

TAB 1

**THE CITY OF PALMETTO  
MANATEE COUNTY, FLORIDA**

**AGREEMENT BETWEEN OWNER & CONTRACTOR**

COP PROJECT NO: COP#11-636

PROJECT NAME AND LOCATION: Sutton Park Renovations  
Phase I

PROJECT DESCRIPTION:

This is the renovation of a municipal park to enhance the aesthetics and improve public access. The scope of services for General Construction will need to include the following: masonry, concrete, electrical, plumbing, paving, grading carpentry, millwork, framing, hardware, demolition, excavation. Project will include furnishing all labor, materials, and equipment to complete the work as specified and in accordance with drawings, specifications, and other contract documents.

Total Contract Price: \$735,346.00

SUBSTANTIAL COMPLETION: 7/1/2012

FINAL COMPLETION: 7/13/2012

ENGINEER:  
Allison-Gause  
Robert C. Gause, RLA, AICP, ISA  
926 14<sup>th</sup> Street West  
Bradenton, FL 34205

ARCHITECT:  
Moore 2 Design, LLC  
Jon L. Moore, AIA  
706 Riverside Drive  
Palmetto, FL 34221

CONTRACTOR: Stellar Development, Inc.  
Maurice Albert Opstal  
9021 Town Center Parkway  
Bradenton, FL 34202

## AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made this the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2012, by and between THE CITY OF PALMETTO, FLORIDA, hereinafter referred to as the "Owner", and Stellar Development, Inc., 9021 Town Center Parkway, Bradenton, FL 34202 hereinafter referred to as the "Contractor". CONTRACTOR

FEDERAL TAX I.D. NUMBER: 65-1032975

The Owner and Contractor agree as set forth below:

### ARTICLE 1

#### THE CONSTRUCTION TEAM AND THE EXTENT OF THE AGREEMENT

- 1.1 The Contractor agrees to furnish its professional skill and judgment and to cooperate with the Architect-Engineer (A-E) in furthering the interests of the Owner. The Contractor agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the project in an expeditious and economical manner consistent with the interests of the Owner.
- 1.2 The Construction Team - Contractor, the Project Manager and the A-E.
  - 1.2.1 The Construction Team and Owner shall work as a team throughout the entire project.
    - 1.2.1.1 The Contractor shall provide leadership to the Construction Team on all matters relating to construction.
    - 1.2.1.2 The A-E shall provide leadership to the Construction Team on all matters relating to design.
- 1.3 The Contract Documents:
  - 1.3.1 The Contract Documents consist of this Agreement, Request for Proposal documents: General Conditions, Scope of Services, Instructions, Bid Form and Plans, the Stellar Clarifications to the Bid Proposal, and all addenda issued by the Owner prior to the execution of this Agreement, other documents listed in this Agreement and changes executed and issued by the Owner after execution of this Agreement, or as provided herein. These form the Contract between the parties and are as fully a part of the Contract as if attached to this Agreement and repeated herein.
  - 1.3.2 The Contract (as defined above) represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or

agreements, either written or oral. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

1.3.3 This Agreement may be amended only by a written instrument signed by the Owner and the Contractor, and approved by the City Commission. Both parties agree that they will not hereafter contend that subsequent oral statements will modify the terms of this Agreement.

1.4 Definitions:

1.4.1 Project or the Work - The total work to be performed under this Agreement. The terms Project and the Work are used interchangeably. The project consists of planning, design, construction and associated site work to build the components of the projects. The Project Description on the cover sheet of this Agreement is incorporated by reference as if fully set forth herein.

1.4.2 Owner - The City of Palmetto, Florida as represented by its Project Manager.

1.4.3 Project Manager or Project Representative - Person designated by the Owner to provide direct interface with the A-E in respect to the Owner's interest and responsibilities.

1.4.4 Contractor or CONTRACTOR - Stellar Development, Inc., 9021 Town Center Parkway, Bradenton, FL 34202

1.4.5	A-E, or A-E - ENGINEER: Allison-Gause Robert C. Gause, RLA, AJCP, ISA 926 14 <sup>th</sup> Street West Bradenton, FL 34205	ARCHITECT: Moore 2 Design, LLC Jon L. Moore, AIA 706 Riverside Drive Palmetto, FL 34221
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1.4.6 Project Contract Price. Project Contract Price is \$735,346.00 for the project, including all fees and cost of the work; provided that where appropriate, Contractor shall investigate and discuss the possibility of direct purchase by Owner for lighting, pavers and other significant materials or equipment. In such event of a direct purchase, the original estimated cost of such material or equipment shall be deducted from the Project Contract Price.

1.4.7 Date of Commencement: The date of commencement of the Work shall be April 3, 2012, unless a different date is stated below or a different date is to be fixed by a Notice to Proceed to be issued by the Owner.

1.4.8 The Contract Time is to be measured from the Date of Commencement.

1.4.9 Substantial Completion - "Substantial completion" shall mean that the project under this contract is sufficiently completed in accordance with contract documents, so that

the owner can occupy or utilize the work or designated portions thereof for the use for which it is intended, as expressed in the contract documents and a certificate of occupancy has been issued by the permitting authority.. (Note: the issuance of a certificate of occupancy, in itself, does not constitute “substantial completion”).

1.4.11 Final Completion - The term “Final completion” shall mean all of the following events have occurred:

- 1) Pursuant to the terms of the contract, an Architect or Engineer as appropriate certifies that the project is substantially complete and, within the time provided in the contract between the Owner and the Contractor, the Owner submits a written punch list to the Contractor and the Contractor substantially completes all of the items on the punch list.
- 2) The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the Owner and the Contractor, the owner submits a written punch list to the contractor and the Contractor substantially completes all of the items on the punch list.
- 3) The owner takes possession of the Project and, within the time provided in the contract between the Owner and the Contractor, the owner submits a written punch list to the contractor and the contractor substantially completes all of the items on the punch list.

## **ARTICLE 2**

### **CONTRACTOR’S BASIC SERVICES**

2.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the A-E and exercise the Contractor skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests.

2.2. Project Construction and Warranty

2.2. 1. The Project shall be constructed:

- (1) In strict accordance with Construction Documents and approved plans specifications as recommended by the A-E and approved by the City of Palmetto.
- (2) Standard Warranties, as identified in the project documents, are in effect and strictly enforced.

2.3 Basic professional services to be provided:

- 2.3.1 The Contractor and the A-E shall jointly schedule regular meetings, weekly unless agreed to otherwise, with the Owner regarding site use and improvements. Contractor to provide recommendations on construction feasibility, actions to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and construction completion.
- 2.3.2 Utilize the project schedule that coordinates the Contractor's services, the A-E services and the Owner's responsibilities with anticipated construction schedules. If the project dates previously approved are found to be inaccurate, the Contractor will make appropriate recommendations to the Project Manager and A-E.
- 2.3.4 It is not the Contractor's responsibility to ascertain that drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes or other regulations. However, if the Contractor recognizes or should have recognized a non-compliance issue, the Contractor shall immediately notify the Project Manager and the A-E in writing.
- 2.3.8 During construction, the Contractor shall schedule and conduct regular meetings of the Construction Team and prepare and distribute minutes, as needed.
- 2.3.9 Equal Employment Opportunity (EEO) - The Contractor shall comply with applicable laws, regulations and special requirements of the contract documents affording equal employment opportunity and affirmative action programs.
- 2.4 Construction Phase
- 2.4.1 The construction phase shall commence on the earlier of the following:
- (1) The Owner's previous stages and issuance of the Notice to Proceed; or,
  - (2) The Owner's first authorization to the Contractor to:
    - (a) Award a Subcontract;
    - (b) Undertake construction work with Contractor's forces;
    - (c) Issue a Purchase Order for materials or equipment required for the Work.
- 2.4.2 The Contractor shall not contract with anyone whom the Owner has a reasonable objection.
- 2.4.3 The master schedule shall be produced and updated monthly throughout the Project. The schedule shall graphically depict the sequence and duration of all activities required to satisfactorily finish the Project.
- 2.4.4 The Contractor shall manage, schedule and coordinate the work, including the work of trade contractors, and coordinate the work with the activities and responsibilities of the Project Manager, A-E and Contractor in order to complete the Project in accordance with the Owner's objectives of time, quality and cost. Maintain

exclusively for this Project, a competent full-time staff at the Project Site to coordinate and direct the work. The Contractor's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Project Manager's consent. The Project Manager shall have the right to direct the Contractor to remove any on-site personnel whose performance is unsatisfactory to the Owner, in Owner's sole and absolute discretion. In such event, the Contractor shall promptly replace such personnel without additional compensation for that replacement.

- 2.4.5 The Contractor shall maintain Requests for Information Log (RFI) and Change Order Log (COL) and Potential Change Order Log (PCOL) to be reviewed at each meeting of the Construction Team who shall act on the disposition of these items. It is the Contractor's responsibility to insure that each RFI, COL or PCOL is acted on in a timely manner so that there is no delay in the schedule.
- 2.4.6 The Contractor shall establish on-site organization and lines of authority to implement the overall plans of the Construction Team.
- 2.4.7 Contractor shall be responsible for initiating, maintaining and supervising effective safety programs and requiring similar programs of trade contractors and subcontractors. OSHA guidelines shall serve as the basis for the safety program. Copies of the proposed program shall be distributed to the Construction Team.
- 2.5 Hazardous Materials - In the event hazardous materials such as asbestos or PCB's are encountered at the Project Site, and it was not specifically noted on drawings or job specifications, the Contractor shall immediately notify the Owner and the A-E in writing of the suspected substance and Contractor shall take all proper measures to contain any contamination. The Owner shall be responsible for obtaining the services of a licensed laboratory to determine absence or presence of the substance and whether it has been rendered harmless. If the material is found to be hazardous, the Owner will be responsible for the cost and time to render the substance harmless. If the Contractor complies with the requirements set forth in this paragraph the Owner shall indemnify and hold Contractor harmless from and against claims, damages, losses, and expenses arising out of or related to any hazardous materials at the site; provided, however, this indemnity shall not apply to hazardous materials brought to the site by Contractor or its subcontractors or release caused by Contractor's negligence.
- 2.6 The Contractor shall provide for all job-site facilities necessary to enable the Contractor, the Project Manager, Project Representative and the A-E to perform their respective duties in the management, inspection and supervision of construction.

**ARTICLE 3**  
**OWNER'S RESPONSIBILITIES**

- 3.1 The Owner shall provide full information, in a timely manner, regarding the requirements of the Project, including a program setting forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- 3.1.1 To the extent that the Owner is in possession of any reports, surveys, drawings or tests describing the conditions of the site, these will be promptly furnished to the CONTRACTOR for its information only, and not as a representation of the true conditions of the site. The CONTRACTOR shall not furnish any such documents to the trade contractors as a representation of the true conditions of the site. All trade contractors will be obligated in their respective contracts to accept the site "as is" without any representations by the Contractor or the Owner of its true condition.
- 3.1.1.1 Should the CONTRACTOR deem it necessary for its own information to engage the service of a geotechnical engineer to evaluate the site, the CONTRACTOR may do so at the Owner's expense and with Owner's written approval. However, any reports, etc., of such engineer shall not be presented to trade contractors as a representation of the true conditions of the site, unless required by any governmental authority having jurisdiction over said contamination.
- 3.2 The Owner will designate a Project Manager who will be fully acquainted with the Project and shall define the lines of Owner approved Scope of Work and Project Budget.
- 3.3 The Owner shall retain an A-E for design and to prepare construction documents for the Project. The duties and responsibilities of A-E are described in the Agreement between the Owner and the A-E. A copy will be furnished to the Contractor upon reasonable request.
- 3.4 If any new construction documents have been developed by the A-E prior to the date of this Agreement, these will be furnished to the Contractor.

**ARTICLE 4**  
**PERMITTING AND INSPECTIONS**

- 4.1 The Contractor shall be responsible to ensure a reviewing authority as identified by Owner must approve the construction documents for code compliance prior to beginning work and that all changes to the construction documents shall be reviewed and approved by the same authority. During Project Construction and Warranty, all work in place will be inspected for strict compliance with the applicable codes, the construction documents and generally accepted construction techniques by the



Owner's Project Representative or his designee and other code inspection authorities having jurisdiction.

- 4.2 The Contractor shall be responsible to ensure that all components of the Project require detailed code compliance and construction document inspections during construction. These areas normally include, but are not limited to, structural, mechanical, electrical, plumbing and general building.
- 4.3 The Owner or another inspecting authority identified by the Owner will provide inspection personnel. The Owner's Project Manager will provide to the Contractor names, addresses and telephone numbers of the inspecting authorities. The Contractor shall notify the appropriate inspector(s) no less than 24 hours in advance of the required inspection. All work scheduled for inspection shall be ready for inspection and inspected prior to the work being concealed. Work not inspected and not approved prior to concealment shall be revealed for inspection when directed by the Owner or designated inspecting authority. All costs associated with inspecting prematurely concealed work shall be borne by the Contractor. It is the Contractor's responsibility to insure that the work passes all required inspections in a timely manner.

## ARTICLE 5 SUBCONTRACTS

- 5.1 Subcontracts:
- 5.2 Definition - A Subcontractor is a person or organization who has a direct contact with the Contractor to perform specific work at the jobsite. Nothing in the contract document shall create any contractual relationship between the Owner, A-E or any subcontractor.
- 5.3 Terms
  - 5.3.1 The work on the Project may be performed under subcontracts or by other appropriate written agreements with the Contractor.
- 5.4 Requirements of Subcontractors
  - 5.4.1 Subcontractors and trade contractors are used interchangeably in this Agreement. Subcontractors shall be required to comply with all of the requirements of this Agreement.
  - 5.4.2 Each subcontract shall include a provision strictly limiting the Subcontractor's remedies against the Contractor as follows:
    - 5.4.2.1 There shall be an enforceable "no damages for delay" clause making the Subcontractor's exclusive remedy for delays caused by others in the performance of

the Subcontractor's work, including claims of breach of contract, negligence or intentional acts, to an extension of the contract time.

- 5.4.2.2 Each subcontract shall contain enforceable provisions by which each Subcontractor agrees that the foregoing constitutes in sole and exclusive remedies for delays and changes in the work, and eliminating all other remedies.
- 5.4.3. Each Subcontractor must be licensed by the State in accordance with Section 489, Florida Statutes.

## **ARTICLE 6** **BASIS FOR PAYMENTS TO CONTRACTOR**

### 6.1 CONTRACT SUM

- 6.1.1 The Owner shall pay the Contractor the Project Contract Price, as defined in Section 1.4.6 under the procedure set forth in Article 9. The Project Contract Price shall consist of the Work, as defined herein, and all fees and costs, as provided below.

## **ARTICLE 7** **CHANGES IN THE WORK**

### 7.1 OWNER INITIATED CHANGES

- 7.1.1 Without increasing the project contract amount, the Owner, through the Project Manager, may, without invalidating this Agreement, order changes in the Work, which may consist of additions, deletions or other revisions. All other change orders, including a change to the substantial completion date, shall require City Commission approval.
- 7.1.2 The Owner may request the Contractor to submit a cost estimate for contemplated changes in the Work. The Contractor shall, in turn, obtain cost estimates from the affected Subcontractors. .
- 7.1.3 A Change Order shall be in writing and signed by the Owner's designated representative who has authority to change the Agreement, usually the Project Manager. Work on the changes may not proceed or be billed until the signed Change Order is received.
- 7.1.4 When the Owner issues a Change Order, the Contractor shall immediately issue a corresponding change to the affected Subcontractor(s), and proceed with the changed Work.
- 7.1.5 If the Owner's Change Order is not accommodated within an appropriate contingency fund, the Project Contract Price may be changed in the Change Order (which change must be signed by the Contractor).

## 7.2 CONTRACTOR INITIATED CHANGES

- 7.2.1 The Contractor may initiate a Request for a Change Order to the Owner. Such a request shall include a detailed breakdown of the costs and mark-up involved. The Contractor shall keep a log of all such requests and shall review them at each weekly job meeting. The Owner shall be specifically apprised of any deadlines per the schedule for making a decision on a Request for Change Order.

## ARTICLE 8 LIQUIDATED DAMAGES

- 8.1 When the Owner and the Contractor agree to a Change Order, the Contractor shall sign the Change Order. By signing this Change Order, the Contractor agrees that the Contract time for Substantial Completion of the Work set forth in this Change Order is a reasonable time period to achieve substantial completion of the Work.
- 8.2 If the Contractor fails to achieve Substantial Completion of the Work by July 1, 2012, the Owner shall be entitled to retain or recover from the Contractor and/or its Surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the contract date identified for Substantial Completion and continuing until the actual date of Substantial Completion. Liquidated Damages shall be \$800.00 per day.
- 8.3 The Liquidated Damages amount per calendar day are fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. The Owner will suffer financial damage if the Project is not substantially completed on the dates set forth in the Contract Documents. Therefore, it is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, additional costs of contract administration by the Architect and Owner.
- 8.4 Permitting the Contractor to continue to finish the work or any part of the work after time fixed for its completion or after date to which time for completion may have been extended shall, in no way, constitute a waiver on the part of the Owner of any of his rights under the Contract.
- 8.5 Liquidated Damages shall be assigned to the Contractor if punch list items have not been completed within ninety (90) days after Substantial Completion. The value of punch list items shall be determined by the Architect and Engineer and multiplied by two (2). This total value (actual value times two) shall be withheld until the item has been completed. In addition, the Owner may obtain the services of others to complete unfinished punch list items after ninety (90) days have expired. Costs for the work shall be deducted from the Contractor's final payment. Liquidated Damages for punch list items shall commence on the ninety-first (91<sup>st</sup>) day after Substantial Completion and accrue until the final Application for Payment has been

approved by the Architect. The Contractor, shall pay to the Owner any sums hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay until the items are complete. Liquidated Damages under this Section 8.5 shall be \$250.00 per day. The Liquidated Damages amount per calendar day are fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. Therefore, it is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, additional costs of contract administration by the Architect and Owner.

**ARTICLE 9**  
**METHOD OF PAYMENTS TO THE CONTRACTOR**

9.1 MONTHLY PROGRESS PAYMENTS

9.1.1 The Contractor shall prepare and submit to the Owner a monthly Contractor's Application for Payment in the form attached as Exhibit A to this Agreement. Said Certificate shall be sworn to and shall attach all cost reports and back-up required by Article 2. The Owner shall make payments on said Certificate as set forth herein.

9.1.2 The period covered by such Certificate shall be one calendar month ending on the last day of the month. If received on or before the 20<sup>th</sup> of the month, the Owner shall make payments on the 10<sup>th</sup> day of the following month, or on the next business day after the 10<sup>th</sup>, if the 10<sup>th</sup> is on a weekend or holiday. The Owner may seek the advice of the A/E in determining the correctness of the Certificate.

9.1.4 Certificate for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Certificate for Payment.

9.1.5 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed by taking that portion of the Project Contract Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the Project Contract Price and subtract any previous payments made to the Contractor.

9.6 Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

9.7 In taking action on the Contractor's Application for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted; that the Owner has made exhaustive or continuous on-site inspections or that the Owner has

made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required, will be performed by the Owner's accountants when the Certificate of Final Payment is audited.

## 9.2 FINAL PAYMENT

9.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor no later than thirty (30) days following the last of the following to be completed:

- (1) The Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond the final payment; and,
- (2) A final Certificate of Final Payment has been issued by the Architect; and,
- (3) A permanent certificate of occupancy has been issued and the Owner is permitted to occupy the facility; and
- (4) All punch list items have been completed.

9.3 Payments to Subcontractors - The Contractor shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of 10 percent (10%). Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

For extraordinary circumstances, final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval by the Owner, Contractor and A/E.

9.4 Delayed Payments by Owner - If the Owner should fail to pay the Contractor within thirty (30) days after the receipt of a Application of Payment approved by the Architect/Engineer, then the Contractor may, upon seven (7) additional days written notice to the Owner and the Architect/Engineer stop the Project until payment of the Amount owing has been received. Interest on funds delayed shall be at the rate specified in section 14.1.

## **ARTICLE 10** **INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

10.1 Indemnity.

10.1.1 The Contractor agrees to indemnify and hold harmless the Owner, the Owner's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction contract.

## 10.2 Contractor's Insurance

10.2.1 The Contractor shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.

10.2.2 Worker's Compensation Insurance - The Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.

10.2.3 Contractor's Public Liability and Property Damage Insurance - The Contractor shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

- (1) *Comprehensive Commercial General Liability Insurance:* Occurrence form required. Aggregate must apply separately to this contract/job. Minimum \$500,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 fire damage.
- (2) *Automobile Insurance:* To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this agreement.

- (3) Excess Liability, Umbrella Form: \$2,000,000 Each Occurrence; Combined Single Limit.
- (4) *Workers Compensation*: Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident; \$500,000 each employee; and \$500,000 policy limit for disease.

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- 10.2.4 Subcontractor's Public Liability and Property Damage Insurance - The Contractor shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy in an amount that is appropriate for the work to be performed.
- 10.2.5 Owner's and Contractor's Protective Liability Insurance - The Contractor shall procure, as a cost of the Project, and furnish an Owner's and Contractor's Protective Liability Insurance Policy with the following minimum limits:

Bodily Injury Liability and Property Damage Liability - \$1,000,000 Each Occurrence, Combined Single Limit

- 10.2.6 "XCU" (Explosion, Collapse, Underground Damage) - The Contractor's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- 10.2.7 Broad Form Property Damage Coverage, Products & Completed Operations Coverage's - The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverage's.
- 10.2.8 Contractual Liability Work Contracts - The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Agreement to the extent covered by a standard Insurance Standards Office (ISO) General Liability policy.
- 10.2.9 Builder's Risk Coverage - At the City's request and cost, the contractor shall arrange to maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverage's on an "all risk" basis including theft and stored materials. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to substantial completion of the Project. The policy shall have a deductible in an amount acceptable to the Owner and that meets the industry standards and any losses not covered by insurance shall

be paid by the Owner out of unforeseen conditions and the Owner shall be listed as an additional insured.

10.2.10 Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

- (1) Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Department of Construction Services. This Certificate shall be dated and show:
  - (a) The name of the insured Contractor, the specific job by name and number, the name of the insurer, the number of the policy, its effective date, and its termination date.
  - (b) Statement that the Insurer will mail notice to the Owner and a copy to the A-E at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
  - (c) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (IS) and such Certificate shall clearly state all the coverage's required.
  - (d) The Owner shall be named as additional insured on all coverages, except Worker's Compensation.
  
- (2) Indemnification Rider
  - (a) To cover the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer and their agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article
  - (b) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any



subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- (c) The obligations of the Contractor under this Section shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect/Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- (d) The Contractor hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect/Engineer in exchange for giving the Owner and Architect/Engineer, respectively, the indemnification provided above.

### 10.3 Waiver of Subrogation

- 10.3.1 The Owner and the Contractor waive all rights against each other, for damages caused by perils covered by insurances provided under this Article to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as Trustees. The Contractor shall require similar waivers from all subcontractors and their sub-contractors.
- 10.3.2 The Owner and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub-contractors.
- 10.3.3 The Owner waives subrogation against the Contractor 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.
- 10.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

## ARTICLE 11 TERMINATION

- 11.1 Termination by the Contractor - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government other than the Owner as the contracting party, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make proper payments thereon, then the Contractor may, upon seven (7) days written notice to the Owner, terminate this contract and request payment for all work executed, the Contractor's fees earned to date, and for any proven loss sustained upon any materials, equipment tools, construction equipment, and machinery, including reasonable profit, damages and terminate expenses incurred by the Contractor.
- 11.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause
- 11.2.1 If the Contractor fails to perform any of his obligations under this Agreement including any obligation he performs with his own forces, the Owner may, after seven (7) days of such failure, produce a written notice to the Contractor allowing fourteen (14) days to cure the problem. If during the fourteen-day period, the Contractor fails to perform such obligations and make good such deficiencies, the Owner may give the Contractor written notice that the Contract is terminated for cause. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under this Agreement. Termination expenses and additional fees and costs related to completion of the Project incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).
- 11.2.2 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined a any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy, and after giving the Contractor and his surety, if any, seven (7) days written notice, during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned bay the Contractor, and may finish the Project by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under this Agreement.

Termination expenses and additional fees and costs related to completion of the Project incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

11.2.3 If the Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Contractor or his Surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligation assumed under this Agreement. Expenses incurred by the Owner will be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

### 11.3 TERMINATION BY OWNER WITHOUT CAUSE

11.3.1 The Contract may be terminated by the Owner, without cause, and for the convenience of the Owner.

11.3.2 If the Owner terminates this Agreement without cause and for the Owner's convenience, he shall reimburse the Contractor for any unpaid Cost of the Project due him under Section 9.1.5. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article 11, execute and deliver all such papers and take all steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such obligations or commitments.

11.3.3 If lack of legislative funding makes the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Contractor his proportionate fee due in accordance with Section 9.1.5.

## ARTICLE 12 ASSIGNMENT AND GOVERNING LAW

12.1 Neither the Owner nor the Contractor shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

12.2 This Agreement shall be governed by the Laws of the State of Florida.

12.3 Jurisdiction and venue for any action brought under this Contract or any subcontract entered into by Contractor is agreed to be exclusively in the courts in and for Manatee County.

**ARTICLE 13**  
**FORCE MAJEURE, FIRE OR OTHER CASUALTY**

13.1 FORCE MAJEURE

13.1.1 Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.

13.1.2 The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the Contractor or to the Contractor, if with respect to the Owner, specifying its actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis for Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

13.2 CASUALTY; ACTIONS BY OWNER & CONTRACTOR

13.2.1 During the Construction Period, if the Project, or any part thereof, shall have been damaged or destroyed, in whole or in part, the Contractor shall promptly file a proof of loss and Owner and Contractor shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction.

13.2.2 The Contractor shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other charges, necessary for reconstruction of the Project substantially in accordance with the Project Plans and Specifications.

- 13.2.3 Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the Contractor covenants and agrees diligently to commence reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:
- (1) Receipt by the Owner or the Trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;
  - (2) Written agreement executed by the Contractor and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and
  - (3) Final Approval by the Owner of the Project Plans and specification for such repair or reconstruction and issuance of any required Building Permit

13.3 APPROVAL OF PLANS AND SPECIFICATIONS FOR RECONSTRUCTION

13.3.1 The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by the plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to be substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinance, codes and regulations.

13.3.2 The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the Contractor as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair to the Project.

13.4 Notice of Loss or Damage. The Contractor shall promptly give the Owner written notice of any significant damage or destruction to the Project, defined as loss or damage which it is contemplated by Contractor extend the date of substantial completion, then expectations of Contractor as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage, which the Contractor determines, will not affect the GMP or date of substantial completion will be reported to the Owner and A-E immediately and associated corrective actions will be undertaken without delay.

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

14.1 INTEREST. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the rate of ten percent (10%) per annum.

14.2 PARTIES' REPRESENTATIVES.

14.2.1 The Owner's Representative is: Robert Gause  
Allison-Gause Engineering

14.2.2 The Contractor's Representative is: Maurice Opstal  
Stellar Development, Inc.  
9021 Town Center Parkway  
Bradenton, Florida 34202

14.2.3 All written notices required or permitted under this Agreement shall be sent to the above by certified mail, return receipt requested. Receipts shall be retained as proof that the notice was received.

14.2.4 The parties' representatives may only be changed upon prior written notice to the other party.

14.3 DISPUTE RESOLUTION

14.3.1 Any dispute under this Agreement or otherwise concerning the Work of the Project must be resolved as specified herein or it is waived.

14.3.2 Within seven (7) days of the act giving rise to the claim, the party making the claim shall notify the other party and the A-E of the nature of the claim. Within seven (7) days of such notification, both parties and the A-E shall meet to attempt to resolve the claim. If the parties cannot resolve the claim, the A-E shall write a report and recommendation of how the claim should be resolved. This report is admissible in court proceeding.

THIS AGREEMENT is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect-Engineer for use in the administration of the Contract, and one to the Owner.

CONTRACTOR - Stellar Development, Inc.

By: \_\_\_\_\_  
Corporate Secretary Signature

By: \_\_\_\_\_  
Corporate President Signature

\_\_\_\_\_  
Type Corporate President's Name

As Witnessed:

OWNER - CITY OF PALMETTO,  
CORPORATE SEAL  
MANATEE COUNTY, FLORIDA:

\_\_\_\_\_

Attest:

City of Palmetto, by and through the City  
Commission

\_\_\_\_\_

By: \_\_\_\_\_  
Shirley Groover Bryant, Mayor