an integral component of this contract and defines the scope of services to be performed.

7.1.3 Compensation for Design Phase Services, as part of the Work, shall include the Design-Builder's Fee as established in Paragraph 7.3, paid in proportion to the services performed, subject to adjustment as provided in Paragraph 7.4.

7.1.4 Compensation for Design Phase Services shall be equitably adjusted if such services extend beyond 120 calendar days from the date of this Agreement for reasons beyond the reasonable control of the Design-Builder or as provided in Paragraph 9.1. For changes in Design Phase services, compensation shall be adjusted as follows:

Compensation will be negotiated at the time of delay or change in scope and will be mutually agreeable before extending services.

7.1.5 Payment shall be made in accordance with the time standards established in the Local Government Prompt Payment Act which is attached herewith as Exhibit 6.

7.1.5 ~~Within fifteen (15) days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) days after accepting such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.~~

7.1.6 If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) days after receipt of the notice by the Owner, and after such seven (7) day period, stop the Work until payment of the amount owing has been received.

1.7 Payments due pursuant to Subparagraph 7.1.5, shall bear interest from the date payment is due at the prime rate prevailing at the location of Project.

## 2 CONSTRUCTION PHASE COMPENSATION

2.1 The Owner shall compensate the Design-Builder for work performed following the commencement of the Construction Phase on the following basis:

.1 the Cost of the Work as allowed in Article 8; and

.2 the Design-Builder's Fee paid in proportion to the services performed subject to adjustment as provided in Paragraph 7.4.

.2.2 The compensation to be paid under this Paragraph 2 shall be limited to the GMP established in Amendment No. 1, as the GMP may be adjusted under Article 9.

.2.3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in Paragraph 7.1, or as mutually agreed.

2.3 DESIGN-BUILDER'S FEE The Design-Builder's fee shall be as follows, subject to adjustment as provided in Paragraph 7.4:

(State whether a stipulated sum or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)

Design Builders fee for construction will be a fixed number equal to six and one half percent (6.5%) of the estimated cost of construction as identified in the GMP. Fee shall be payable monthly based on percent complete.

2.4 ADJUSTMENT IN THE DESIGN-BUILDER'S FEE Adjustment in the Design-Builder's Fee shall be made as follows:

.1 for changes in the Work as provided in Article 9, the Design-Builder's Fee shall be adjusted as follows:

Fifteen percent (15%) as long as the change does not affect the duration of construction. If duration is affected, fees will be negotiated.

.2 for delays in the Work not caused by the Design-Builder, except as provided in Subparagraph 6.3.2, there will be an equitable adjustment in the Design-Builder's Fee to compensate the Design-Builder for increased expenses; and

.3 if the Design-Builder is placed in charge of managing the replacement of an insured or uninsured loss, the Design-Builder shall be paid an additional fee in the same proportion that the Design-Builder's Fee bears to the estimated Cost of the Work for the replacement.

## ARTICLE 8

### COST OF THE WORK

The Owner agrees to pay the Design-Builder for the Cost of the Work as defined in this Article. This payment shall be in addition to the Design-Builder's Fee stipulated in Paragraph 7.3.

#### 8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.1.

#### 8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work.

8.2.2 Salaries of the Design-Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

Employees performing duties directly related to the management of this project including, but not limited to, project executive, project manager, assistant project manager, accounting, and clerical.

**8.2.3** Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

**8.2.4** Reasonable transportation, travel, hotel and moving expenses of the Design-Builder's personnel incurred in connection with the Work.

**8.2.5** Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.

**8.2.6** Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.

**8.2.7** Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Architect/Engineer and compensated in Paragraph 7.1.

**8.2.8** Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value and/or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.

**8.2.9** Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

**8.2.10** Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure or deems necessary, and approved by the Owner.

**8.2.11** Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.

**8.2.12** Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Design-Builder is not responsible as set forth in Paragraph 3.7, and deposits lost for causes other than the Design-Builder's negligence.

**8.2.13** Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work and/or redesign during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such corrective work and/or redesign did not arise from the negligence of the Design-Builder.

**8.2.14** All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

**8.2.15** Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the Worksite and reasonable petty cash expenses at the field office.

**8.2.16** All water, power and fuel costs necessary for the Work.

**8.2.17** Cost of removal of all non-hazardous substances, debris and waste materials.

**8.2.18** Costs incurred due to an emergency affecting the safety of persons and/or property.

**8.2.19** Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Design-Builder, reasonably and properly resulting from the Design-Builder's performance of the Work.

**8.2.20** All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

**8.3 DISCOUNTS** All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## ARTICLE 9

### CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Work Change Directive, or a minor change in the work, subject to the limitations stated in the Contract Documents.

#### 9.1 CHANGE ORDER

9.1.1 The Design-Builder may request and/or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the GMP or the estimated cost of the work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and shall be performed under the applicable conditions of the Contract Documents.

9.1.2 Each adjustment in the GMP and/or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and the Design-Builder's Fee, with the Design-Builder's Fee not to exceed Fifteen percent (15 %). ♦  
provided the project duration is not extended.

9.1.3 The Owner and the Design-Builder shall negotiate in good faith an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion shall not be unreasonably withheld.

#### 9.2 WORK CHANGE DIRECTIVES

9.2.1 The Owner may issue a written Work Change Directive directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate, the compensation for Design Phase Services.

9.2.2 The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, the

Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, arising out of Work Change Directives. As the changed work is completed, the Design Builder shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) days of the issuance of the Work Change Directive. Pending final determination of cost to the Owner, amounts not in dispute may be included in applications for payment and shall be paid by Owner.

9.2.3 If the Owner and the Design-Builder agree upon the adjustments in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, for a change in the Work directed by a Work Change Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Change Directives issued since the last Change Order.

#### 9.3 MINOR CHANGES IN THE WORK

9.3.1 The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

9.3.2 The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

9.4 **UNKNOWN CONDITIONS** If in the performance of the Work the Design-Builder finds latent, concealed or subsurface physical conditions which materially differ from the conditions the Design-Builder reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed. The Design-Builder shall provide the Owner with written notice within the time period set forth in Paragraph 9.6.



## 9.5 DETERMINATION OF COST

9.5.1 An increase or decrease in the GMP and/or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 unit prices set forth in this Agreement or as subsequently agreed;
- .2 a mutually accepted, itemized lump sum;
- .3 costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Design-Builder's Fee as determined in Subparagraph 7.4.1; or
- .4 if an increase or decrease cannot be agreed to as set forth in Clauses 9.5.1.1 through 9.5.1.3 above, and the Owner issues a Work Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Design-Builder's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the Design-Builder's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.5.2 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

9.5.3 If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice

its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.6 **CLAIMS FOR ADDITIONAL COST OR TIME** For any claim for an increase in the GMP, estimated Cost of the Work, the Design-Builder's Fee and the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) days after the occurrence giving rise to the claim or within twenty-one (21) days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, resulting from such claim shall be authorized by Change Order.

9.7 **EMERGENCIES** In any emergency affecting the safety of persons and/or property, the Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, on account of emergency work shall be determined as provided in this Article.

9.8 **CHANGES IN LAW** In the event any changes in laws or regulations affecting the performance of the Work are enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in Amendment No: 1 to this Agreement, whichever occurs later, the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, shall be equitably adjusted by Change Order.

ARTICLE 10

PAYMENT FOR  
CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 On the last day of each month after the Construction Phase has commenced, the Design-Builder shall submit to the Owner an application for payment consisting of the Cost of the Work performed up to the last day of the month, including the cost of material suitably stored on the Worksite or at other locations approved by the Owner, along with a proportionate share of the Design-Builder's Fee. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the site. Prior to submission of the next application for payment, the Design-Builder shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the Design-Builder.

~~10.1.2\*\*Within ten (10) days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) days after accepting such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.~~

10.1.3 If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) days after receipt of the notice by the Owner, and after such seven day period, stop the Work until payment of the amount owing has been received.

10.1.4 Payments due but unpaid pursuant to Subparagraph 10.1.2, less any amount retained pursuant to Para-

graphs 10.2 and 10.3 may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

10.1.5 The Design-Builder warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

10.1.6 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.7 Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Design-Builder's Fee, less one-hundred-fifty percent (150%) of the cost of completing any unfinished items as agreed to between the Owner and the Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

10.2 RETAINAGE From each progress payment made prior to the time Substantial Completion of the Work has been reached, the Owner shall retain ten percent ( 10 %), if required, of the amount otherwise due after deduction of any amounts as provided in Paragraph 10.3 of this Agreement. If the Owner chooses to use this retainage provision:

.1 at the time the Work is fifty percent (50%) complete and thereafter, the Owner may choose to withhold no more retainage and pay the Design-Builder the full amount of what is due on account of subsequent progress payments;

.2 once each early finishing trade Subcontractor has completed its work and that work has been accepted by the Owner, the Owner may release final retention on such work;

.3 in lieu of retainage, the Design-Builder may furnish securities, acceptable to the Owner, to be held by the Owner. The interest on such securities shall accrue to the Design-Builder;

.4 the Owner may, in its sole discretion, reduce the amount to be retained at any time.

~~\*\*10.1.2 Payment shall be made in accordance with the time standards established in the Local Government Prompt Payment Act which is attached herewith as Exhibit 6.~~

**10.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT** The Owner may adjust or reject an application for payment or nullify a previously approved Design-Builder application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

- .1 the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;
- .2 loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner or Others to whom the Owner may be liable;
- .3 the Design-Builder's failure to properly pay the Architect/Engineer, Subcontractors or Material Suppliers for labor, materials, equipment or supplies furnished in connection with the Work; provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
- .4 Defective Work not corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion and/or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder; and
- .6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work.

The Owner shall give written notice to the Design-Builder at the time of disapproving or nullifying all or part of an application for payment of the specific reasons. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for the amount previously withheld.

**10.4 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK**

**10.4.1** Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) and/or sureties consent to the occupancy or use, and (c) appropri-

ate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

**10.5 FINAL PAYMENT**

**10.5.1** Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Design-Builder's Fee, shall be due and payable when the work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

**10.5.2** In making final payment the Owner waives all claims except for:

- .1 outstanding liens;
- .2 improper workmanship or defective materials appearing within one year after the Date of Substantial Completion;
- .3 work not in conformance with the Contract Documents; and
- .4 terms of any special warranties required by the Contract Documents.

**10.5.3** In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

**ARTICLE 11**

**INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION**

**11.1 INDEMNITY**

**11.1.1** To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees from all claims for bodily injury and property damage (other than to the Work itself and other property required to be insured under Paragraph 11.5 owned by or in the custody of the owner), that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by the Design-Builder, Subcontractors or anyone employed directly or indirectly by

any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to defend, indemnify or hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees for any acts, omissions or negligence of the Owner, the Owner's officers, directors, members, consultants, employees, agents or separate contractors.

11.1.2 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Paragraph 11.5, that may arise from the performance of work by Others, to the extent of the negligence attributed to such acts or omissions by Others.

**11.2 DESIGN-BUILDER'S LIABILITY INSURANCE**

11.2.1 The Design-Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from the Design-Builder's operations or from the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- .1 workers' compensation, disability and other employee benefit claims under acts applicable to the Work;
- .2 under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Design-Builder's employees;
- .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Design-Builder;
- .4 personal injury liability claims for damages directly or indirectly related to the person's employment by the Design-Builder or for damages to any other person;
- .5 claims for physical injury to tangible property, including all resulting loss of use of that property, to property other than the Work itself and property insured under Paragraph 11.5;
- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and
- .7 contractual liability claims involving the Design-Builder's obligations under Subparagraph 11.1.1.

11.2.2 The Design-Builder's Commercial General and Automobile Liability Insurance as required by Subparagraph 11.2.1 shall be written for not less than the following limits of liability:

- .1 Commercial General Liability Insurance
  - a. Each Occurrence Limit  
\$ 1,000,000.00 ◆
  - b. General Aggregate  
\$ 2,000,000.00 ◆
  - c. Products/Completed Operations Aggregate  
\$ 2,000,000.00 ◆
  - d. Personal and Advertising Injury Limit  
\$ 1,000,000.00 ◆
- .2 Comprehensive Automobile Liability Insurance
  - a. Combined Single Limit Bodily Injury and Property Damage  
\$ 1,000,000.00 ◆  
Each Occurrence
  - b. Bodily Injury  
\$ 500,000.00 ◆  
Each Person
  - \$ 1,000,000.00 ◆  
Each Occurrence
  - c. Property Damage  
\$ 1,000,000.00 ◆  
Each Occurrence

11.2.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy.

11.2.4 The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be filed with the Owner prior to commencement of the Work.

11.2.5 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year(s) after either final payment or Substantial Completion ninety (90) days following the Date of final completion, whichever is earlier. ◆

**11.3 PROFESSIONAL LIABILITY INSURANCE** The Design Builder shall obtain, either itself or through the Architect/Engineer, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

~~General Office Coverage~~ *cy*

Project Specific Professional Liability Insurance  
(Cross-out one of the above), ◆

written for not less than \$ 1,000,000 ◆  
per claim and in the aggregate with a deductible not to exceed \$ 10,000 ◆. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Architect/Engineer. This coverage shall be continued in effect for one (1) year(s) after the Date of Substantial Completion. ◆

**11.4 OWNER'S LIABILITY INSURANCE.** The Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at the Owner's discretion. The Owner shall provide the Design-Builder with a certificate of insurance at the request of the Design-Builder.

**11.5 INSURANCE TO PROTECT PROJECT**

*(See 14.8) cy*

**11.5.1** The Owner shall obtain and maintain "All Risk" Builder's Risk insurance in a form acceptable to the Design-Builder upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors. This insurance shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The insurance policy shall be written without a co-insurance clause. The Owner shall be solely responsible for any deductible amounts.

**11.5.2** If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Design-Builder. Permission for partial occupancy from the insurance company shall be included as standard in the property insurance policy, to ensure that this insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Design-Builder to such early occupancy or use shall not be unreasonably withheld.

**11.5.3** The Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors shall be protected under this coverage.

**11.5.4** The Owner shall purchase and maintain insurance to protect the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors against loss of use of the Owner's property due to those perils insured pursuant to Paragraph 11.5. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Owner and the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors, necessary labor expense including overtime, loss of income by the Owner and other determined exposures. Exposures of the Owner, the Design-Builder, the Architect/Engineer, Subcontractors and Subsubcontractors, shall be determined by mutual agreement with separate limits of coverage fixed for each item.

**11.5.5** The Owner shall provide the Design-Builder with a copy of all property insurance policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Design-Builder. The Design-Builder shall be given thirty (30) days notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Design-Builder before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Design-Builder may obtain insurance in order to protect its interest in the Work as well as the interest of the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors in the Work. The cost of this insurance shall be a Cost of the Work pursuant to Article 8, and the GMP shall be increased by Change Order. If the Design-Builder is damaged by the failure of the Owner to purchase or maintain property insurance or to so notify the Design-Builder, the Owner shall bear all reasonable costs incurred by the Design-Builder arising from the damage.

**11.5.6** The Owner shall have the right to self-insure against the risks covered in Subparagraphs 11.5.1 and 11.5.4 upon providing evidence satisfactory to the Design-Builder of the ability to so self-insure.

**11.6 PROPERTY INSURANCE LOSS ADJUSTMENT**

**11.6.1** Any insured loss shall be adjusted with the Owner and the Design-Builder and made payable to the Owner and Design-Builder as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

**11.6.2** Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the

agreement of the parties in interest, or in the absence of such agreement, in accordance with a dispute resolution award pursuant to Article 13. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 13.

#### 11.7 WAIVER OF SUBROGATION

11.7.1 The Owner and the Design-Builder waive all rights against each other, the Architect/Engineer, and any of their respective employees, agents, consultants, Subcontractors, Material Suppliers and Subsubcontractors for damages covered by the insurance provided pursuant to Paragraph 11.5 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and the Design-Builder as trustees. The Design-Builder shall require similar waivers from the Architect/Engineer and all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

11.7.2 The Owner waives subrogation against the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

11.7.3 The policies shall also be endorsed to state that the carrier waives any right of subrogation against the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers, or Subsubcontractors.

11.8 **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** The Owner and the Design-Builder agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss of reputation. The Design-Builder agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. This paragraph shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of this paragraph shall govern the termination of this Agreement and shall survive such termination.

#### 11.9 BONDING

##### 11.9.1 Performance and Payment Bonds

are

~~are not~~

(Cross-out one of the above)

required of the Design-Builder. Such bonds shall be issued by a surety licensed in the state of the location of the Project and must be acceptable to the Owner.

11.9.2 Such Performance Bond shall be issued in the penal sum equal to one-hundred percent (100%) of the

GMP (if there is no GMP, then the agreed estimated cost of the Project, including design and construction).

~~agreed estimated construction cost of the Project.~~  
(Cross-out one of the above)

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to Paragraph 11.2 and Paragraph 11.3, whether or not such insurance is provided or is in an amount sufficient to cover such damages.

11.9.3 The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

#### ARTICLE 12

##### SUSPENSION AND TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S RESPONSIBILITIES

##### 12.1 SUSPENSION BY THE OWNER FOR CONVENIENCE

12.1.1 The Owner may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

12.1.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

**12.2 OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE**

12.2.1 If the Design-Builder persistently fails to perform any of its obligations under this Agreement, the Owner may, after five (5) days' written notice, during which period the Design-Builder fails to perform such obligation, undertake to perform such obligations. The GMP shall be reduced by the cost to the Owner of performing such obligations.

12.2.2 Upon an additional five (5) days' written notice to the Design-Builder and the Design-Builder's surety, if any, the Owner may terminate this Agreement for any of the following reasons:

- .1 if the Design-Builder persistently utilizes improper materials and/or inadequately skilled workers;
- .2 if the Design-Builder does not make proper payment to laborers, Material Suppliers or Subcontractors, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
- .3 if the Design-Builder persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Design-Builder otherwise materially breaches this Agreement.

If the Design-Builder fails to cure or commence and continue to cure within the five (5) days, the Owner, without prejudice to any other right or remedy, may take possession of the Worksite and complete the Work utilizing any reasonable means. In this event, the Design-Builder shall not have a right to further payment until the Work is completed.

12.2.3 If the Design-Builder files a petition under the Bankruptcy Code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.2.4 In the event the Owner exercises its rights under Subparagraph 12.2.1 or 12.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

**12.3 TERMINATION BY OWNER WITHOUT CAUSE**

If the Owner terminates this Agreement other than as set forth in Paragraph 12.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design-Builder shall be paid an amount calculated as set forth below:

.1 If the Owner terminates this Agreement prior to commencement of the Construction Phase, the Design-Builder shall be paid for the Design-Builder's Design Phase services provided to date as set forth in Subparagraph 7.1.2 and 7.1.3, and a premium as set forth below:

(Insert here the amount agreed to by the parties)

ten percent (10%)

.2 If the Owner terminates this Agreement after commencement of the Construction Phase, the Design-Builder shall be paid for the Construction Phase Services provided to date pursuant to Subparagraph 7.2.1 and a premium as set forth below:

(Insert here the amount agreed to by the parties)

ten percent (10%)

.3 The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 12, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

## 12.4 TERMINATION BY THE DESIGN-BUILDER

## ARTICLE 13

12.4.1 Upon five (5) days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

- .1 if the Work has been stopped for a sixty (60) day period
  - a. under court order or order of other governmental authorities having jurisdiction; or
  - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design-Builder, materials are not available;
- .2 if the Work is suspended by the Owner for sixty (60) consecutive days;
- .3 if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.3 of this Agreement.

12.4.2 If the Owner has for thirty (30) days failed to pay the Design-Builder pursuant to Subparagraph 10.1.2, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within five (5) days of giving written notice to the Owner, then upon five (5) days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

12.4.3 Upon termination by the Design-Builder in accordance with this Subparagraph, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in Subparagraph 12.3.1 or 12.3.2, depending on when the termination occurs, and Subparagraph 12.3.3.

## DISPUTE RESOLUTION

13.1 **WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during all dispute resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

13.2 **INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the ~~Construction Industry Mediation Rules of the American Arbitration Association before recourse to the dispute resolution procedures contained in this Agreement.~~ <sup>per Exhibit No. Seven (7)</sup> The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party's representative to the other party's representative and the mediator.

13.3 **EXHIBIT NO. 1** If the dispute cannot be settled by mediation within sixty (60) days, the parties shall submit the dispute to any dispute resolution process set forth in Exhibit No. 1 to this Agreement.

13.4 **MULTIPARTY PROCEEDING** The parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution proceedings.

13.5 **COST OF DISPUTE RESOLUTION** The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by the dispute resolution process set forth in Exhibit No. 1 to this Agreement shall be entitled to recover from the other party those reasonable attorneys fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

13.6 **LIEN RIGHTS** Nothing in this Article shall limit any rights or remedies not expressly waived by the Design-Builder which the Design-Builder may have under lien laws.



**MISCELLANEOUS PROVISIONS**

**14.1 ASSIGNMENT** Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly-owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either party attempts to make such an assignment, that party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other party.

**14.2 GOVERNING LAW** This Agreement shall be governed by the law in effect at the location of the Project.

**14.3 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**14.4 NO WAIVER OF PERFORMANCE** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

**14.5 TITLES AND GROUPINGS** The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

**14.6 JOINT DRAFTING** The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to exe-

cutation. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

**14.7 RIGHTS AND REMEDIES** The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

**14.8 OTHER PROVISIONS**

Builders Risk Insurance shall be provided by Design-Builder in lieu of Owner as provided in Article 11.5 of this agreement.

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

\* Square Footages as prepared by V.R.L. Architects, Inc. and attached as Exhibit No. 3.

\* Site Plan as prepared by V.R.L. Architects, Inc. and attached as Exhibit No. 4.

*Handwritten initials*  
Floor Plan as prepared by V.R.L. Architects, Inc. ~~and attached as Exhibit No. 5~~, with revisions by Nassau County and attached as Exhibit No. 5.

As defined in Subparagraph 2.4.1, the following Exhibits are a part of this Agreement:

EXHIBIT NO. 1 ~~Dispute Resolution Menu, one page.~~

EXHIBIT NO. 2 ~~Agreement establishing Fast track approach and Schedule of the Work, Eight (8) pages.~~ *C. Young Construction proposal dated June 21, 2007*

EXHIBIT NO. 3 ~~Labor Relations provisions, \_\_\_\_\_ pages.~~ *Square Footages as prepared by V.R.L. Architects, Inc. consisting of three (3) pages and titled Nassau County Building Department VRL Job #0702 Square Footages - Concept 2.*

EXHIBIT NO. 4 Site Plan as prepared by V.R.L. Architects, Inc. dated 12 June 2007 consisting of one (1) page.

EXHIBIT NO. 5 Floor Plan as prepared by V.R.L. Architects, Inc. dated 12 June 2007 consisting of one (1) page.

EXHIBIT NO. 6 Local Government Prompt Payment Act, Chapter 218 of the 2007 Florida Statutes dated July 31, 2007 and consisting of nine (9) pages.

EXHIBIT NO. 7 Nassau County Dispute Resolution Procedures, dated July 31, 2007, consisting of one (1) page.

This Agreement is entered into as of the date entered in Article 1.

ATTEST AS TO CHAIRMAN'S SIGNATURE:

ATTEST: *[Signature]*  
JOHN A. CRAWFORD  
EX-OFFICIO CLERK

REVIEWED BY GENE KNAGA  
DEPUTY COMPTROLLER

*[Signature]* DATE 10/9/07

ATTEST: \_\_\_\_\_

OWNER: The Board of County Commissioners, Nassau County, FL.

BY: *[Signature]*

PRINT NAME: Jim B Higginbotham

PRINT TITLE: Chairman

DESIGN-BUILDER: C. Young Construction, L.L.C.

BY: *[Signature]*

PRINT NAME: C. Coleman Young Jr.

PRINT TITLE: President


ATTEST:

See page 26

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John A. Crawford  
Ex-Officio Clerk

APPROVED AS TO FORM:



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David A. Hallman  
County Attorney

June 21, 2007

Ms. Charlotte Young  
Capital Projects Administration  
96135 Nassau Place, Suite 6  
Yulee, Florida 32097

**RE: Proposal for Design Phase Services Only  
For the Design & Construction of a New Building Department Facility  
Board of County Commissioners, Nassau County  
Yulee, Florida**

Dear Ms. Young,

Both VRL Architects and C. Young Construction appreciate the confidence shown by Nassau County to select us to construct the above referenced project. It is exciting for us to have the opportunity to build a relationship with your rapidly growing county. We especially appreciate the team approach to this project displayed during our preliminary meetings and discussions.

Pursuant to our meeting on May 24, 2007, we are submitting this proposal to provide complete design documents ready for permitting and to provide a guaranteed maximum price proposal for construction services. We propose to perform design phase services for the lump sum total cost of One Hundred Thirty Two Thousand Dollars (\$132,000.00), subject to the scope of services and qualifications/assumptions identified below.

### **Scope of Services for Design Phase**

#### **Schematic Design**

- Finalize the space plan and program with input expected by Nassau County
- Prepare a design phase schedule

#### **Design Development (40% Documents)**

- The Design team will prepare Design Development Drawings
- Constructability review to Design Team/Owner
- Develop and identify list of potential value engineering ideas/alternates
- Identify major trade packages and begin preparing bidders list

#### **Final Review Submittal (80-90% Documents)**

- The design team will prepare 80-90% documents and specifications
- Constructability review to Design Team/Owner
- Finalize alternates and value engineering ideas with Owner



# C. YOUNG CONSTRUCTION

## 100% Construction Documents

- The design team will complete the construction documents, ready for permitting
- Complete bidders list for major trade packages
- Prepare preliminary schedule
- Prepare estimate
- Present guaranteed maximum price proposal

The Design Team includes the following members:

Architect	VRL Architects, Inc.
Civil Engineering	Mittauer & Associates, Inc.
Structural Engineering	Atlantic Engineering Services
Mechanical, Plumbing Electrical and Fire Protection Engineering	M.V. Cummings Engineers, Inc.

The Design Team will provide Design Development, 90% Review documents, and Construction documents for the below scope of work:

### Scope of Work

1. Prepare a Site Development Plan to include parking for approximately sixty (60) cars in accordance with the attached Site Plan prepared by VRL Architects, Inc. The Owner may add approximately fifteen (15) to twenty (20) additional parking spaces along the eastern side of the entrance drive. If so, this work is included in the scope of services.
2. Civil engineering is predicated upon our understanding from the Nassau County Building Department that the site has been previously permitted by the St. Johns River Water Management District (SJRWMD) to include a future building of approximately 13,000 S.F. As a result, a letter requesting a modification to the site layout will be sufficient for this project and a pond modification or application for SJRWMD Permit will not be required.
3. Landscaping will be the minimum requirement of the Nassau County Landscape Ordinance.
4. The building will be a pre-engineered metal building 70 feet wide, 180 feet long and consisting of nine (9) bays of 20 feet each. The exterior building envelope will be designed for 120 mph with 155 mph three (3) second gusts. The structure will be pre-engineered steel-framed roof supported by perimeter steel columns. The exterior cladding will be steel-framed metal panels. The floor is anticipated to be a soil supported concrete slab-on-grade with conventional shallow foundations.
5. The building will be fully fire sprinklered.
6. The building will be wired for an emergency generator.
7. Twelve (12) half size drawings (11" x 17") will be provided at each Design Milestone, Design Development, Final Review, and Construction Documents. Twelve (12) copies of project specifications will be provided at Final Review and Construction Documents. Six (6)



# C. YOUNG CONSTRUCTION

full size drawings will be provided at Construction Documents, three (3) of which will be sealed, for use in permitting.

In preparing this proposal, we have made some assumptions based on our preliminary meetings and our understanding of the project. The following qualifications/clarifications apply to this proposal:

1. This fee is based upon completion of the attached schematic plans and program prepared by VRL Architects, Inc. subsequent to our last meeting with Nassau County on May 24, 2007. Any significant modifications will be performed at the standard hourly rates of the involved parties.
2. We have not included cost to design off site utilities.
3. It is our understanding that fire flow data is available through Nassau County so we have not included cost to perform further tests.
4. The proposed fee does not include cost for normal/customary reimbursables including, but not limited to, site surveys, tree surveys, topographic surveys, environmental surveys, geotechnical investigations, postage/courier, travel, and document reproduction other than that outlined in this proposal. We suggest that an allowance is established to cover these costs and included in the contract. A suggested value is Twenty Thousand Dollars (\$20,000.00).
5. This proposal does not include plan review fees, permit fees, impact fees, or any inspection or similar fees.
6. This proposal does not include traffic studies, zoning related tasks, irrigation design, wetlands surveys, permitting, mitigation, or flood plain permitting and/or flood plain mitigation.

Again, we sincerely appreciate the opportunity to prepare this proposal for Nassau County. We are available to proceed with design immediately upon execution of a contract. Should you wish to proceed with the work outlined above, please notify us and we will prepare the AGC 410 Agreement for execution. We anticipate the design phase services can be completed within fourteen (14) weeks of contract execution assuming no more than two (2) weeks of Owner review is required during design.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

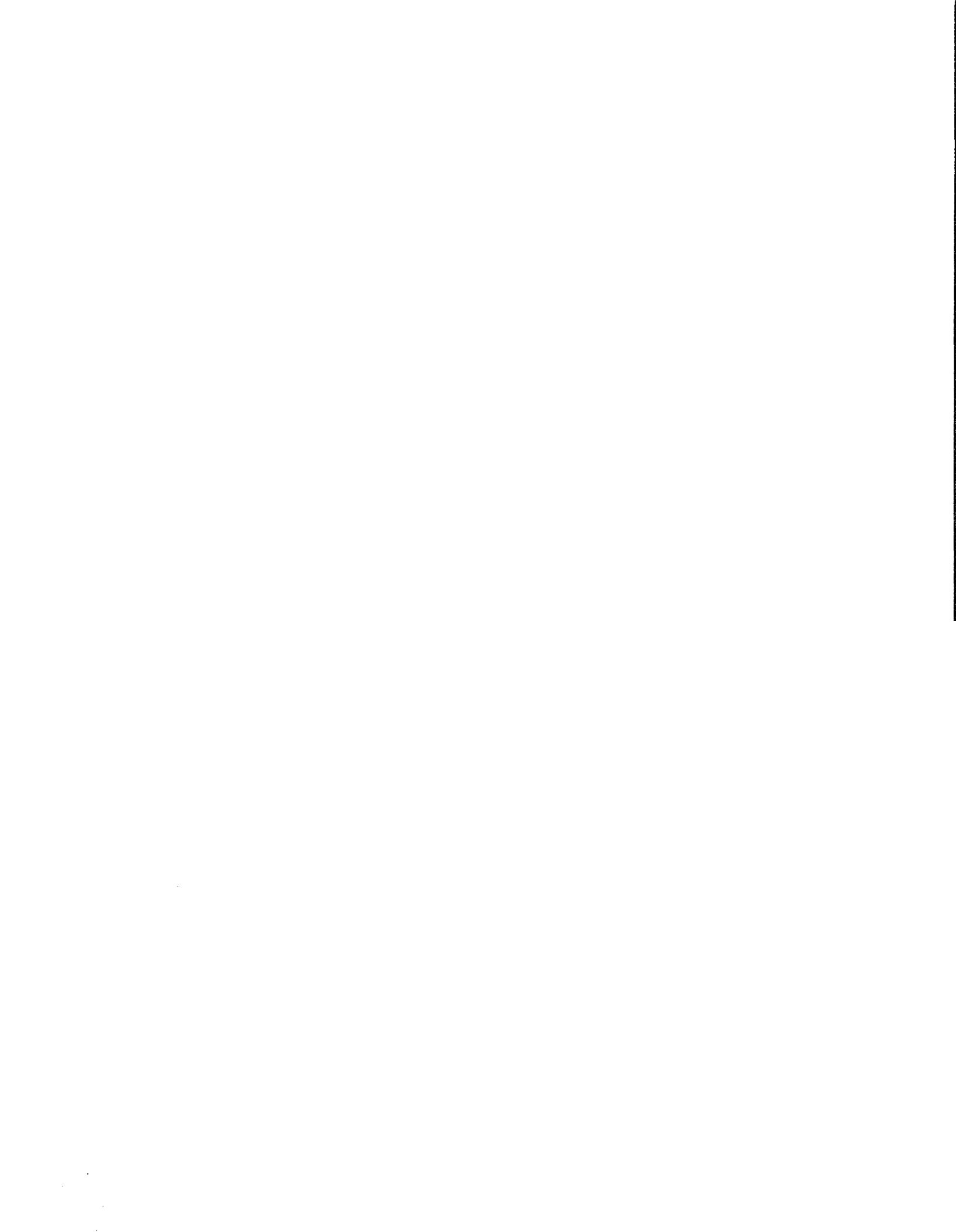


Jeremy Isbell

Jl/ch

cc: Steve Lazar  
File  
Follow-up





**NASSAU COUNTY  
 BUILDING DEPARTMENT  
 VRL JOB #0702  
 SQUARE FOOTAGES-CONCEPT 2**

**Administrative**

	<b>Program Goals</b>	<b>Achieved</b>
Building Official (Moran)	160 SF	191 SF
Deputy Building Official (Sasser)	120 SF	127 SF
Administrative Assistant (Moblely)	100 SF	108 SF
Office Manager (Solomon)	120 SF	120 SF
Accounting Specialist (Griffin)	160 SF	164 SF
Office Specialist (Armstrong)	100 SF	108 SF
Building Copy Room	140 SF	142 SF
<b>Subtotal</b>	<b>900 SF</b>	<b>960 SF</b>

**Building Support Services**

Senior Programmer Specialist (Peterson)	160 SF	100 SF
Support Services Director (Crowder)	100 SF	100 SF
GLS Mapping Specialist (Gregory)	100 SF	200 SF
Technical Specialist (Wallace)	100 SF	100 SF
<b>Subtotal</b>	<b>460 SF</b>	<b>500 SF</b>

**Inspectors**

Inspector (Hare)	100 SF	32 SF
Inspector (Garver)	100 SF	32 SF
Inspector (Wood)	100 SF	32 SF
Inspector (Waters)	100 SF	32 SF
Inspector (Tassell)	100 SF	32 SF
Inspector (Owings)	100 SF	32 SF
Inspector (Kumar)	100 SF	32 SF
Inspector (Future)	100 SF	32 SF
Inspector (Future)	100 SF	32 SF
Inspector (Future)	100 SF	32 SF
<b>Subtotal</b>	<b>1000 SF</b>	<b>320 SF</b>



**Permitting**

Cashier (Johnson)	100 SF	289 SF
Permit Coordinator (Wiggins)	120 SF	120 SF
Senior Permitting Specialist (Austin)	100 SF	100 SF
OSTDS Specialist (Crews)	100 SF	100 SF
Permit Specialist (Lee)	100 SF	80 SF
Permit Specialist (Wyckoff)	100 SF	80 SF
Permit Specialist (Burnsed)	100 SF	80 SF
Permit Specialist (Roy)	100 SF	80 SF
Permit Specialist (Future)	100 SF	80 SF
Permit Specialist (Future)	100 SF	80 SF
Permit Specialist (Future)	100 SF	80 SF
Permit Specialist (Future)	100 SF	65 SF
Permit Specialist (Future)	100 SF	65 SF
Subtotal	1320 SF	1299 SF

**Plans Examiners**

Senior Plans Examiner (Ellis)	150 SF	150 SF
Plan Examiner (Letellier)	120 SF	100 SF
Plan Examiner (Future)	120 SF	100 SF
Plan Examiner (Future)	120 SF	100 SF
Subtotal	510 SF	450 SF

**Zoning**

Zoning Specialist (Herrin)	100 SF	90 SF
Zoning Specialist (Shedd)	100 SF	90 SF
Subtotal	200 SF	180 SF

**Miscellaneous Support Spaces**

Conference/Training Room (30 people @ 15 sf each)	450 SF	476 SF
Waiting Area	150 SF	377 SF
Restrooms	320 SF	232 SF
Janitor	80 SF	79 SF
File Room 680 (plus 2000)	600 SF	581 SF
Computer Room	100 SF	109 SF
Telephone	60 SF	66 SF
Electrical Room	120 SF	128 SF
Mechanical Room	280 SF	291 SF
Break Room	180 SF	196 SF
Subtotal	2340 SF	2535 SF

**SubTotal Square Footage    6730 SF                      6244 SF**



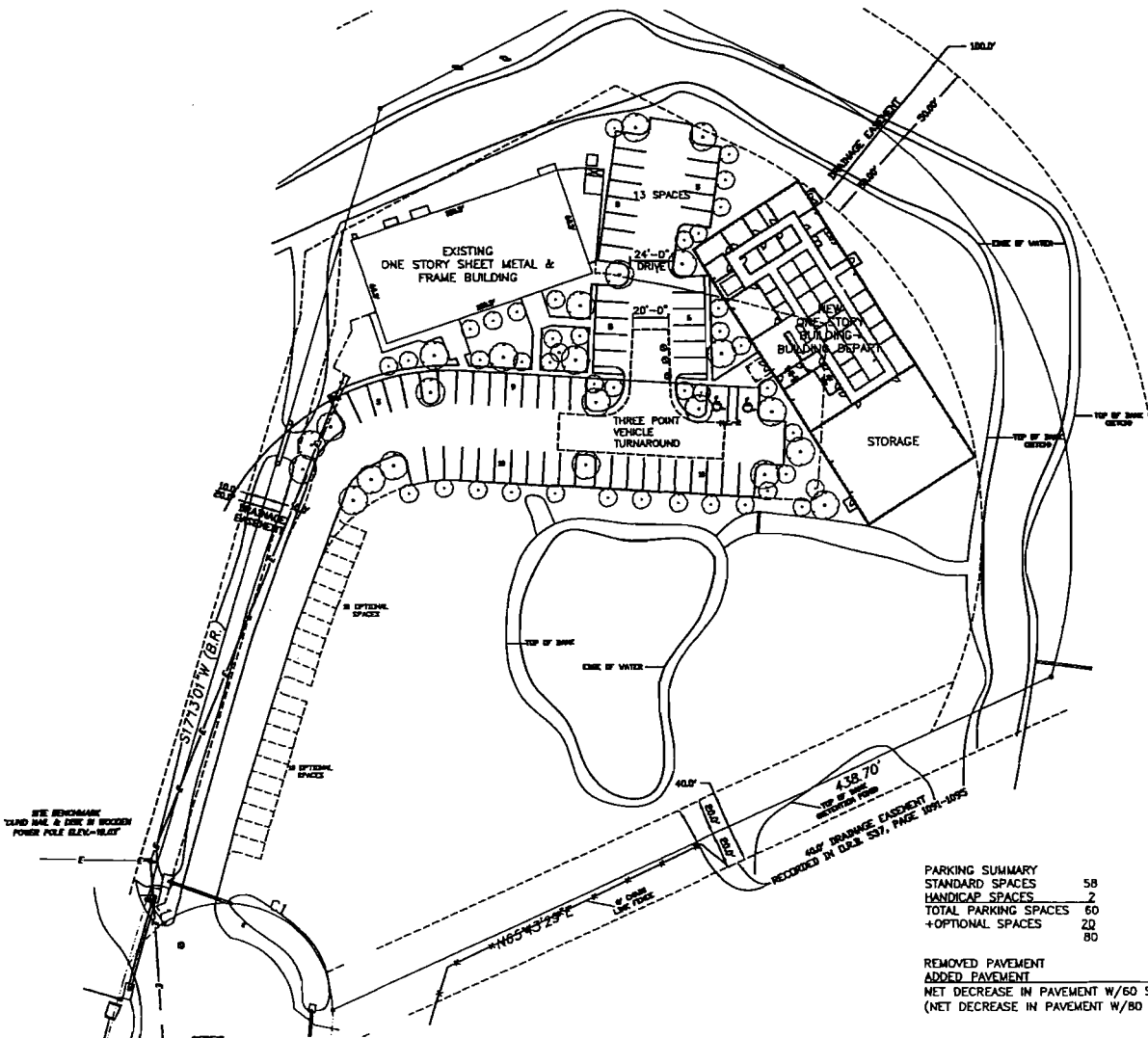
<b>Add 25% Circulation</b>	<b>1683 SF</b>	<b>2213 SF</b>
<b>SubTotal Square Footage</b>	<b>8400 SF</b>	<b>8458 SF</b>
<b>Storage Area</b>		<b>4235 SF</b>
<b>Total Area</b>		<b>12693 SF</b>





**C. YOUNG  
CONSTRUCT**  
General Contractors - Cor  
Managers - Design-I

**NASSA  
COUNTY  
BUILDING  
DEPARTMENT  
NASSA  
COUNTY  
FLORIDA**

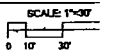


<b>PARKING SUMMARY</b>	
STANDARD SPACES	58
HANDICAP SPACES	2
TOTAL PARKING SPACES	60
+OPTIONAL SPACES	80

REMOVED PAVEMENT	9,399 SF
ADDED PAVEMENT	4,474 SF
NET DECREASE IN PAVEMENT W/60 SPACES	4,941 SF
(NET DECREASE IN PAVEMENT W/80 SPACES	1,747 SF)



**SITE PL.**



12 JUNE 2









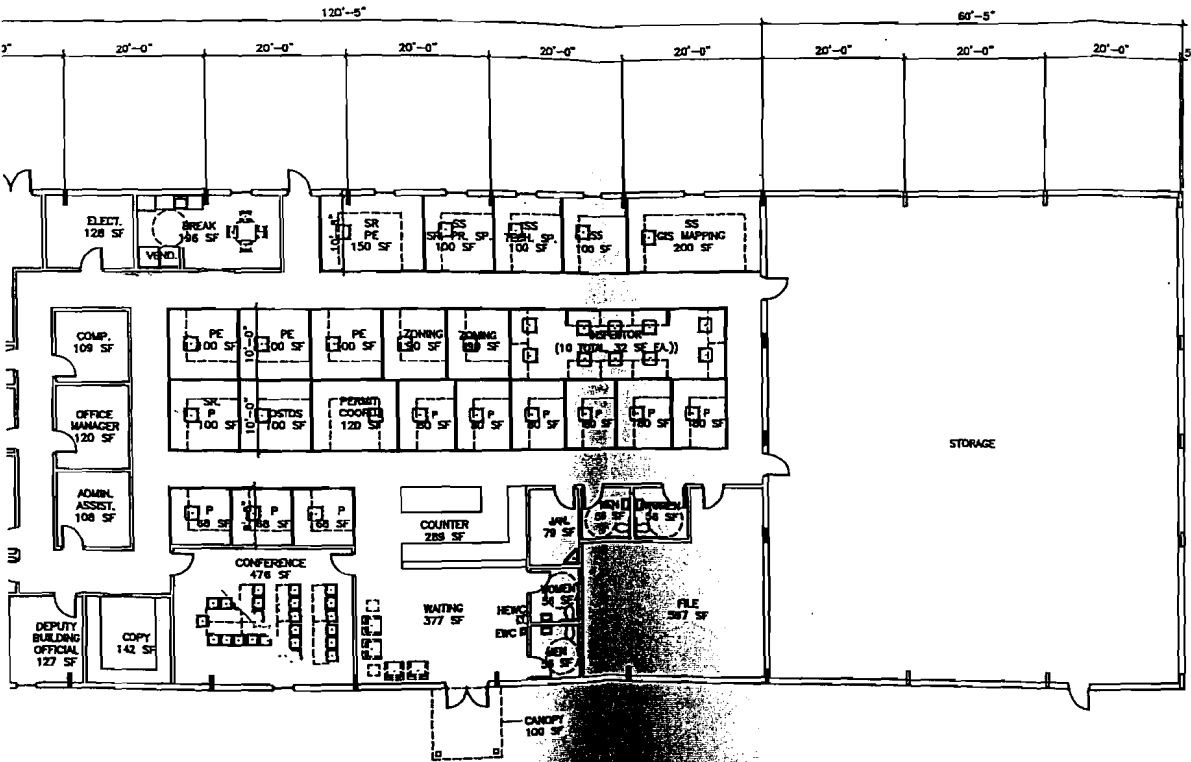




**V.R.L.**  
 Architects, Inc.  
 # AAC001735

**C. YOUNG  
 CONSTRUCTION**  
 General Contractors · Construction  
 Managers · Design-Build

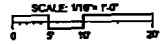
**NASSAU COUNTY  
 BUILDING  
 DEPARTMENT**  
 NASSAU COUNTY,  
 FLORIDA



STORAGE AREA (GROSS) 4,200 SF  
 ADMINISTRATION AREA (GROSS) 8,470 SF  
 TOTAL GROSS AREA 12,670 SF



**FLOOR PLAN**



12 JUNE 2007



PART VII

LOCAL GOVERNMENT PROMPT PAYMENT ACT

218.70 Popular name.

218.71 Purpose and policy.

218.72 Definitions.

218.73 Timely payment for nonconstruction services.

218.735 Timely payment for purchases of construction services.

218.74 Procedures for calculation of payment due dates.

218.75 Mandatory interest.

218.76 Improper payment request or invoice; resolution of disputes.

218.77 Payment by federal funds.

218.78 Report of interest.

218.79 Repeal of conflicting laws.

218.80 Public Bid Disclosure Act.

218.70 Popular name.--This part may be cited as the "Local Government Prompt Payment Act."

History.--s. 4, ch. 89-297; s. 1, ch. 2005-230.

218.71 Purpose and policy.--

(1) The purpose of this part is:

(a) To provide for prompt payments by local governmental entities and their institutions and agencies.

(b) To provide for interest payments on late payments made by local governmental entities and their institutions and agencies.

(c) To provide for a dispute resolution process for payment of obligations.

(2) It is the policy of this state that payment for all purchases by local governmental entities be made in a timely manner.





History.--s. 4, ch. 89-297.

**218.72 Definitions.**--As used in this part:

(1) "Proper invoice" means an invoice which conforms with all statutory requirements and with all requirements that have been specified by the local governmental entity to which the invoice is submitted.

(2) "Local governmental entity" means a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.

(3) "County" means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(4) "Municipality" means a municipality created pursuant to general or special law and metropolitan and consolidated governments as provided in s. 6(e) and (f), Art. VIII of the State Constitution.

(5) "Purchase" means the purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by a local governmental entity.

(6) "Vendor" means any person who sells goods or services, sells or leases personal property, or leases real property directly to a local governmental entity. The term includes any person who provides waste hauling services to residents or businesses located within the boundaries of a local government pursuant to a contract or local ordinance.

(7) "Construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.

(8) "Payment request" means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the local governmental entity to which the payment request is submitted.

(9) "Agent" means project architect, project engineer, or any other agency or person acting on behalf of the local governmental entity.

(10) "Contractor" or "provider of construction services" means any person who contracts directly with a local governmental entity to provide construction services.

History.--s. 4, ch. 89-297; s. 1, ch. 95-331; s. 1, ch. 2001-169; s. 2, ch. 2005-230.

**218.73 Timely payment for nonconstruction services.**--The time at which payment is due for a purchase other than construction services by a local governmental entity must be calculated from:

(1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval by the governing body, if required; or



(2) If a proper invoice is not received by the local governmental entity, the date:

(a) On which delivery of personal property is accepted by the local governmental entity;

(b) On which services are completed;

(c) On which the rental period begins; or

(d) On which the local governmental entity and vendor agree in a contract that provides dates relative to payment periods;

whichever date is latest.

**History.**--s. 4, ch. 89-297; s. 2, ch. 95-331; s. 2, ch. 2001-169.

**218.735 Timely payment for purchases of construction services.--**

(1) The due date for payment for the purchase of construction services by a local governmental entity is determined as follows:

(a) If an agent must approve the payment request or invoice prior to the payment request or invoice being submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(b) If an agent need not approve the payment request or invoice which is submitted by the contractor, payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(2) The local governmental entity may reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

(3) If a payment request or an invoice is rejected under subsection (2) and the contractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the local governmental entity, the corrected payment request or invoice must be paid or rejected on the later of:

(a) Ten business days after the date the corrected payment request or invoice is stamped as received as provided in s. 218.74(1); or

(b) If the governing body is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the governing body held after the corrected payment request or invoice is stamped as received as provided in s. 218.74(1).

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(4) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (3), the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract or in any applicable ordinance. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in s. 218.76(2).

(5) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with subsection (1).

(6) When a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

(7)(a) Each contract for construction services between a local governmental entity and a contractor must provide for the development of a list of items required to render complete, satisfactory, and acceptable the construction services purchased by the local governmental entity. The contract must specify the process for the development of the list, including responsibilities of the local governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, as follows:

1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or

2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 60 calendar days, after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

(b) If the contract between the local governmental entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in paragraph (a).

(c) The failure to include any corrective work or pending items not yet completed on the list developed pursuant to this subsection does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.



(d) Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the local governmental entity may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.

(e) All items that require correction under the contract and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.

(f) Warranty items may not affect the final payment of retainage as provided in this section or as provided in the contract between the contractor and its subcontractors and suppliers.

(g) Retainage may not be held by a local governmental entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a local governmental entity or a contractor for a project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the local governmental entity's or contractor's insurance provider.

(h) If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b), as defined in the contract, within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section. The local governmental entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(f) applies.

(8)(a) With regard to any contract for construction services, a local governmental entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.

(b) After 50-percent completion of the construction services purchased pursuant to the contract, the local governmental entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this subsection, the term "50-percent completion" has the meaning set forth in the contract between the local governmental entity and the contractor or, if not defined in the contract, the point at which the local governmental entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract. However, notwithstanding this subsection, a municipality having a population of 25,000 or fewer, or a county having a population of 100,000 or fewer, may withhold retainage in an amount not exceeding 10 percent of each progress payment made to the contractor until final completion and acceptance of the project by the local governmental entity.

(c) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5





percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the local governmental entity.

(d) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the local governmental entity a payment request for up to one-half of the retainage held by the local governmental entity. The local governmental entity shall promptly make payment to the contractor, unless the local governmental entity has grounds, pursuant to paragraph (f), for withholding the payment of retainage. If the local governmental entity makes payment of retainage to the contractor under this paragraph which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(e) This section does not prohibit a local governmental entity from withholding retainage at a rate less than 10 percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the local governmental entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a local governmental entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(f) This section does not require the local governmental entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the local governmental entity or contractor.

(g) The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to this section.

(h) Paragraphs (a)-(d) do not apply to construction services purchased by a local governmental entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

(i) This subsection does not apply to any construction services purchased by a local governmental entity if the total cost of the construction services purchased as identified in the contract is \$200,000 or less.

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1 percent per month, or the rate specified by contract, whichever is greater.



History.--s. 3, ch. 95-331; s. 3, ch. 2001-169; s. 3, ch. 2005-230.

**218.74 Procedures for calculation of payment due dates.--**

(1) Each local governmental entity shall establish procedures whereby each payment request or invoice received by the local governmental entity is marked as received on the date on which it is delivered to an agent or employee of the local governmental entity or of a facility or office of the local governmental entity.

(2) The payment due date for a local governmental entity for the purchase of goods or services other than construction services is 45 days after the date specified in s. 218.73. The payment due date for the purchase of construction services is specified in s. 218.735.

(3) If the terms under which a purchase is made allow for partial deliveries and a payment request or proper invoice is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request or invoice in the same manner as provided in s. 218.73 or s. 218.735.

(4) All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance. The vendor must invoice the local governmental entity for any interest accrued in order to receive the interest payment. Any overdue period of less than 1 month is considered as 1 month in computing interest. Unpaid interest is compounded monthly. For the purposes of this section, the term "1 month" means a period beginning on any day of one month and ending on the same day of the following month.

History.--s. 4, ch. 89-297; s. 4, ch. 95-331; s. 4, ch. 2001-169.

**218.75 Mandatory interest.--**No contract between a local governmental entity and a vendor or a provider of construction services shall prohibit the collection of late payment interest charges allowable under this part.

History.--s. 4, ch. 89-297; s. 5, ch. 2001-169.

**218.76 Improper payment request or invoice; resolution of disputes.--**

(1) In any case in which an improper payment request or invoice is submitted by a vendor, the local governmental entity shall, within 10 days after the improper payment request or invoice is received by it, notify the vendor that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper.

(2) In the event a dispute occurs between a vendor and a local governmental entity concerning payment of a payment request or an invoice, such disagreement shall be finally determined by the local governmental entity as provided in this section. Each local governmental entity shall establish a dispute



resolution procedure to be followed by the local governmental entity in cases of such disputes. Such procedure shall provide that proceedings to resolve the dispute shall be commenced not later than 45 days after the date on which the payment request or proper invoice was received by the local governmental entity and shall be concluded by final decision of the local governmental entity not later than 60 days after the date on which the payment request or proper invoice was received by the local governmental entity. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the local governmental entity, then interest charges shall begin to accrue 15 days after the local governmental entity's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

(3) In an action to recover amounts due under ss. 218.70-218.80, the court shall award court costs and reasonable attorney's fees, including fees incurred through any appeal, to the prevailing party, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party's claim to those amounts.

History.--s. 4, ch. 89-297; s. 6, ch. 2001-169; s. 34, ch. 2002-1.

**218.77 Payment by federal funds.**--A local governmental entity which intends to pay for a purchase with federal funds shall not make such purchase without reasonable assurance that federal funds to cover the cost thereof will be received. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

History.--s. 4, ch. 89-297.

**218.78 Report of interest.**--If the total amount of interest paid during the preceding fiscal year exceeds \$250, each local governmental entity shall, during December of each year, report to the board of county commissioners or the municipal governing body the number of interest payments made by it during the preceding fiscal year and the total amount of such payments made under this part.

History.--s. 4, ch. 89-297; s. 5, ch. 95-331.

**218.79 Repeal of conflicting laws.**--All laws and parts of laws in conflict with this part are repealed.

History.--s. 4, ch. 89-297.

**218.80 Public Bid Disclosure Act.**--

(1) This section may be cited as the "Public Bid Disclosure Act."

(2) It is the intent of the Legislature that a local governmental entity shall disclose all of the local governmental entity's permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents or other request for proposal, unless such permits or fees are disclosed in the bidding



documents or other request for proposal for the project at the time the project was let for bid. It is further the intent of the Legislature to prohibit local governments from halting construction to collect any undisclosed permits or fees which were not disclosed or included in the bidding documents or other request for proposal for the project at the time the project was let for bid.

(3) Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction and shall include the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract. If the request for proposal does not require the response to include a final fixed price, the local governmental entity is not required to disclose any fees or assessments in the request for proposal. However, at least 10 days prior to requiring the contractor to submit a final fixed price for the project, the local governmental entity shall make the disclosures required in this section. Any of the local governmental entity's permits or fees which are not disclosed in the bidding documents, other request for proposal, or a contract between a local government and a contractor shall not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

(4) This section does not require disclosure in the bidding documents of any permits or fees imposed as a result of a change order or a modification to the contract. The local government shall disclose all permits or fees imposed as a result of a change order or a modification to the contract prior to the date the contractor is required to submit a price for the change order or modification.

History.--s. 1, ch. 93-76.





EXHIBIT NO. SEVEN (7)  
NASSAU COUNTY DISPUTE RESOLUTION PROCEDURES  
JULY 31, 2007

**DISPUTES:**

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Contractor as set forth herein. Disputes shall be set forth in writing to the County Coordinator with a copy to the Project Manager and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the same manner prior to any meetings of representatives. The initial meeting shall be with the County Coordinator and the Project Manager or their designee and a representative of the Contractor. If the dispute is not settled at that level, the County Attorney shall be notified in writing by the Project Manager or his/her designee, and the County Attorney and the County Coordinator and the Project Manager or their designee(s) shall meet with the Contractor's representative(s). Said meeting shall occur within sixty (60) days of the notification by the County Coordinator. If there is no satisfactory resolution, the claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Contractor. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Contractor. Contractor shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

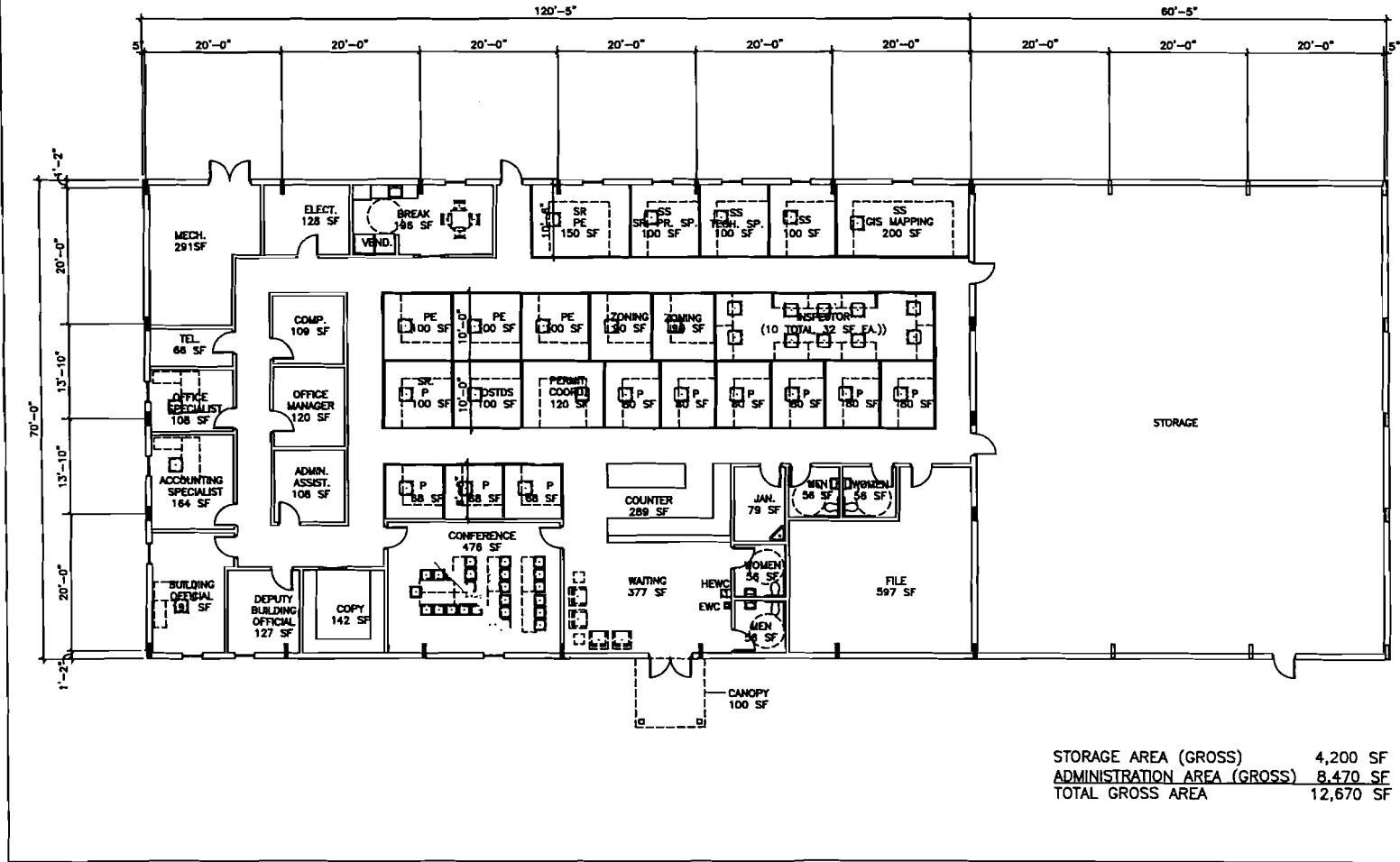
Original to Cypr 10/10/07

cc: Finance  
Admin Support  
Contract Mgr  
Bill, W/House  
Salmon

**V·R·L**  
 Architects, Inc.  
 # AAC001735

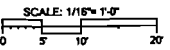
**C. YOUNG  
 CONSTRUCTION**  
 General Contractors · Construction  
 Managers · Design-Build

**NASSAU  
 COUNTY  
 BUILDING  
 DEPARTMENT**  
 NASSAU  
 COUNTY,  
 FLORIDA



NORTH

**FLOOR PLAN**



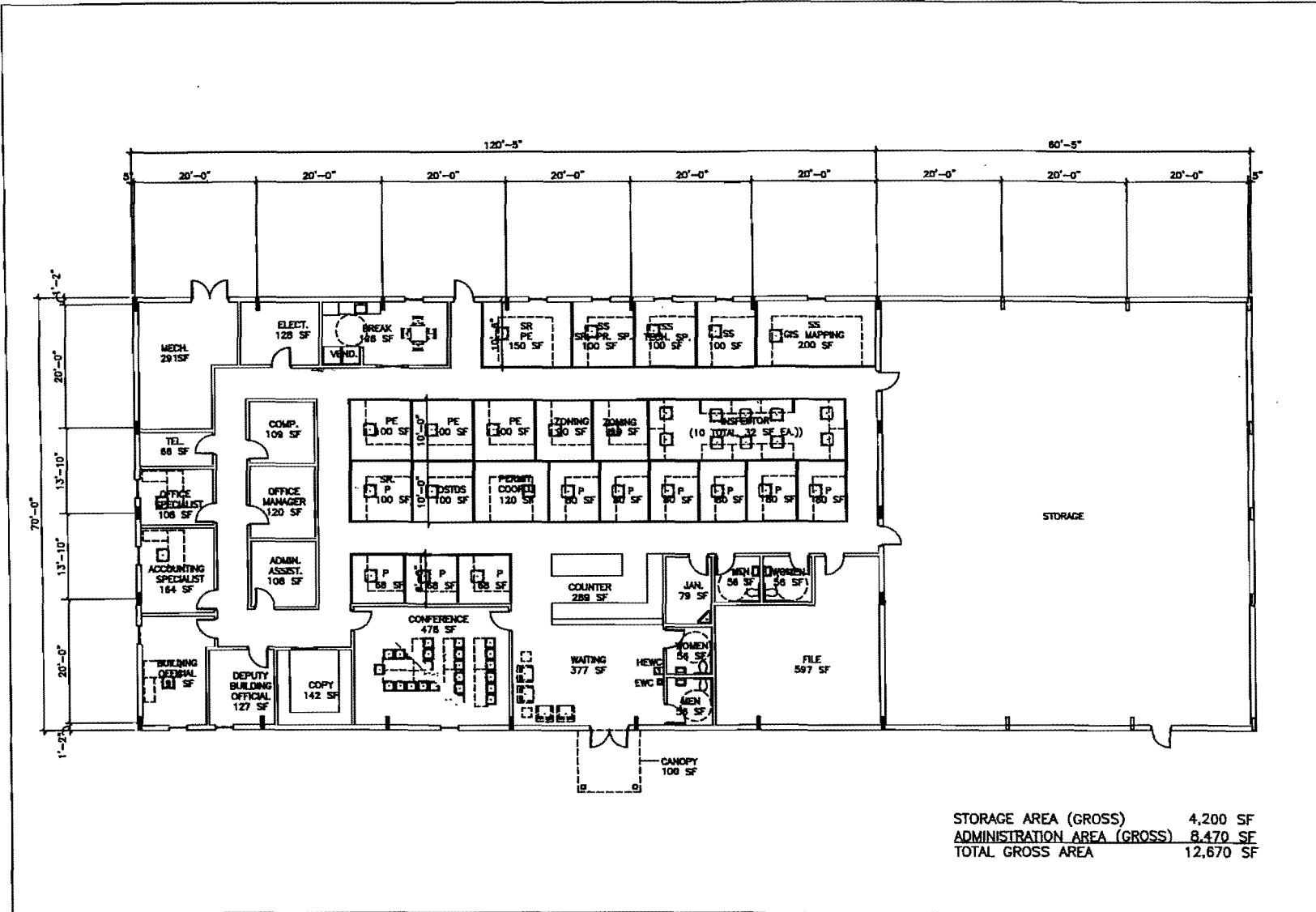
12 JUNE 2007

**V·R·I**  
 Architects, Inc.  
 # AAC001735

**C. YOUNG  
 CONSTRUCTION**

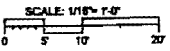
General Contractors · Construction  
 Managers · Design-Build

**NASSAU  
 COUNTY  
 BUILDING  
 DEPARTMENT  
 NASSAU  
 COUNTY,  
 FLORIDA**



NORTH

**FLOOR PLAN**

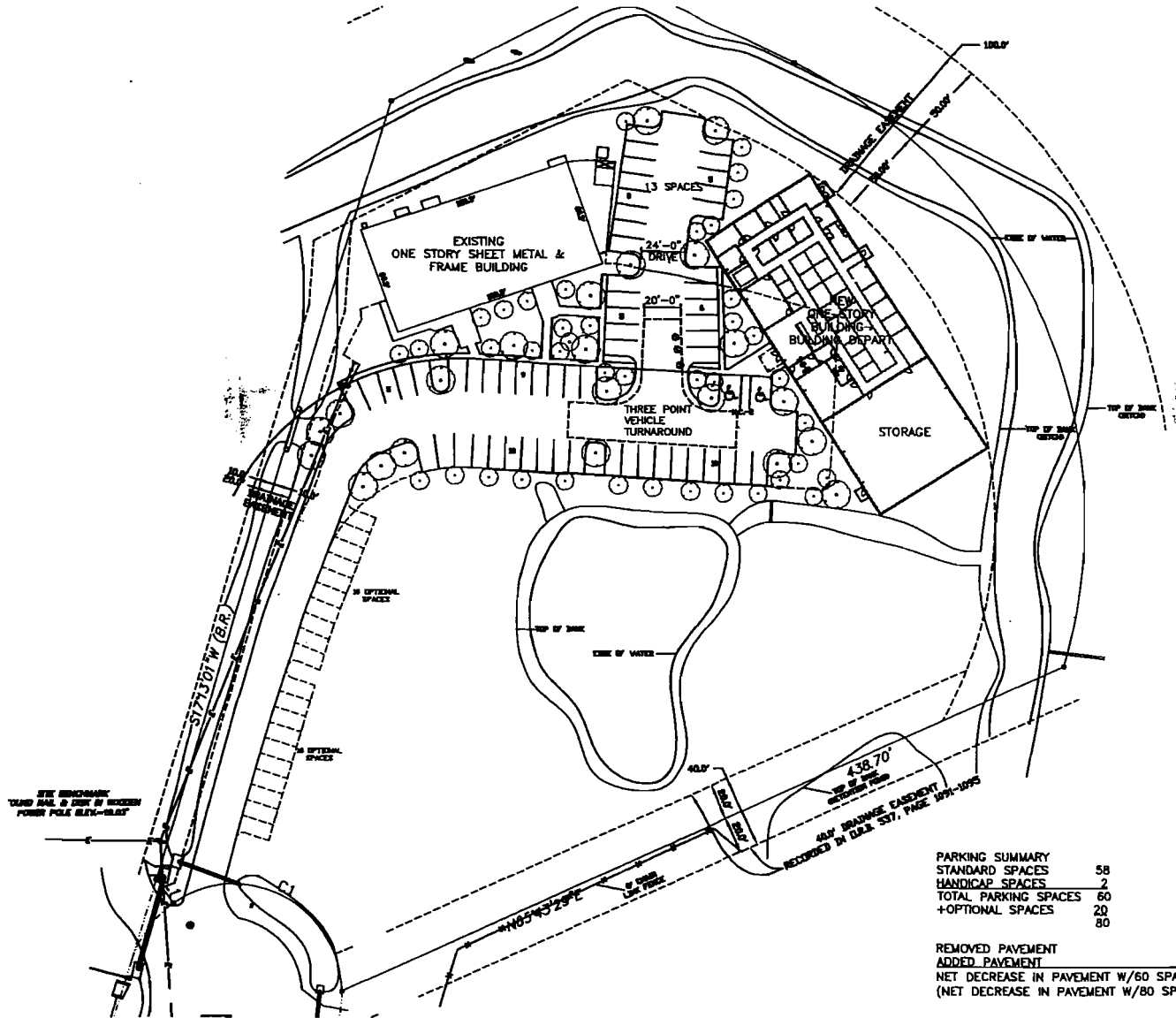


12 JUNE 2007

**V·R·L**  
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**NASSAU  
 COUNTY  
 BUILDING  
 DEPARTMENT**  
 NASSAU  
 COUNTY,  
 FLORIDA



**PARKING SUMMARY**

STANDARD SPACES	58
HANDICAP SPACES	2
TOTAL PARKING SPACES	60
+OPTIONAL SPACES	20
	80

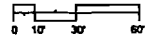
REMOVED PAVEMENT	9,399 SF
ADDED PAVEMENT	4,474 SF
NET DECREASE IN PAVEMENT W/60 SPACES	4,941 SF
(NET DECREASE IN PAVEMENT W/80 SPACES	1,747 SF)



NORTH

**SITE PLAN**

SCALE 1"=50'



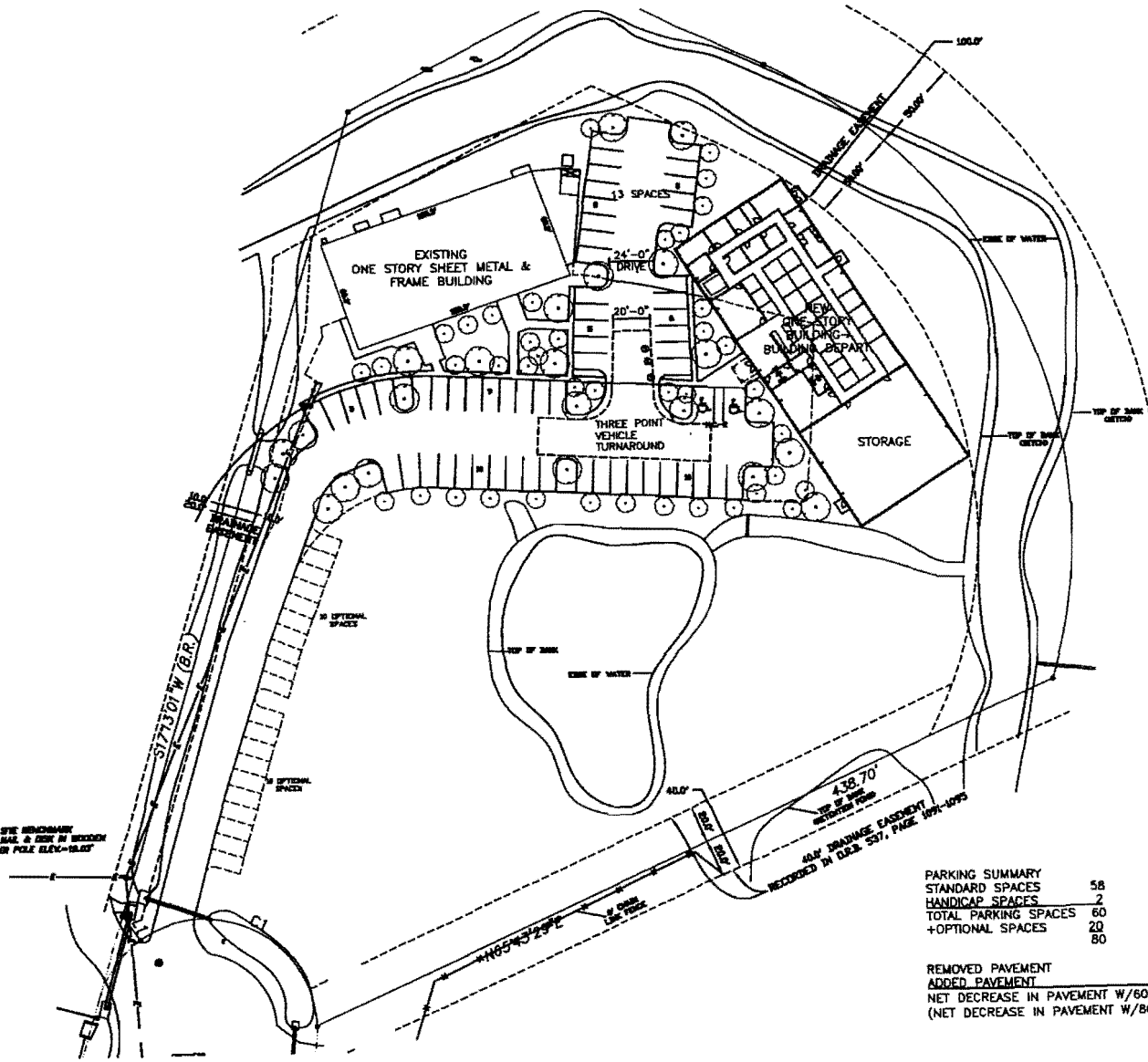
12 JUNE 2007

**V.R.L.**  
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**C. YOUNG  
CONSTRUCTION**  
General Contractors · Construction  
Managers · Design-Build

**NASSAU COUNTY  
BUILDING  
DEPARTMENT**  
NASSAU  
COUNTY,  
FLORIDA

SEE REMOVED  
LAND BARS & POLE IN RECORD  
POWER POLE ELEV=18.00'



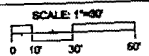
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NORTH

**SITE PLAN**



SCALE: 1"=60'  
12 JUNE 2007