



R. R. SIMMONS

DESIGN/BUILDERS • ARCHITECTS • CONSTRUCTION MANAGERS

13112 Telecom Drive
Tampa, FL 33637-0924
www.rrsimmons.com

Date

Company
Address
City State Zip

ATTN: **Contact Name**

RE: **USF Project Number 579**
 USF Athletic Facilities
 RRSCC Commitment No.-COMMITMENT NUMBER

Dear Mr. Last Name,

Attached please find an original Agreement for the above referenced project. Print two (2) copies and have an authorized representative of your company review, execute and return both Agreements to me at the address shown above. However, please be advised that this Agreement will not be considered binding until such time as the Design/Builder provides you with a fully executed Agreement. You are not authorized to proceed with any work until such an executed Agreement is received by your office.

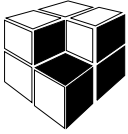
Please note the following when returning the original executed Agreements:

- 1) Provide an original Acord Certificate of Insurance naming **R. R. Simmons Construction Corporation, University of South Florida, and USF Financing Corporation** as additional insured and with the proper thirty (30) day cancellation notice as outlined in Exhibit A. If Subcontractor is performing design services also include a certificate from (Engineer's Name) evidencing their Professional Liability insurance and General Liability Insurance complying with these requirements.
- 2) Bonds, if required, for this Project should be submitted no later than Date.
- 3) Provide a list of all secondary subcontractors and/or vendors, including a contact name, company and phone number for each that you anticipate using on this project.
- 4) Return the executed Agreements by no later than {Contracts.RequiredDate}.
- 5) Review Exhibits D and E, which relate to payment procedures, with the individual in your company who is responsible for these items.

If you have any questions, do not hesitate to contact me. Please be aware that receipt of the executed Agreement and Acord Certificate of Insurance is required before you will be allowed to commence services on the Project. For your reference a copy of the Prime Contract is available for review for specific items incorporated by reference in this Agreement including a requirement for confidentiality with this transaction and all related transactions.

Sincerely,
R. R. Simmons Construction Corporation

Ken Boeser
Project Manager



R. R. Simmons Construction Corporation
13112 Telecom Drive
Tampa, Florida 33637-0924

SUBCONTRACT AGREEMENT

DATE:

COMMITMENT NO.: COMMITMENT NUMBER

PROJECT NUMBER: 10-903

PROJECT NAME: USF Project Number 579
 USF Athletic Facilities

PROJECT ADDRESS: 4202 E. Fowler Avenue
 Tampa, FL 33620

OWNER NAME: USF Financing Corporation

PROJECT MANAGER: Ken Boeser EMAIL: kenboeser@rrsimmons.com PHONE: (813) 632-5519

PROJECT ASSISTANT: EMAIL: _____@rrsimmons.com PHONE: (813) 632-

SUPERINTENDENT: EMAIL: _____@rrsimmons.com PHONE: (813)

SUBCONTRACTOR: Company

ADDRESS: Address
 City State Zip

CONTACT: Contact Name EMAIL:
 PHONE: FAX NUMBER:

SUBCONTRACT PRICE: \$Price
 (Price in Words Dollars)

RETAINAGE: %

THIS SUBCONTRACT AGREEMENT ("Agreement") is made as of this _____ day of _____, 2010 by and between **R. R. Simmons Construction Corporation, 13112 Telecom Drive, Tampa Florida 33637-0924** ("Design/Builder"), a limited liability company duly authorized and licensed under the laws of the State of Florida and **Company, Address, City State Zip** ("Subcontractor"), a company duly authorized and licensed under the laws of the State of Florida.

For the consideration herein, the Subcontractor covenants and agrees with the Design/Builder as follows:

1. DEFINITIONS

- a. In this Agreement the word "WORK" shall mean the scope of WORK, including labor, services and materials, required to be done and furnished by the Subcontractor under this Agreement and the other Contract Documents.
- b. The word "Owner" shall mean the legal entity contracting with the Design/Builder under that certain Agreement Between Owner and Design/Construction Services Team, dated December 8, 2009, including all documents referenced within such agreement, supplemental and general conditions, all other related documents, and any amendments or other modifications thereto

("Prime Contract") for the design and construction of the Project, including the performance of the WORK. Any referenced made in the Prime Contract to "Design/Construction Services Team", "DCST", "Team", "Architect", "Engineer", "Architect/Engineer" or "Construction Manager" shall mean "Design/Builder" and all such terms may be used interchangeably.

- c. The words "Building" or "Structure" or "Project" shall also mean and include all utilities, sidewalks, landscaping, roads, streets, and other subjects and objects of construction provided for in the Prime Contract between the Owner and the Design/Builder.

2. THE WORK

- a. The Subcontractor agrees to provide and perform all WORK required by this Agreement, and the other Contract Documents, including all items of WORK described in the Scope of WORK attached as Exhibit "B", and specifically made a part hereof. As part of the WORK, Subcontractor will furnish all labor, materials, equipment, systems, machinery, tools, apparatus, transportation, shop drawings, and samples required to complete the WORK. The WORK also includes the daily clean up of all debris resulting from Subcontractor's operations.
- b. If design services are a part of the Scope of WORK, the design obligations are set forth in Exhibit "G" Professional Design Services, attached hereto and specifically made a part of this Agreement. In addition, if design services are included in the Scope of WORK, by signing and executing this Agreement the Subcontractor represents that it has expertise and is properly licensed or will contract with a qualified Subconsultant who has expertise and is properly licensed in the type of professional architectural and/or engineering services that will be required from Subcontractor under this Agreement. When the Subcontractor engages a Subconsultant to perform the Professional Design Services set forth in the Scope of WORK, the Subcontractor agrees to engage only those subconsultants who Design/Builder has pre-approved to perform such services and to bind the Subconsultant to all obligations of this Agreement. The word Consultant as used in Exhibit "G" shall mean the Subcontractor and/or Subcontractor's Subconsultants who are engaged by the Subcontractor to perform the Professional Design Services required of Subcontractor by this Agreement.
- c. Subcontractor is bound to Design/Builder by the terms of this Agreement, including those of the Contract Documents, and shall assume towards Design/Builder, with respect to Subcontractor's performance, all of the obligations and responsibilities which Design/Builder assumes towards Owner under the Contract Documents with respect to the Subcontractor's Work. Subcontractor shall bind its lower tier subcontractors and suppliers to all of the performance obligations and responsibilities which Subcontractor assumes towards Design/Builder hereunder.

3. CONTRACT DOCUMENTS

- a. Contract Documents consist of this Agreement with all Exhibits referenced in Section 20 below, all modifications to the Agreement hereafter issued pursuant to the terms of this Agreement and the Prime Contract , including, but not limited to the drawings, specifications, general, supplementary and other conditions of the Prime Contract (but specifically excluding the payment provisions between the Owner and the Design/Builder), as well as all addenda to the Prime Contract issued prior to the execution of this Agreement, and subsequent modifications to the Prime Contract. The Prime Contract payment provisions between the Owner and the Design/Builder are specifically not included within the Contract Documents incorporated in this Agreement. In case of conflict between the provisions of the Prime Contract between the Owner and the Design/Builder, and the provisions of this Agreement, the provisions of this Agreement shall prevail in any matter between the Design/Builder and Subcontractor.
- b. The WORK shall be performed and completed in accordance with all terms of the Contract Documents (excluding the payment terms of the Prime Contract), all of which Subcontractor acknowledges he has read and understands.
- c. The Contract Documents, shall be kept on file in the main office of the Design/Builder, and are available for inspection by Subcontractor upon reasonable request during normal business hours. WORK shown on the drawings but not specified, or specified but not shown on the drawings,

shall be performed by Subcontractor as part of the WORK. Drawings and specifications are to be construed as supplementing each other.

- d. In executing this Agreement, except as expressly noted and provided for in Exhibit "B", the Subcontractor represents that he has visited, investigated, examined, inspected, and thoroughly familiarized himself with the Contract Documents, the Project site and adjoining premises, and the local conditions, in connection with which the WORK covered by this Agreement is to be performed, that it has thoroughly informed itself as to any difficulties in connection therewith, that the Design/Builder has made no representation of any kind or nature with references thereto except as may be expressly set forth in writing in this Agreement and Subcontractor has correlated its observations with the requirements of the Contract Documents and further represents that based on that review, Subcontractor finds the Contract Documents are sufficient for the WORK to be performed. Commencement of this WORK or any portion thereof by the Subcontractor shall be conclusive evidence that the Project site, or that part thereof at which the WORK is being installed, is in proper condition for the reception and installation of the WORK.
- e. Design/Builder may provide some or all of the Contract Documents, whether draft or final versions, in electronic media for Subcontractor's use as reference documents. Due to the potential that the information set forth in such electronic media can be corrupted or modified in transmission or by the Subcontractor or others, unintentionally or otherwise, or that design changes may be made after the data is transferred, Subcontractor recognizes and agrees that all use of such electronic media will be at Subcontractor's sole risk and without any liability, risk or legal exposure to the Design/Builder, its employees, officers, subcontractors or consultants.
- f. Subcontractor agrees to indemnify, defend and hold harmless Design/Builder with respect to any loss or damage incurred by Design/Builder due to Subcontractor's use of the electronic Contract Documents.

4. SUBMITTALS

- a. Time is of the essence of this Agreement. Subcontractor shall prepare and submit to Design/Builder a submittal log and schedule which, shall be updated weekly, showing the status of all required shop drawings, samples and other required submittals. Subcontractor shall prepare all shop drawings and other required data and furnish same for review and approval by the Design/Builder in strict accordance with this Agreement and Design/Builder's schedule requirements (as said schedule requirements maybe adjusted by Design/Builder from time to time in response to the current needs of the Project), so as not to delay the progress of either the Subcontractor's WORK, the total WORK required of the Design/Builder pursuant to the Prime Contract or the work of Owner or any other person or entity with respect to the Project. Adequate copies of such data shall be submitted by Subcontractor to Design/Builder, plus the number of returned copies desired by the Subcontractor for his use. In the instance of specifically prepared fabrication drawings, submittal shall consist of one reproducible drawing and two prints. Subcontractor agrees to keep Design/Builder fully informed regarding his delivery schedule and will immediately advise the Design/Builder in writing should any delay be anticipated. A complete, up-to-date procurement schedule will be submitted on forms acceptable to the Design/Builder, upon request. Procurement schedule and Project Schedule to be compatible.
- b. In reviewing Subcontractor's shop drawings, samples and other submittals, Design/Builder is not responsible for verifying dimensions or field conditions. Review or approval of any such materials shall not relieve the Subcontractor from his responsibility for the proper matching and fitting of the WORK with all contiguous work and the coordination of the WORK with other work being performed on the Project site, or of any duty and responsibility to perform the WORK in accordance with the Contract Documents.
- c. As-built documents and data shall be maintained and recorded on a continuous basis by the Subcontractor as applicable to his WORK and shall be reviewed periodically by Design/Builder. Should Design/Builder determine that such as-built documents are not being properly maintained, Design/Builder shall have the right to withhold payment under the terms of this Agreement until such time as, in Design/Builder's determination, the as-built documents have been properly recorded.

5. SUPERINTENDENCE

- a. The Subcontractor shall provide adequate, competent, and experienced full-time, English speaking, site supervision (satisfactory to the Design/Builder) during the performance of the WORK to be performed under this Agreement. Such supervisor shall have the authority to carry out directions from the Design/Builder relating to the Subcontractor's WORK, or responsibility and shall have the authority to act on behalf of Subcontractor in all matters necessary for proper coordination, direction and technical administration of the WORK. Instructions, directions and orders from Design/Builder issued to such supervisor shall be binding upon Subcontractor
- b. The Subcontractor shall provide technical services as required by Design/Builder or Owner to effect the operation of equipment and/or material furnished under this Agreement, including performance of specific testing, if any, and shall instruct the Owner's personnel in the operation, maintenance and control of such equipment.

6. MATERIAL AND WORKMANSHIP

- a. All WORK shall be subject to the final approval of the Design/Builder and/or Owner.
- b. The Subcontractor shall provide safe and sufficient facilities and access to the WORK at all times for inspection of the WORK by the Design/Builder, the Owner, or any of their authorized representatives.
- c. Should the Design/Builder or Owner condemn or fail to approve any WORK, including any equipment or materials to be furnished under this Agreement, the Subcontractor shall, within 24 hours after receiving written notice from the Design/Builder of such determination, proceed promptly to take down all portions of such WORK and remove from the Project all equipment and materials, whether worked or unworked, which are subject to that condemnation or disapproval, and shall promptly make good, at Subcontractor's expense, all such WORK and all other work damaged or destroyed in removing or making good said condemned or disapproved WORK.
- d. Subcontractor shall cause the WORK to conform to, and Subcontractor shall abide by, any additional specifications, drawings, or explanations furnished by the Design/Builder to illustrate the WORK to be done, subject only to the provisions of Paragraph 9.

7. PROGRESS AND COMPLETION

- a. The Subcontractor shall coordinate its WORK with the rest of the work required for the Project, and unless otherwise expressed or provided in the Contract Documents, the Subcontractor shall commence its WORK as soon as the Project is ready for such WORK, or immediately upon verbal or written notice by the Design/Builder, whichever is sooner, and shall perform and complete its WORK so that neither Design/Builder nor any other person or entity involved in the Project will be delayed by any act or omission of Subcontractor in completing its WORK on the Project in accordance with this Agreement and the Design/Builder's Project Schedule (attached as Exhibit "C") as said schedule may be revised from time to time by Design/Builder.
- b. The Subcontractor shall at all times, supply and promptly pay for, adequate tools, appliances, equipment, a sufficient number of properly skilled workmen, and a sufficient amount of materials and supplies of specified quality to efficiently and properly prosecute the WORK in accordance with the Design/Builder's Project Schedule, and any modifications thereto issued by Design/Builder, in order to achieve a Project completion date established by the Design/Builder with due consideration that other work is dependent upon the WORK of this Agreement for proper and timely completion.
- c. Subcontractor shall coordinate its operations with all of Design/Builder's other subcontractors working on the Project. The Subcontractor shall employ workmen who will work in harmony with those employed by the Design/Builder and its other subcontractors, and should the Design/Builder's or its other subcontractor's WORK for any reason be stopped, or delayed, in the judgment of the Design/Builder, due to the Subcontractor not having properly coordinated its

WORK including without limitation having proper and sufficient workmen, then the Design/Builder shall have the right, in addition to any and all other rights provided in this Agreement, after forty-eight (48) hours written notice to the Subcontractor, to stop Subcontractor's performance of the WORK, or any portion thereof, and employ such workmen to complete the requirements of this Agreement as to such WORK or portion, and the cost of completing the WORK, or any portion thereof, shall be charged to the Subcontractor.

- d. If, in the opinion of the Design/Builder, the Subcontractor falls behind in the progress of the WORK the Design/Builder may, upon forty-eight (48) hours written notice to the Subcontractor, direct the Subcontractor to take such steps as the Design/Builder deems necessary to improve the rate of progress, including requiring the Subcontractor to increase the labor force, number of shifts and/or overtime operations, days of work, amount of plant or other remedies, and to submit for Design/Builder's approval a recovery schedule demonstrating the method under which the required rate of progress will be regained; all of the above to be done without additional costs to the Design/Builder. The Design/Builder may, at any time, modify the Design/Builder's Project Schedule to suspend, delay or accelerate, in whole or in part, the commencement or execution of the WORK or any portion thereof or to vary the sequence thereof. Notwithstanding the foregoing, in the event Design/Builder accelerates the Subcontractor's commencement or execution of the WORK and such acceleration is required as a result of a delay, disruption or interference by any of Design/Builder's other subcontractors, and so long as such acceleration is not caused or contributed to in any way by the fault or neglect of Subcontractor, Design/Builder shall endeavor to charge and collect from that other subcontractor, the direct, increased out-of-pocket expenses to Subcontractor, if any, resulting from that acceleration. In the event Design/Builder is able to collect any of those amounts from the other subcontractor, Design/Builder shall pay those collected amounts to Subcontractor, less Design/Builder's reasonable costs and expenses associated with the collection of those amounts. Provided, however, notwithstanding anything in the Contract Documents to the contrary, Subcontractor acknowledges and agrees that receipt of that payment from any such other subcontractor is an express condition precedent to Design/Builder's obligation to make any such payment to Subcontractor. If Subcontractor fails to comply with the requirements of this subparagraph to Design/Builder's satisfaction, in addition to any other right or remedy Design/Builder may have under this Agreement, Design/Builder may employ such workmen and purchase and lease such materials and equipment as Design/Builder deems necessary in order to regain the proper rate of progress with respect to the WORK. All costs incurred by Design/Builder in so regaining the proper rate of progress for the WORK shall be charged to and the responsibility of the Subcontractor.

8. MUTUAL RESPONSIBILITY

- a. The quantity and scope of WORK required herein is directed by the whole of the Contract Documents, and Subcontractor acknowledges his obligation under this Agreement to coordinate his WORK with materials and/or equipment to be furnished by others to ensure a completely compatible Project systems. Accordingly, the Subcontractor shall review the fabrication drawings and the product data of all Project items requiring integration and compatibility with the WORK required hereunder and shall notify Design/Builder in writing of any deficiencies or errors in such drawings and Project data.
- b. The Subcontractor shall review the surfaces provided by others to which his WORK is to be applied, and shall notify the Design/Builder in writing of any defect or condition detrimental to proper procedures, prior to the commencement of his WORK; otherwise, except as to latent defects not then reasonably discoverable by Subcontractor, it shall be deemed a waiver by Subcontractor of any claim resulting from such defect or condition and that the Subcontractor has accepted the conditions of such surfaces and shall be liable for all consequences resulting therefrom.
- c. Subcontractor shall be liable to Design/Builder for any damages to adjacent surfaces caused by his WORK, including damages resulting from Subcontractor's cleaning of such surfaces.
- d. Unless otherwise noted in the Contract Documents, the Design/Builder shall make available within reasonable limits, temporary services for the benefit of Subcontractor, consisting of sanitary toilet facilities, potable water, 110 volt electric service and litter containers for incidental

waste. Litter containers shall not be utilized for the deposit of scrap or waste construction materials.

- e. Subcontractor will provide, maintain and remove from the Project site on substantial completion of WORK, all his temporary offices, structures for the use of his employees, sheds and storage facilities complete with all necessary utilities, gas, telephone and water. Storage areas for the use of the Subcontractor shall be designated from time to time by the Design/Builder, and no materials or equipment shall be stored in such areas by the Subcontractor except in areas approved in advance and in writing by the Design/Builder. Such storage areas shall be maintained in an orderly condition by the Subcontractor.
- f. The Subcontractor shall provide and be responsible for layout, including the accuracy thereof, necessary for the performance of the WORK covered by this Agreement.
- g. The Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of his WORK that may be required to fit it to, receive, or be received by the work of others: (i) as shown, or reasonably implied by the Contract Documents; (ii) as required, or reasonably implied by industry standards and the rules and regulations, codes, and requirements of all regulatory agencies having jurisdiction over the Project; or (iii) as required or reasonably implied to achieve consistency and compatibility with the design of the Project.
- h. The Subcontractor shall pay to the Design/Builder the reasonable value for the use of any of the Design/Builder's equipment which the Design/Builder may permit in advance and in writing the Subcontractor to use.
- i. Anchoring devices required for the WORK to be built into concrete or masonry shall be furnished by the Subcontractor with accompanying location drawings. All anchoring devices will be installed by the Subcontractor unless otherwise agreed in writing by the parties hereto.
- j. Subcontractor hereby agrees to constantly maintain proper housekeeping controls for construction debris and litter arising from his operations. Accordingly, Subcontractor shall clean and remove, on a daily basis, all trash, debris and foreign material resulting directly or indirectly from its operations from the Project site or to locations designated in writing by the Design/Builder. If Subcontractor fails, within Forty Eight (48) hours of receipt of written notice to the Subcontractor's field supervisor, to correct his failure to properly clean-up and dispose of all trash and waste materials created by the Subcontractor, the Design/Builder shall have the right to perform such clean-up and charge the cost and expense thereof to the Subcontractor, and the Subcontractor hereby agrees to pay Design/Builder One Hundred (\$100.00) Dollars per man hour for the time required, plus all transportation and dumping costs, all as the agreed costs for the Design/Builder to perform the clean-up work. Fire exits, corridors and doorways shall be clear of trash and debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.

9. CHANGES

- a. In the event the Design/Builder requests the Subcontractor to review a proposed modification to the Project which may affect the Subcontractor's WORK, the Subcontractor shall respond in writing within the time requested by Design/Builder but in no event later than seven (7) calendar days after receipt of such request, or other reasonable time limits as the parties may agree in writing, stating the effect of the proposed modification upon his performance, including details of cost and time adjustments thereof. Otherwise, the Subcontractor shall accept the determination of the Design/Builder as to the effect of the proposed modification or change.
- b. The Design/Builder may at any time, without invalidating this Agreement and without notice to the Surety of this Agreement, by written order designated or indicated to be a Change Order, make any change in the WORK within the general scope of this Agreement. Adjustments to the Subcontract Price or the time for completion of Subcontractor's WORK, if any, shall be made in accordance with the provisions of the Contract Documents, when applicable, and in accordance with this Paragraph 9.

- c. Additions or changes to the WORK shall be made only upon written order, approved by the Design/Builder. If Design/Builder and Subcontractor are unable to agree on a Change Order for the requested change, Subcontractor shall, nevertheless, promptly perform the change as directed by Design/Builder in a written Work Directive Change. In that event, the Subcontract Price and Contract Time shall be adjusted as directed by Design/Builder, and Design/Builder shall make payment to Subcontractor on such adjusted amount pursuant to the payment terms of this Agreement. If Subcontractor disagrees with Design/Builder's adjustment determination, Subcontractor shall make a claim pursuant to paragraph 12.b. of this Agreement or else be deemed to have waived any claim on this matter it might otherwise have had. If any change to the Subcontractor's WORK results in a net deductive Change Order or Work Directive Change, Subcontractor shall not make any claim for loss of anticipated profits on WORK not performed.
- d. In the event the Subcontractor is required by the Design/Builder to perform additional work for which the amount of compensation is not previously agreed upon, the Subcontractor shall prepare and submit to the Design/Builder, a proposal describing the estimated quantities and cost involved. The Subcontractor shall submit that proposal to Design/Builder within the appropriate time period established in paragraph 9.a above, so as to permit Design/Builder sufficient time to review the proposal and forward it to the Owner for consideration. The Subcontractor at all times shall keep accurate detailed and itemized records of the costs of any such change and shall report such costs to the Design/Builder in the form and manner prescribed by the Design/Builder. The Subcontractor shall, if requested, furnish each day to the Design/Builder, certified copies of all time sheets, receiving and inspection reports and all other basic documents required by the Design/Builder to evidence the expenditures of the Subcontractor as a result of such change. The Subcontractor's application to the Design/Builder for payment for such change work shall be accompanied by certified copies of all pertinent payrolls, invoices, and vouchers relating to the change work. The Design/Builder's or Owner's receipt, or acknowledgment of the Subcontractor's Change Order claims, or any other alleged claim, or any notice or report, including reports of cost and time, or any payments made, shall not be construed as the Design/Builder's or Owner's acknowledgment, or acceptance of the accuracy and validity of any portion thereof, until such time as Design/Builder or Owner expressly agree to such amounts (or such other amounts that may be expressly agreed to in writing by Design/Builder and or Owner) by executing, in writing, a final Change Order.
- e. For any change for which the amount of compensation was not previously agreed upon, the total allowable markup of Subcontractor's material, labor, and subcontract cost shall not exceed 10% for labor and material costs, and 5% for any sub-subcontracted costs. The mark-up shall cover all overhead and profit to the Subcontractor. Material costs subject to mark-up shall be defined as only those items which become a permanent part of the WORK. Labor costs subject to mark-up shall be defined as the direct wages of field personnel stationed at the Project site plus taxes, insurance and benefits required by law or collective bargaining agreements and for personnel not covered by such agreements, customary fringe benefits such as sick leave, medical and health benefits, holidays, vacations and pensions from foreman down (as opposed to wages paid to management, administrative or supervisory personnel) in the direct employ of the Subcontractor in the performance of his WORK under this Agreement. All other costs will be accounted for in the allowable mark-ups shown above.
- f. In the event the Agreement is executed prior to the determination of a firm Subcontract Price, the Agreement will indicate ("Preliminary") after the Subcontract Price listed on the face of this Agreement. Once the Design/Builder and Subcontractor have agreed upon a final Subcontract Price, the Design/Builder and Subcontractor will execute a written Change Order setting forth the final Subcontract Price. If the Design/Builder and Subcontractor are not able to agree on that final Subcontract Price, the procedures previously set forth in paragraphs 9.d and 9.e will be followed.

10. DELAYS

- a. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the WORK for any cause whatever, including those for which Owner or Design/Builder may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform or give rise to any rights, damages or additional compensation from Design/Builder. Subcontractor's sole remedy against Design/Builder shall be the right to seek an extension to the time fixed for the

completion of the WORK in accordance with subparagraph "c" below. This subparagraph "a" shall expressly apply to claims for early completion, as well as to claims based upon late completion. Notwithstanding the foregoing, Subcontractor may be compensated for interruptions, interferences, inefficiencies, suspensions or delays, so long as they are not attributable to Subcontractor's fault or neglect, to the extent, and only to the extent, Design/Builder actually receives such compensation from the Owner or others. Design/Builder's receipt of such payment from Owner or others is an express condition precedent to Design/Builder's duty of payment to Subcontractor. This provision does not, however, entitle Subcontractor to any compensation Design/Builder may receive from Owner for early completion. Notwithstanding the foregoing, in the event Design/Builder has received payment from Owner for WORK performed by Subcontractor and Design/Builder has failed to forward such payment to Subcontractor within sixty (60) days of Design/Builder's receipt, less any backcharges, set-offs or other amounts Design/Builder is permitted to withhold from payment to Subcontractor hereunder, then upon five (5) business days' written notice to Design/Builder from Subcontractor and Design/Builder's failure to forward such payment to Subcontractor within said five (5) day period, Subcontractor may stop its performance of the WORK. In no event shall Subcontractor be entitled to any extension of time or any damages for any delays, disruptions or interferences caused or contributed to in any way by Subcontractor.

- b. The Subcontractor shall be liable to the Design/Builder for any and all loss or damage (including any liquidated damages) to the Design/Builder or to the Owner as a result of any delay on the part of the Subcontractor in the prosecution or completion of the WORK, or for any delay to the completion of the entire Project attributable, in whole or in part, to Subcontractor.
- c. Should the Subcontractor be delayed in the prosecution of the WORK by any act, neglect or default of the Design/Builder or Owner, or by any damage caused by fire, lightning, earthquake, hurricane, or any other cause for which the Subcontractor is not responsible, either in whole or in part, then the time fixed for the completion of the WORK pursuant to the terms of this Agreement shall be extended for a period equivalent to the time lost to the critical path of Subcontractor's WORK by reason of such cause. However, no time extension shall become operative unless a notice of claim therefor is presented in writing to the Design/Builder within seventy-two (72) hours of the first occurrence of the delay and such claim is subsequently approved in writing by the Design/Builder. Subcontractor agrees that such extension of time for completing the WORK precludes, satisfies and cancels any and all other claims Subcontractor may have against the Design/Builder on account of such delay. Permitting the Subcontractor to continue after the time to complete the WORK has expired, shall not be construed as a waiver by Design/Builder of any claims for loss or damage for breach by Subcontractor of this Agreement.

11. DEFAULT AND TERMINATION

- a. Subcontractor shall be considered in material default of this Subcontract and in addition to any other rights or remedies provided under this Agreement or at law, such default shall be considered cause for Design/Builder to terminate this Subcontract, in whole or in part, as further set forth in this Section, if Subcontractor: (1) fails or refuses to begin the WORK under the Contract Documents within the time specified herein; or (2) fails or refuses to properly and timely perform the WORK as directed by Design/Builder or as provided for in the Project Schedule or the Contract Documents; or (3) performs the WORK unsuitably or neglects or refuses to remove materials or to correct or replace such WORK as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the WORK without Design/Builder's direction or approval; or (5) fails to resume WORK which has been suspended within a reasonable time after being notified to do so; or (6) causes delay to, interferes with or stops the work of Design/Builder or any other subcontractor, person or entity with respect to the Project; (7) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (8) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (9) makes an assignment for the benefit of creditors; or (10) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the WORK; or (11) fails or refuses to perform any of its obligations under the Contract Documents or otherwise materially breaches any provision of this Agreement.
- b. In such event, Design/Builder shall notify Subcontractor in writing of Subcontractor's default(s). If Design/Builder determines that Subcontractor has not remedied and cured the default(s) within

three (3) calendar days following receipt by Subcontractor of said written notice or such longer period of time as Design/Builder may approve, then Design/Builder, at its option, without releasing or waiving its rights and remedies against Subcontractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Subcontractor's right to proceed with the WORK under this Agreement, in whole or in part, and take possession of all or any portion of the WORK and any materials, tools, equipment, and appliances of Subcontractor, take assignments of any of Subcontractor's subcontracts and purchase orders, and complete all or any portion of Subcontractor's WORK by whatever means, method or agency which Design/Builder, in its sole discretion, may choose. If Design/Builder so terminates Subcontractor's right to proceed under this Agreement, Subcontractor shall not be entitled to any further payments under this Agreement until Subcontractor's WORK has been completed and accepted by Owner, and payment has been received by Design/Builder from Owner with respect thereto. In the event that the unpaid balance due Subcontractor exceeds Design/Builder's cost of completion of the WORK and all damages that are incurred by Design/Builder as a result of Subcontractor's default, the difference shall be paid to Subcontractor; but if such cost of completion and damages exceeds the balance due, Subcontractor agrees to immediately pay the difference to Design/Builder upon demand for such payment. For the purpose of this paragraph, Design/Builder's damages will include the Owner's and Design/Builder's attorney's fees, as well as additional subcontractor, consultant or architectural fees.

- c. Additionally, Design/Builder shall have the right to terminate this Agreement, upon written notice, without cause or for its own or the Owner's convenience, and require Subcontractor to immediately stop WORK. In such event, Design/Builder shall pay Subcontractor for that portion of the WORK actually and properly performed in an amount proportionate to the total Subcontract Price. Design/Builder shall not be liable to Subcontractor for any other costs or damages nor for prospective or anticipated profits on WORK not performed. However, if the reason for the termination and cancellation is due to any default or action by Owner, or as a result of court order or public authority, then Design/Builder shall not be liable to Subcontractor for any sum greater than that which Design/Builder receives from Owner with respect to Subcontractor's performance, less any costs incurred by Design/Builder. If, after notice of termination of Subcontractor's right to proceed pursuant to paragraphs 11a or 11b herein, it is determined for any reason that the Subcontractor was not in default, or that its default was excusable, or that Design/Builder is not entitled to the remedies against Subcontractor provided therein, then Subcontractor's remedies against Design/Builder shall be the same as and limited to those afforded Subcontractor under this paragraph 11c. Payment by Owner shall be an express condition precedent to Design/Builder's duty to pay Subcontractor hereunder.
- d. The remedies of the Design/Builder provided for in this Paragraph 11 and in any part of the Contract Documents shall be cumulative, and not exclusive, of all other remedies which the Design/Builder may have for breach of this Agreement by the Subcontractor, or as a result of the Subcontractor's failure to perform any of the covenants of this Agreement. All losses, damages, and expenses, including attorneys' and paralegals' fees in the prosecution or defense of any action, arbitration or suits, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceedings, or any subsequent proceedings or appeals from any order or judgment entered therein, incurred by the Design/Builder as a result of the foregoing, shall be borne by and charged against the Subcontractor and shall be damages for breach of this Agreement, and the Design/Builder may recover same from the bond mentioned in Paragraph 14 hereof, and both the Subcontractor and his Surety agree to pay Design/Builder for such losses, damages, expenses and attorneys' and paralegals' fees. The Design/Builder may withhold from the Subcontractor any amounts that are payable, or due to become payable under this Agreement, or any other agreements between the Subcontractor and the Design/Builder to offset the damages incurred or potentially incurred as a result of the breach of this Agreement by the Subcontractor, or as a result of the Subcontractor's failure to perform any of the covenants of this Agreement or any other agreements between Design/Builder and Subcontractor.

12. CLAIMS AND DISPUTES

- a. Subcontractor shall make all claims to the Design/Builder for increases in the Subcontract Price and/or extensions of time, for which the Owner may be responsible, in the manner provided for in the Contract Documents, if any, for like claims by the Design/Builder upon the Owner, and

allowing sufficient time for the Design/Builder to comply with the requirements of the Prime Contract for making such claims to the Owner. If no such manner for claims is provided in the Prime Contract or if the claim does not involve the Owner, then Subcontractor shall comply with the requirements otherwise set forth in this Agreement. The Subcontractor shall only be entitled to any increase in the Subcontract Price or extension to the time required to perform by Subcontractor, to the extent that the Design/Builder, on Subcontractor's behalf, actually recovers such increase from the Owner less the Design/Builder's costs associated with the claim.

- b. 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. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under the Agreement which is not resolved shall be decided by the Design/Builder, who shall reduce his decision to writing and furnish a copy thereof to the Subcontractor. The decision of the Design/Builder shall be final and conclusive, unless within seven (7) calendar days from the date of receipt of such decision, the Subcontractor makes written demand to the Design/Builder contesting same. If Subcontractor fails to contest Design/Builder's final decision within the time period noted above, he shall be deemed to have waived any right to contest that decision. The Subcontractor shall carry on the WORK and maintain the Project Schedule (as modified by Design/Builder from time to time) during any dispute or legal proceedings, unless otherwise agreed to in writing by the parties hereto.
- c. In the event the Subcontractor desires to pursue an appeal of an adverse final decision rendered by the Owner or the Owner's Representative that affects the Subcontractor's interest, and provided the Design/Builder's interests are unaffected, and provided further that the Prime Contract allows the Subcontractor to pursue such appeal, the Subcontractor agrees to bear the full cost thereof and sole responsibility for prosecuting such appeal and further agrees to indemnify, defend, protect and hold Design/Builder harmless from and against all claims, losses, expenses or damages resulting from Subcontractor's pursuit of such appeal. In the meantime, the Subcontractor shall carry on the WORK and maintain the Project Schedule (as modified by Design/Builder from time to time), unless otherwise agreed to in writing by the parties hereto and Design/Builder shall continue to make payments on WORK properly performed and which is not in dispute, but only to the extent that Design/Builder has been paid for such WORK by Owner.
- d. In the event of any claim or other matter in dispute between the Design/Builder and Subcontractor arising from or otherwise relating to this Agreement, the Project, the WORK, the Contract Documents, or the breach thereof, the party claiming the dispute shall provide the other party prompt written notice of such dispute. In the event that the parties are unable to reach a resolution of the dispute through direct discussions pursuant to paragraph (b) of this Section 12, and so long as Subcontractor has strictly complied with the notice requirements therein, the parties shall submit the dispute to non-binding mediation before a mutually agreed upon mediator certified by the State of Florida. If the parties are unable to resolve the dispute through non-binding mediation, the dispute shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.
- e. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. Any arbitration initiated as provided herein may include any other entities or persons whom Design/Builder believes to be substantially involved in a common question of fact or law. Notwithstanding the foregoing or anything in the Contract Documents to the contrary, in the event of any dispute between Owner and Design/Builder or Design/Builder and any other person or entity (such disputes collectively being referred to herein as an "Other Dispute"), Design/Builder may, at its sole discretion (i) include Subcontractor by joinder into, or (ii) consolidate any proceeding involving a dispute between Subcontractor and Design/Builder under this Agreement, with any proceeding involving an Other Dispute, including without limitation any mediation, arbitration, or litigation proceeding, in whatever forum that Other Dispute is pending. The location for any arbitration or mediation proceeding hereunder shall be in a location in Hillsborough County, Florida designated by the Design/Builder. Subcontractor waives any and all rights to contest the selection of dispute resolution method or forum including without limitation any rights based upon forum non conveniens.

- f. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Any award rendered by arbitrators shall be final and enforceable by any party to the arbitration, and judgment may be rendered upon it in accordance with applicable law in any court having jurisdiction thereof. Subcontractor and Design/Builder mutually agree to arbitrate under the terms and conditions outlined in this Article 12. This paragraph 12 shall survive completion or termination of this Agreement.

13. REGULATORY COMPLIANCE

- a. The Subcontractor shall comply with all Local, State and Federal laws, rules, codes, regulations, ordinances standards, orders, notices and requirements, including, but not limited to, those relating to labor, safety, discrimination in employment, fair employment practices, and equal employment opportunity, whether or not specifically provided for by this Agreement, without additional charge or expense to Design/Builder, where they may apply to the WORK.
- b. The Subcontractor shall comply with the Williams-Steiger Occupational Safety and Health Act of 1970 as amended, and the General Safety Rules and Regulations of the Construction Industry as currently required by the governing authorities having jurisdiction thereof, and such other labor laws as may be applicable, and report immediately to the Design/Builder any injury to any employee of the Subcontractor at the site of the project.
- c. The Subcontractor shall comply with the requirements of the Building Department, and comply with all other laws and ordinances, and indemnify, defend and hold the Design/Builder harmless from all annoyances and fines arising from Subcontractor's performance of the WORK, and give proper authorities all requisite notices relating to the WORK, and procure and pay for all necessary official licenses or permits to carry on the WORK.
- d. Material Safety Data Sheets (MSDS) are required on materials that the Subcontractor is going to use on the Project or on materials that are manufactured by the Subcontractor's firm or his suppliers that will be used in the Project that contain toxic materials. The Subcontractor shall furnish Material Safety Data Sheets to the Design/Builder, and so identify them specifically within thirty (30) days of execution of this Agreement, or, if the information is not available at that time, within fourteen (14) calendar days prior to delivery. The Subcontractor shall meet the obligations of applicable laws, ordinances or rules to properly train and advise his employees, subcontractors, sub-subcontractors, agents and invitees. Failure by the Subcontractor to comply with the preceding requirements shall constitute a material breach of this Agreement, and any items or materials delivered to the Project without complying with all of the foregoing, shall be considered as non-conforming, and the Design/Builder may reject and return same, or hold them at the Subcontractor's expense and risk while pursuing other remedies.
- e. In the event of the Subcontractor's violation of any of the above, the Subcontractor shall bear all costs resulting from such violation and shall indemnify, defend and hold the Design/Builder and Owner harmless from any damages (including attorneys' and paralegals' fees), claims, and causes of action arising from such violation.

14. BONDS AND INSURANCE

- a. Prior to commencing WORK, Subcontractor shall secure, and pay for, required insurances from an insurer acceptable to Design/Builder in such amounts as required by this Agreement but not less than that required by the Prime Contract, and such other insurance coverages as may be required by the Contract Documents as applicable to the WORK required under this Agreement. The coverages, requirements and limits of said insurance are as set forth in the Minimum Insurance Requirements attached hereto as Exhibit "A" and specifically made a part of this Agreement. All insurance coverages of the Subcontractor shall be primary to any insurance or self-insurance program carried by the Design/Builder applicable to this WORK. The word Vendor as used in Exhibit "A" shall mean the Subcontractor and the word Subvendor shall mean Subcontractor's subcontractors or subconsultants who are engaged by the Subcontractor to perform the WORK described in this Agreement.

- b. Subcontractor may be required to provide Performance and Payment Bonds, each in the penal amount of 100% of the Subcontract Price. If Bonds are required by this Agreement it will be noted in Exhibit "F". The Bonds must be provided on forms provided by the Design/Builder as Exhibit "F" attached hereto, within ten (10) calendar days of execution of this Agreement. The cost of such Bonds shall be included in the Subcontract Price unless otherwise expressly set forth in this Agreement. The surety issuing the Bonds on behalf of the Subcontractor must be acceptable to Design/Builder in all respects and meet or exceed the requirements set forth in Exhibit "F" and the Contract Documents. The costs of said Bonds are to be documented by invoices from the surety issuing the Bonds.
- c. Failure to provide required insurance and Bonds will be considered a material default under this Agreement. Commencement of WORK by the Subcontractor without having provided said evidence of insurances or Performance and Payment Bonds shall not be considered a waiver or release by the Design/Builder of the above requirement for insurances or Bonds, and Subcontractor shall be deemed to have proceeded with the WORK at its own risk and shall not be entitled to payment hereunder until such evidence of insurances or Bonds is delivered to the Design/Builder. Provided, however, in such event, Design/Builder may, but shall not be obligated to, in its sole discretion, procure such insurance or Bonds and charge the entire cost and expense of procuring such insurance or Bonds to Subcontractor, plus an administrative fee of 10% of the cost of such insurance or Bonds, either directly or by withholding such amounts from any payment otherwise due Subcontractor by Design/Builder hereunder.

15. ENCUMBRANCES

- a. The Subcontractor shall turn the WORK over to the Design/Builder in good condition and free and clear of, all claims, encumbrances, or other liens and shall indemnify, protect and save harmless the Design/Builder and Owner from all claims, encumbrances or liens arising out of the Subcontractor's performance of this Agreement, and the Subcontractor will at his own cost and expense (including attorneys' and paralegals' fees), defend all suits to establish such claims, and pay any such claims or liens so established. In the event of failure by the Subcontractor to comply with this requirement, the Design/Builder may, at its sole discretion, bond off any liens. Subcontractor shall be liable for all costs of such action including attorney's fees and costs and Design/Builder may offset any such amounts against any other amounts due or to become due by Design/Builder to Subcontractor hereunder. The foregoing notwithstanding, Design/Builder will not require Subcontractor to remove any liens perfected by Subcontractor when the Design/Builder is not in dispute with the Subcontractor and provided the liens were perfected due to nonpayment by the Owner through no fault of the Design/Builder or the Subcontractor or any sub-subcontractor of Subcontractor. Subcontractor agrees to cooperate with Design/Builder in the removal of the lien if the request for removal of lien is to facilitate payment for same.
- b. The Subcontractor shall, as often as requested by the Owner or by the Design/Builder, furnish a sworn statement showing all parties who furnish labor or materials to the Subcontractor with their names and addresses and amounts due or to become due each of them. Like statements may, at Design/Builder's option, be required from any sub-subcontractors or suppliers of the Subcontractor.
- c. The Subcontractor shall furnish the Design/Builder, if requested, evidence of the payment of all bills and expenses incurred by the Subcontractor for labor, services, equipment and materials used by the Subcontractor, or any other liability incurred by the Subcontractor in any way, for the purpose of using the same on or about the Project, and written lien releases and waivers, in the form provided by the Design/Builder as Exhibit "E" attached hereto and specifically made a part of this Agreement, from all persons, firms, or corporations that may have furnished to the Subcontractor, any labor, services, equipment and materials, whether on or for the Project, and written lien releases and waivers, in the form provided by the Design/Builder as Exhibit "E", from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the WORK of the Subcontractor under this Agreement.
- d. Any and all transportation tax, sales tax, use tax or any other tax that might accrue through purchase of materials or amounts paid for labor by the Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by the Subcontractor.

- e. The Subcontractor agrees that payment due hereunder is not assignable and that no part of this Agreement can be assigned, except by and in accordance with the prior written consent of the Design/Builder.

16. WARRANTIES AND GUARANTEES

- a. Subcontractor warrants to the Design/Builder and Owner that all materials and equipment furnished shall be new unless otherwise expressly specified in the Contract Documents, and that all WORK under this Agreement shall be of good quality, free from faults and defects and in full conformance with all of the requirements of the Contract Documents.
- b. Subcontractor agrees to promptly correct, without cost to Design/Builder or Owner, any and all defects due to faulty workmanship and/or materials which may appear within the correction period(s) established in the Contract Documents, and if no other such period(s) is set forth in the Contract Documents, then such correction period shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any separate, extended or special guarantees as provided by the Contract Documents or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.
- c. Subcontractor shall pay for all changes to the Subcontractor's WORK or the Design/Builder's work resulting from defects in Subcontractor's workmanship or materials, as well as, all expenses necessary to replace or repair either the Subcontractor's WORK or the Design/Builder's work or any property of the Owner, including that damaged or disturbed by making replacements or repairs of defective work. This guarantee is in addition to all other guarantees, warranties and rights contained in the Contract Documents or required by law, express or implied, which Subcontractor may owe to Design/Builder or Owner.
- d. If Subcontractor fails to begin or complete any repair or replacement within the time directed by Design/Builder, Design/Builder may undertake, but shall not be obligated for Subcontractor's benefit to undertake, such repair or replacement at Subcontractor's expense, and Subcontractor shall reimburse Design/Builder within ten (10) days of demand for any costs incurred, including ten percent (10%) for overhead and ten percent (10%) for profit.

17. PAYMENTS

- a. The Schedule of Values is attached to this Agreement as Exhibit "D". Subcontractor shall submit for approval within thirty (30) calendar days hereof and prior to any payment being made, any proposed revisions to the Schedule of Values in sufficient detail to allow Design/Builder to evaluate the progress of the WORK with respective quantities illustrated and a list of sub-subcontractors and/or material suppliers.
- b. It is expressly agreed that time is the essence of this Agreement, and that the payment of the Subcontract Price, or any portion thereof, is executory and conditional upon proper completion of the WORK by Subcontractor as herein specified. It is further expressly agreed that, any provision of the Contract Documents to the contrary notwithstanding, payment by the Owner to the Design/Builder of all amounts owed Subcontractor hereunder is an absolute condition precedent to Design/Builder's obligation to make payment to the Subcontractor of all or any portion of the Subcontract Price.
- c. The Subcontract Price shall be paid by the Design/Builder to the Subcontractor as follows:
 - 1. Payments shall be made in installments as the WORK progresses unless Subcontractor is in default. By the 20th day of each month, the Subcontractor shall submit to the Design/Builder a written requisition for payment, on a form provided by the Design/Builder attached to this Agreement as Exhibit "D", showing the proportionate value of WORK performed and completed to date, from which shall be deducted: (1) the retainage set forth at the beginning of this Agreement of such proportionate value or as set forth in the Contract Documents, whichever is greater; (2) all previous payments; (3)

all charges for materials and services furnished by Design/Builder to the Subcontractor; and (4) any other charges and deductions permitted or provided for in this Agreement. The balance of the requisition, to the extent approved by the Owner and Design/Builder, shall be payable to Subcontractor within seven (7) calendar days after payment is received by Design/Builder from Owner, such receipt constituting a condition precedent to Design/Builder's payment obligation and the source of such payment.

2. The quantities of WORK performed and materials furnished as established by the Design/Builder, Owner or the Owner's representative shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the WORK but delivered and suitably stored, shall be in accordance with the Contract Documents.
 3. Provided further, that payment for stored materials shall be made as set forth in the Contract Documents, and any requests for payment for stored materials shall be accompanied by such documentation as may be required by Design/Builder or Owner including without limitation vendor invoices, itemizing respective quantities and unit costs of such stored material. At its option, the Design/Builder may make payment for stored material by joint check to the Subcontractor and vendor and/or require, as a condition precedent to payment for stored materials, proof of proper insurance and a waiver and release of lien, effective as of the date of the payment. It is further understood and agreed that material stored on the site, for which payment is requested, shall be in the care and custody of the Subcontractor, and shall not be removed from the site without the written consent of the Design/Builder. Payment for materials stored is conditional upon the Design/Builder receiving payment from the Owner, such receipt constituting a condition precedent to Design/Builder's payment obligation and the source of such payment.
 4. Final payment, consisting of the unpaid balance of the Subcontract Price, shall be made to Subcontractor only after final completion of the Subcontractor's WORK in strict accordance with this Agreement and the Contract Documents and final acceptance of same by the Design/Builder and Owner and upon the conditions precedent such final payment has been received by the Design/Builder from the Owner, that all labor (including customary fringe benefits and payments due under collective bargaining agreements) and all sub-subcontractors, materialmen and suppliers have been paid in full and have provided final waivers and releases of lien upon the final payment.
- d. If at any time there shall be evidence of lien or claim for which, if established, Design/Builder or Owner might become liable, and which is chargeable to Subcontractor, and not due to a wrongful failure of payment by Owner, or if Subcontractor shall incur any liability to Design/Builder, or Design/Builder shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, the Design/Builder shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between the Design/Builder and the Subcontractor, an amount sufficient to indemnify Design/Builder and Owner against such lien or claim, and/or to compensate Design/Builder for and fully satisfy such liability, claim, or demand, and charge or deduct all costs of defense or collection with respect thereto, including reasonable attorneys' and paralegals' fees. Should any claim or lien develop after all payments are made, the Subcontractor shall refund to the Design/Builder immediately upon demand by Design/Builder, all monies that the Design/Builder may be compelled to pay in discharging such claims or liens or costs incurred in collecting said monies from the Subcontractor.
- e. No progress payment under this Agreement shall be conclusive evidence of the performance or completion of the WORK either in whole or in part, and no payment, including final payment, shall be construed to be acceptance of defective or nonconforming WORK or improper materials nor shall it release Subcontractor from any of its obligations under this Subcontract, nor shall entrance upon or use of the Project by the Owner constitute acceptance of defective or nonconforming WORK.

- f. The Subcontractor shall pay for all materials and labor used in connection with the performance of the WORK through the period covered by previous payments received from the Design/Builder, and furnish satisfactory evidence, when requested by the Design/Builder, to verify compliance with the above requirements. Further, as a condition precedent to receiving any payments hereunder, the Subcontractor shall deliver each month to the Design/Builder (regardless of whether any WORK was performed) waivers and releases of lien, for the period covered by the requisition of payment for the Subcontractor and for the period covered by the previous payment from the Design/Builder, from all sub-subcontractors and suppliers who have filed Notices to Owner (regardless of whether any WORK was performed by them), and at the request of the Design/Builder, waivers and releases of lien from those sub-subcontractors and suppliers who have not filed Notices to Owner (regardless of whether any WORK was performed by them). When required by the Owner under the terms of the Prime Contract, in exchange for payment by the Design/Builder, the Subcontractor will deliver waivers and releases of lien through the period covered by the current application for payment from the Subcontractor and all sub-subcontractors who have filed Notices to Owner (regardless of whether any WORK was performed by them). The Subcontractor further agrees to furnish to the Design/Builder, at the time of final payment, an affidavit certifying to the Subcontractor's payment in full for all items relating to the cost of the WORK hereunder; and also a final waiver and release of lien, on the form designated by the Design/Builder along with Consent of Surety.
- g. Final payment is further subject to the Design/Builder's prior receipt from the Subcontractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties and bonds relating to the WORK.
- h. Acceptance of final payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Design/Builder or Owner it might have arising out of or relating to this Agreement, except for those previously reduced to writing and specifically identified as still pending in Subcontractor's final Application for Payment.
- i. To the extent that any provisions of this Paragraph 17 are inconsistent with any part of the Contract Documents, the provisions of this Paragraph 17 shall control.

18. MISCELLANEOUS REQUIREMENTS AND SPECIAL PROVISIONS

- a. Subcontractor waives all rights of subrogation against Design/Builder and Owner for loss of, or damage to, Subcontractor's work, tools, machinery, equipment, material or supplies, except as may be covered by the Builder's Risk policy for the Project.
- b. Subcontractor's special attention is called to the requirements for adherence to the Design/Builder's Project Schedule, as it may be modified from time to time by Design/Builder, a copy of the most current Design/Builder's Project Schedule will be kept in the Design/Builder's Field Office. It is Subcontractor's duty to regularly check the Project Schedule to keep itself informed of any changes or modifications to it. Design/Builder is not required to notify Subcontractor of any such changes or modifications.
- c. Delivery of materials to the Project site are to be received, unloaded and stored by the Subcontractor and are to be coordinated with the Design/Builder.
- d. Design/Builder reserves the right to request that Subcontractor remove from the Project site any employees of Subcontractor for any reason. Upon notice from Design/Builder Subcontractor shall immediately take action to remove such employees. Provided however, that in order to exercise its rights under this paragraph, there must be a reasonable basis for Design/Builder's request, and the request must be made in writing. In the event such employees are not removed within Twenty Four (24) hours of such written notice from Design/Builder, such failure to remove employees shall be deemed a material breach of the Agreement by Subcontractor entitling Design/Builder to withhold payment until such condition has been remedied or at Design/Builder's option, terminate Subcontractor's right to continue its performance under this Agreement. by providing an additional three (3) day written notice.

- e. Subcontractor's authorized representative shall attend all meetings for the Project, when required by Design/Builder, including regular Project site safety and coordination meetings.
- f. When the WORK to be performed under this Agreement is such as to require as-built drawings, such drawings shall be kept up-to-date on a daily basis as a condition precedent to Design/Builder's obligation to make payment under this Agreement.
- g. Where testing agency standards are referenced, all materials shall be tested and certified by an approved, independent testing company.
- h. Location of employee break areas, employee parking, equipment parking, material storage, and temporary trailers will be subject to approval by the Design/Builder.
- i. Subcontractor will provide a list of Subcontractor's vendors/suppliers for this Project to Design/Builder for Design/Builder's approval prior to submitting the first application for payment.
- j. In the event the Subcontractor wishes to contract with a sub-subcontractor for any portion of the WORK covered by this Agreement, prior written approval of the Design/Builder must be obtained.
- k. The prevailing party to any litigation or arbitration arising out of or relating to any dispute or claim between the Design/Builder and the Subcontractor shall be entitled to recover attorney's fees, paralegals' fees, appeal costs and any and all other costs incurred by them as a result of such litigation or arbitration.
- l. The headings provided in this Subcontract are for ease of reference only. The headings form no part of the Agreement between the parties and shall be given no weight in the interpretation or construction of this Agreement.
- m. Should any provision of this Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.
- n. The failure of the Design/Builder to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- o. This Subcontract shall be governed by the law, rules, and regulations of the State of Florida. Any suit or action brought by either party relating to or arising out of this Subcontract must be brought in the appropriate Florida state court in Hillsborough County, Florida, unless otherwise mutually agreed to by the parties.
- p. Subcontractor and Subcontractor's subcontractors, sub-subcontractors, subconsultants and sub-subconsultants, in performing the WORK shall promote the best interest of Design/Builder and assume towards Design/Builder a relationship of the highest trust, confidence, and fair dealing.
- q. This Agreement is not assignable, in whole or in part, by Subcontractor without the prior written consent of Design/Builder.
- r. The parties hereto acknowledge that they have carefully reviewed this Agreement and have had the opportunity to be advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
- s. Whenever used herein the singular number shall include the plural, the plural of the singular, and the use of any gender shall include all genders. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise.

- t. Neither termination nor cancellation of this Agreement shall be deemed to relieve the parties of any obligations hereunder that by their nature survive termination or cancellation including, but not limited to, all warranties and indemnification obligations.

19. INDEMNIFICATION

- a. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, protect and hold harmless Design/Builder, and Owner, their officers, directors, members, agents, consultants or employees of any of them (collectively "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees attributable to: bodily injury; sickness; disease; death; injury to or destruction of tangible property (other than the WORK itself); any alleged or actual infringement or violation of any intellectual property right, including without limitation, any copyright, patent right or license; and/or any alleged or actual violation of any federal, state or local law, rule, ordinance, statute, regulation, permit or other governmental restriction (collectively "Liabilities"), arising out of or resulting from performance of the WORK, but only to the extent the Liabilities are caused by the acts or omissions of Subcontractor or any of the Subcontractor's sub-subcontractors, materialmen, or agents of any tier, or their respective employees or anyone for whose acts or omissions any of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. The indemnification obligation under this paragraph shall be deemed part of the Agreement and shall be construed in such a manner as to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects.
- b. In the event any Liabilities arising out of or resulting from performance of the WORK are attributable at least in part to the acts or omissions of Subcontractor or any of the Subcontractor's sub-subcontractors, materialmen, or agents of any tier, or their respective employees or anyone for whose acts or omissions they may be liable, and attributable in part by the acts or omissions of any Indemnitee, then Subcontractor shall also, to the fullest extent permitted by law, indemnify, defend, protect and hold harmless any of the Indemnitees from and against the Liabilities to the extent they are attributable to the acts or omissions of the Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. Subcontractor agrees that the indemnification obligation in this Paragraph shall be limited to the amount of loss suffered by the Indemnitees or **\$(Amount to be determined based on scope)** per occurrence (Note: if this space is left blank, Subcontractor and Design/Builder agree the monetary limitation shall be \$1 million per occurrence), whichever is less, which amount is stipulated by the parties to bear a reasonable commercial relationship to the Agreement. The indemnification obligation under this Paragraph shall be deemed part of the Agreement and shall be construed in such a manner as to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects.
- c. The indemnification provided by Subcontractor in Paragraph 19(b) above shall only apply to damages to persons or property caused at least in part by any act, omission, or default of:
 - 1. The Subcontractor;
 - 2. Any of Subcontractor's sub-subcontractors, materialmen, or agents of any tier or their respective employees; or
 - 3. The Indemnitees. Provided, however, that such indemnification shall not include:
 - i. claims of, or damages resulting from gross negligence, or willful, wanton or intentional misconduct of the Indemnitees; or
 - ii. claims for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Subcontractor or any of the Subcontractor's sub-subcontractors, materialmen, or agents of any tier or their respective employees.
- d. Notwithstanding anything in the Contract Documents or this Agreement to the contrary, Subcontractor agrees to indemnify, defend, protect and hold harmless any of the Indemnitees to the same extent that Design-Builder is required to indemnify the Owner or any third party under the Contract Documents. Such obligation shall not be construed to negate, abridge, or reduce

other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. The indemnification obligation under this Paragraph 19.4 shall be deemed part of the Agreement and shall be construed in such a manner as to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects.

- e. Subcontractor's indemnification obligations set forth in Paragraphs 19.1 through 19.4 of this Section and elsewhere in this Agreement are each independent and separately enforceable by Design-Builder or any of the Indemnitees.
- f. Subcontractor's duties to defend under this Section are independent and separate from any duty to indemnify hereunder, and the duty to defend exists regardless of any ultimate liability of Subcontractor or any Indemnitee. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Subcontractor. Subcontractor's obligation to indemnify and defend under this Section will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Indemnitees for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Provided, however, notwithstanding and without limiting the foregoing, the parties acknowledge and agree that in the event Subcontractor is required to defend a Liability pursuant to this Section, Subcontractor shall be entitled to reimbursement from the Design/Builder for the costs and expenses of such defense reasonably and necessarily incurred by Subcontractor up to and only to the extent of the Indemnitees' pro rata share of such costs and expenses based upon the percentage of the Indemnitees' fault or neglect with respect to the Liability defended, as determined by a court of competent jurisdiction in a final judgment fully and finally barring the action in question by the applicable statute of limitations.
- g. If any word, clause or provision of the this Section is determined not to be in compliance with Section 725.06, Florida Statutes, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that the indemnification obligations under this Section comply fully with Section 725.06, Florida Statutes, including any amendments thereto, in all respects.
- h. Furthermore, the indemnification obligations under this Section are in addition to and not in lieu of common law indemnification to which any Indemnitee is entitled.
- i. Subcontractor further agrees that it shall reimburse any Indemnitee its reasonable attorneys' fees, paralegals' fees, costs and expenses incurred by such Indemnitee in enforcing Subcontractor's obligations to defend and indemnify hereunder.

20. MISCELLANEOUS

- a. This Agreement and the instruments described in Paragraph 3 contain all the terms and conditions agreed upon by the parties hereto, and no other terms or agreements, oral or otherwise, respecting the subject matter of this Agreement shall be deemed to exist, or to bind any of the parties hereto.
- b. All of the following Exhibits are deemed to be attached to and specifically made a part of this Agreement:
 - Exhibit A:** Minimum Insurance Requirements
 - Exhibit B:** Scope of Work
 - Exhibit C:** Project Schedule
 - Exhibit D:** Application for Payment and Schedule of Values
 - Exhibit E:** Form of Lien Waiver
 - Exhibit F:** Performance and Payment Bond Forms
 - Exhibit G:** Professional Design Services
- c. The Design/Builder and the Subcontractor for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of this Agreement.

- d. If this Agreement, as provided by Design/Builder, is not duly and properly executed by the Subcontractor and returned to Design/Builder within thirty (30) calendar days of its date, it may be declared null and void by the Design/Builder at its option and without further notice.

21. NOTICES

- a. Any notices required or permitted under the Agreement shall be deemed to be fully given if placed in a pre-paid addressed envelope and sent by certified U.S. mail with return receipt requested or by Federal Express or other similar national express mail service, or by acknowledged telex or telecopy, or by delivering the same in person. Notice shall be effective upon three (3) days after said notice is sent or upon receipt whichever is earliest. All notices to be given to the parties shall be sent to or made at the addresses as set forth below; but by giving the other party at least ten (10) days prior written notice thereof, any party hereto shall have the right to change its respective address or the individual to whom notices are to be sent.

Notices to Design/Builder: R. R. Simmons Construction Corporation
Attention: Cesar A. Zevallos
13112 Telecom Drive
Tampa, FL 33637-0924

With a copy to: R. R. Simmons Construction Corporation
Attention: Sandra M. Piccirilli
13112 Telecom Drive
Tampa, FL 33637-0924

Notices to Subcontractor: Company
Attention: President's Name
Address
City State Zip

With a copy to: _____
Attention: _____

- b. Notwithstanding the foregoing, the parties acknowledge and agree that any notice required or permitted under the Agreement may be sent via electronic mail; provided, however, in such event, such notice shall be sent to the e-mail address and to the attention of the person(s) as set forth and identified below, for the respective parties, with written notice as set forth in Paragraph 21.1 above being sent simultaneously.

To the Contractor: Attention: Cesar A. Zevallos
E-mail: cesarzevallos@rrsimmons.com

To the Subcontractor: Attention: _____
E-mail: _____

The parties have executed this Agreement as of the day and year first written above.

SUBCONTRACTOR

Company

(Signature)

Printed Name: _____

As Its: _____

Date: _____

DESIGN/BUILDER

Error! Reference source not found.

(Signature)

Printed Name: Linda O. Simmons

As Its: President

Date: _____

EXHIBIT A
MINIMUM INSURANCE REQUIREMENTS
RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579

The word "Vendor" used herein refers to a Subcontractor, Material Supplier or Design Consultant, as applicable, based on the Agreement executed between Design/Builder and Vendor. The term "subvendor" or "subsubvendor" refers to the Vendor's subcontractor, subsubcontractor, subconsultant or subsubconsultant as applicable.

Vendor is to secure, and pay for all insurance required by this Agreement from an insurer acceptable to Design/Builder in such amounts as required by this Agreement but not less than that required by the Contract Documents, and such other insurance coverages as may be required by the Contract Documents as applicable to the WORK required under this Agreement, prior to commencing WORK. All liability insurance policies, other than Workers' Compensation and Employers' Liability Insurance and Professional Liability policies (for Vendors and/or their subvendors or subsubvendors providing design services) shall name Design/Builder as an additional insured (including Completed Operations) using ISO Endorsements CG 2010 (11/85 edition) or CG2026 (11/85 edition) or approved equivalent. The use of any other form to provide additional insured coverage will require the prior approval of Design/Builder. All coverages afforded the additional insured shall be primary and non-contributory as respects any other insurance carried by the additional insured. The amounts and types of insurance available to Design/Builder as an additional insured shall be the amounts and types as specified in this Agreement or the amount and types provided in Vendor's insurance policies, whichever is greater. In no event shall a provision in Vendor's policies limit the coverage available to Design/Builder to an amount or type less than that available to Vendor.

All policies shall contain severability of interests or "separation of insureds" provisions and shall not exclude coverage for "cross-liability" or "insured vs. insured" suits. A waiver of subrogation in favor of Design/Builder shall be included on all policies. Vendor shall provide Design/Builder with evidence of this insurance and of Vendor's compliance with this requirement by providing the endorsement form or by listing this endorsement on the face of the ISO Certificate.

All certificates of insurance and policies shall contain provisions that thirty (30) days written notice by registered or certified mail shall be given to Design/Builder of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the aggregate limits provisions. The 30 day cancellation notice is required on all certificates for all required coverages and shall not include wording such as "will endeavor" to give notice, and failure to do so imposes "no obligation". This notice may be certified by striking the words "endeavor to" and "but failure to do so will impose no obligation or liability of any kind upon the company, its agents or representatives", or by providing a unqualified cancellation notice provision in the comments section of the certificate of insurance or a separate endorsement evidencing that the policies have been amended to require a direct 30 day notice of cancellation/non-renewal to Design/Builder. Upon request, Vendor shall provide Design/Builder with certified copies of all insurance policies required to be furnished by Vendor herein or a confirmation from the various insurance companies providing coverages or from their authorized agent, in writing, confirming that the Vendors various insurance policies, individually or in combination meet the requirements of this Exhibit A.

If any insurance provided pursuant to this Agreement expires prior to the completion of the WORK or all warranty periods required by this Agreement, renewal certificates of insurance shall be furnished by Vendor to Design/Builder thirty (30) days prior to the date of expiration.

In the event of a reduction of the aggregate limit of any policy, the Vendor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Vendor shall be primary to any insurance or self-insurance program carried by Design/Builder applicable to this WORK. Further, if requested, certified true copies of the renewal policies shall also be furnished by Vendor to Design/Builder at least 30 days prior to expiration.

Should at any time the Vendor not maintain the insurance coverages required in this Agreement, Design/Builder may cancel or terminate the Agreement or Design/Builder may, but shall not be obligated to and at its sole discretion, shall be authorized to procure such insurance and charge the entire cost of procuring such insurance to Vendor, plus Design/Builder's administrative fee of 15% of the cost of such insurance. Design/Builder shall be

under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Design/Builder to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Subcontract Agreement.

Acceptance by Design/Builder of any certificates of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Design/Builder that the insurance requirements have been met or that the insurance policies shown on any certificates of insurance are in compliance with the requirements of this Agreement.

No WORK or services shall commence on the Project unless and until the required Certificates of Insurance are received, this Agreement has been executed and performance is due pursuant to the Project Schedule. Vendor shall require each of its subvendors and subsubvendors to procure and maintain, until the applicable warranties expire, insurance of the types and to the limits specified in this Exhibit A, unless such insurance requirement for the subvendor or subsubvendor is expressly waived in writing by Design/Builder.

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms (sample attached) and endorsements or broader where applicable. The insurance company must be have a minimum "A" - Class VIII or higher in Best's Key Rating Guide for Property and Casualty, unless otherwise approved by Design/Builder. All deductibles or self-insured retentions are to be \$5,000.00 or less unless otherwise stated and approved in writing by Design/Builder and are the responsibility of the Vendor:

A. **Workers' Compensation and Employers' Liability Insurance** shall be maintained by Vendor during the term of a project agreement, for all employees engaged in Work under the agreement, in accordance with the laws of the state of Florida. The limits of coverage shall not be less than:

Workers' Compensation	Florida Statutory Requirement
Employers' Liability	\$100,000 Limit each accident
	\$500,000 Limit disease aggregate
	\$100,000 Limit disease each employee

The insurance company shall waive its Rights of Subrogation against Design/Builder. In addition, if labor is subcontracted or leased employees are utilized, a Certificate of Insurance reflecting Workers' Compensation coverage must be provided by either the Leasing Company or Subcontractor. Leasing Companies must include an "alternate employer" endorsement for the vendor.

B. **Commercial General Liability Insurance** shall be maintained by Vendor. Coverage shall include, but not be limited to, premises and operations, personal injury, contractual liability pertaining to indemnification or hold harmless agreements with Design/Builder, per project aggregate, independent contractors, broad form property damage including products and completed operations coverages and shall not exclude coverage for the "x" (explosion) "c" (collapse) and "u" (underground) property damage liability exposures. Coverage shall not be excluded or restricted for "construction defect", nor for the installation of any product, including but not limited to EIFS or other exterior finishing systems, by or on behalf of the Vendor. No endorsements limiting or excluding coverage for operations included within the WORK of this Agreement are acceptable. Any exclusionary endorsements must be specifically identified on the certificate of insurance. The Completed Operations Coverage shall be maintained for this Project for not less than one (1) year following completion and acceptance by Design/Builder, unless otherwise extended by the requirements of the contract documents. Limits of coverage shall not be less than the following for Bodily Injury, Property Damage and Personal Injury Combined Single Limits:

General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$500,000
Each Occurrence	\$500,000
Fire Damage	\$50,000
Medical Payments, each person	\$5,000
Per Project Aggregate Limits	\$ same as above

The aggregate limits shall be separately applicable to each project through per project aggregate or the use of an endorsement approved by Design/Builder. The Insurance Company shall waive its Rights of Subrogation against Design/Builder.

General Liability insurance shall be issued or renewed on an "occurrence" form. If the General Liability insurance required herein is unavailable to vendor on an occurrence form and is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be unlimited.

- C. **Automobile Liability Insurance** shall be maintained by Vendor as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury Liability	\$500,000 Limit each person
	\$500,000 Limit each accident
Property Damage Liability	\$500,000 Limit each accident - or -
Bodily Injury and Property Damage Liability	\$500,000 Combined single limit each accident

The Insurance Company shall waive its Rights of Subrogation against Design/Builder.

- D. **Umbrella Liability Insurance** or Excess Liability Insurance shall not be less than \$1,000,000 each occurrence and aggregate. Coverage shall be in excess of the Employers Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The aggregate limits shall apply separately to each Project, and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by Design/Builder. If the Umbrella coverage does not allow for the above per Project General Aggregate limit, the Umbrella Aggregate limit shall be a minimum of \$2,000,000. The Insurance Company shall waive its Rights of Subrogation against Design/Builder.

- E. **Transportation Insurance** shall be maintained by Vendors providing shipments of supplies valued in excess of \$100,000. Such insurance shall be purchased in an amount equal to the full value of the selling price of the shipment. Coverage must be placed using a company and form acceptable to Design/Builder. The Insurance Company shall waive its Rights of Subrogation against Design/Builder.

- F. If Design Services are to be provided by Vendor's direct personnel, Vendor must provide evidence of **Professional Liability Insurance**. If Design Services are to be provided by a subcontractor or subconsultant to Vendor, the Vendor must provide evidence of Contingent Professional Liability Insurance, and provide evidence of coverage by the subcontractor or subconsultant. The minimum requirements for Professional Liability Insurance shall be as follows:

Professional Liability Insurance shall be maintained by Vendor and Vendor's subcontractor or subconsultant that provides design services, insuring its legal and contractual liability arising out of the performance of professional services under design agreements. Such insurance shall have limits of not less than \$2,000,000 each claim and aggregate. Any deductible applicable to any claim shall be the sole responsibility of the Vendor and shall not be greater than \$100,000.00 each claim. Vendor must make every attempt to continue this coverage for a period of not less than three (3) years after completion of its services to Design/Builder provided such coverage is reasonably available at commercially affordable premiums.

For the purpose of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professionals practicing in this state in this discipline are able to obtain such coverage. The retroactive date for coverage during this three-year period shall not be later than the commencement date of the Project. Such Professional Liability Insurance may be provided through an endorsement to the Vendor's General Liability policy as long as coverage is true Professional Liability coverage including economic damages, and not limited to "bodily injury" and "property damage". The Vendor or Vendor's subcontractor or subconsultant shall promptly submit Certificates of Insurance providing for an unqualified written notice of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In the event of a reduction in the aggregate limits of any policy, the Vendor or Vendor's subcontractor or subconsultant shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. The Vendor or Vendor's subcontractor or subconsultant shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by Design/Builder. The Insurance Company

shall waive its Rights of Subrogation against Design/Builder.

- G. Pollution Liability Insurance** is required for all Vendors bringing materials or equipment on to a jobsite. This insurance must cover the release of any pollutants at the jobsite arising from the use of such materials or equipment. Limits of liability for this insurance shall not be less than \$100,000 per occurrence, and may be provided as an endorsement to the General Liability policy. In the event that a Vendor is actually involved in environmental remediation or any other type of handling of pollutants arising out of the site itself, an actual Pollution Liability policy will be required at limits of not less than \$1,000,000 per occurrence and include Design/Builder as an additional insured. The Insurance Company shall waive its Rights of Subrogation against Design/Builder.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
Month/Date/Year

PRODUCER Insurnce Agent/Broker Name Insurnce Agent/Broker Street Address or P.O. Box Insurnce Agent/Broker City, State & Zip Code Contact & Phone Number	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Vendor Name Vendor Street Address or P.O. Box Vendor City, State & Zip Code	INSURER A: Name of Insurance Company	Enter NAIC#
	INSURER B: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER C: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER D: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER E: Name of Insurance Company (if applicable)	Enter NAIC#

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <u>Independent Contractor</u> <input checked="" type="checkbox"/> <u>Contractual Liability</u> <input checked="" type="checkbox"/> <u>XCU Coverage</u> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Enter Policy #	Enter Effective Date	Enter Expiration Date	EACH OCCURENCE	\$500,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$500,000
						GENERAL AGGREGATE	\$1,000,000
						PRODUCTS - COMP/OP AGG	\$1,000,000
							\$
A	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____	Enter Policy #	Enter Effective Date	Enter Expiration Date	COMBINED SINGLE LIMIT (Each Occurrence)	\$500,000
						BODILY INJURY (Per person)	\$500,000
						BODILY INJURY (Per accident)	\$500,000
						PROPERTY DAMAGE (Per accident)	\$500,000
	<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A	<input checked="" type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$5,000	Enter Policy # (if required)	Enter Effective Date	Enter Expiration Date	EACH OCCURENCE	\$1,000,000
						AGGREGATE	\$1,000,000
							\$
							\$
							\$
A	<input checked="" type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	Enter Policy #	Enter Effective Date	Enter Expiration Date	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$100,000
						E.L. DISEASE - EA EMPLOYEE	\$500,000
						E.L. DISEASE - POLICY LIMIT	\$100,000
	<input type="checkbox"/>	OTHER See Exhibit A					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project: USF Athletic Facilities, Project No. 579
 R. R. Simmons Construction Corporation, University of South Florida, and USF Financing Corporation are added as additional insured, including completed operations, with respect to the Commercial General, Automobile, and Excess/Umbrella Liability policies with a separation of insured provision that is primary and non-contributory. A waiver of a right to recovery or subrogation is included in all policies in favor of R. R. Simmons Construction Corporation, University of South Florida and USF Financing Corporation. Coverage will not be cancelled or allowed to expire until at least 30 days notice has been given to all named insured, except 10 days for nonpayment. All endorsements are attached hereto.

CERTIFICATE HOLDER

R. R. Simmons Construction Corporation
 13112 Telecom Drive
 Tampa, FL 33637

Facsimile Number: (813) 632-5500

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT B
SCOPE OF WORK & DRAWING LIST
RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579

DESCRIPTION OF PROJECT

This Project consists of the design and construction of athletic facilities and/or improvements located on the Tampa Campus of the University of South Florida, which includes the following venues: a new basketball practice facility, improvements to the existing baseball stadium, a new softball stadium, new football practice fields, and the relocation of the recreation fields. Additional projects may be added to this scope subject to the availability of funds.

DESCRIPTION OF SCOPE

EXHIBIT C

PROJECT SCHEDULE

RRSCC Commitment No. COMMITMENT NUMBER

USF Project Number 579

Subcontractor shall perform the WORK as set forth this Project Schedule. The Project Schedule is an evolving document and Design/Builder reserves the right to make any changes necessary. Subcontractor is responsible for adhering to the most current and up to date version of the Project Schedule, which is available for review at Design/Builder's main office and the Project site.

EXHIBIT D
APPLICATION FOR PAYMENT and SCHEDULE OF VALUES
RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579

All Applications for Payment must be submitted on the attached form, which is a combined Application for Payment and Schedule of Values. The Schedule of Values is in the format required to provide a summary description and documentation of the progress of the performance of the WORK for the application period. To assist with evaluation of the request, please feel free to submit and attach to the Application for Payment any additional detail or documentation of the billing. However, all amounts must be summarized in the level on the Application for Payment.

Design/Builder reserves the right in its sole discretion to request additional documentation to include, but not limited to, purchase orders, bills of lading and payroll records, to further document the value of WORK performed under this application and may adjust the amount of payment made based upon review of such documentation.

A revised Application for Payment and Schedule of Values will be issued with each Change Order, once it has been approved. Please use the most current version of this form and include all appropriate lien waivers in order to allow us to expedite your payment.

IMPORTANT: ALL APPLICATIONS FOR PAYMENT ARE TO BE SENT TO THE ATTENTION OF THE ACCOUNTING DEPARTMENT, NOT THE PROJECT MANAGER. MONTHLY PROGRESS PAYMENTS WILL BE MADE AGAINST FAXED OR ORIGINAL APPLICATIONS FOR PAYMENT, PROVIDED THEY ARE RECEIVED NO LATER THAN THE DATE SET FORTH IN THIS AGREEMENT. IF APPLICATIONS FOR PAYMENT ARE NOT RECEIVED BY THE DATES SPECIFIED, DESIGN/BUILDER WILL NOT BE ABLE TO REQUEST PAYMENT FOR YOUR WORK FROM THE OWNER AND YOUR APPLICATION WILL BE HELD UNTIL THE NEXT BILLING CYCLE.

A separate ORIGINAL Application for Payment and Final Lien Waiver is required for Final Payment. No final payments will be made without these original documents.

A list of all sub-subcontractors, material suppliers and all Material Safety Data Sheets (MSDS) is required prior to your submission of the first Application for Payment to Design/Builder.

EXHIBIT E
FORM OF LIEN WAIVERS

RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579

The Waiver of Lien forms included as a part of Exhibit E are the forms which have been approved by the Owner for use on this Project. **NO OTHER FORM OF LIEN WAIVER WILL BE ACCEPTED BY DESIGN/BUILDER.**

**WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT**

The undersigned lienor, in consideration of the sum of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through _____, 20____, to on the job of _____ to the following described property:

Legal Description:

TBD

This waiver and release does not cover any retention of labor, services, or materials furnished after the date specified.

DATED on _____

(Lienor)

By: _____
(Signature)

(Printed Name)

**WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT**

The undersigned lienor, in consideration of the sum of the final payment in the amount of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to _____ on the job of _____ to the following described property:

Legal Description:

TBD

DATED on _____

(Lienor)

By: _____
(Signature)

(Printed Name)

EXHIBIT F
FORM OF PAYMENT AND PERFORMANCE BOND
RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579

The bond forms that follow this page are the only forms approved for use on this Project. Design/Builder reserves the right to determine, in its sole discretion, acceptability and compliance with the Contract Documents of any bonds issued pursuant to this Agreement. No WORK shall commence on the Project until the required bonds are received and acceptable to the Design/Builder. The receipt of a bond by Design/Builder does not constitute Design/Builder's acceptance. Acceptance is contingent upon satisfying all bonding requirements in this Agreement and required by law.

The surety issuing bonds must maintain a minimum Best's Guide Key Rating of "A" – Class VIII or higher and a listing in the Department of Treasury Federal Register. In the event of a reduction of the surety's rating or listing, Vendor shall immediately notify the Design/Builder and take steps to have the rating reinstated via a replacement bond from a Surety acceptable to Design/Builder.

PERFORMANCE BOND

BY THIS BOND, We **Company**, **Address**, **City** **State** **Zip** ("Principal") and _____, a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Florida, ("Surety"), are held and firmly bound unto _____ ("Obligee"), in the sum of \$**Price** (Price in Words Dollars), for the payment of which sum well and truly to be made, the Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a written agreement with Obligee dated the _____ day of _____, 2010, a copy of which is by reference made part hereof, consisting of the design and construction of **Trade** in connection with the Project known as _____ all as shown and called for in the plans and drawings in the specifications including addenda and including the general or special conditions as prepared by the architect and/or engineer, which plans, drawings and specifications, including addenda and general and special conditions, are hereby acknowledged to have been read and examined by all of the parties and are incorporated into this bond insofar as they are applicable ("Agreement").

NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT IF THE PRINCIPAL:

Shall well and truly perform all the undertakings, covenants, terms, conditions, and obligations of the Agreement within the time provided and any extensions that may be granted by the Obligee, and during the life of any guaranty required under the Agreement, and shall also well and truly perform all the undertakings, covenants, terms, conditions, and obligations of any and all duly authorized modifications of the Agreement that may be made and shall indemnify and save harmless the Obligee of and from any and all loss, damage, and expense, including costs and attorneys' fees, which the Obligee may sustain by reason of any failure to fully perform the Agreement, then this bond shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. Whenever Principal shall be declared by Obligee to be, in default under the Agreement, Obligee having performed its obligation, Surety shall promptly cause all defaults to be remedied and compensate Obligee for any losses or damages it suffers as a result of Principal's default including damages for any delays to the WORK, or shall (a) complete the Agreement in accordance with its terms and conditions and compensate Obligee for any losses of damages it suffers as a result of Principal's default including any damages for delays to the WORK, or (b) promptly obtain a bid or bids for submission to Obligee for completing the Agreement in accordance with its terms and conditions, and upon the determination by Obligee and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Obligee, and Surety shall make available as such WORK progresses (even if there is a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion under the terms of the Agreement less the balance of any amount due and compensate Obligee for any losses or damages it suffers as a result of Principal's default including damages for any delays to the WORK, but not exceeding, the amount of this bond.

2. Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the Agreement or in the WORK to be performed or in the specifications, or in the plans, shall in anyway affect its obligation under this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

THIS BOND DATED THE ____ DAY OF _____, 200__.

Signed, sealed and delivered in the presence of:

Witnesses as to Principal

**PRINCIPAL
Company**

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, as _____ of _____, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

ATTEST:

SURETY

Witnesses as to Surety:

(Printed Company Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Printed Name)

(Business Address)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, as _____ of _____, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

BOND NO. _____

PAYMENT BOND

BY THIS BOND, We **Company**, **Address**, **City** **State** **Zip** ("Principal") and _____, a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Florida, ("Surety"), are held and firmly bound unto _____ ("Obligee"), in the sum of \$**Price**(Price in Words Dollars), for the payment of which sum well and truly to be made, the Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a written agreement with Obligee dated the _____ day of _____, 2010, a copy of which is by reference made part hereof, consisting of the design and construction of Trade in connection with the Project known as Premier Beverage ("Subcontract").

NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT IF THE PRINCIPAL:

1. Promptly makes payment to all lienors as defined in Section 713.01, Florida Statutes, supplying labor, materials or supplies, as used directly or indirectly by the Principal in the prosecution of the WORK provided for in the Subcontract; and

2. Pays the Obligee all loss, damage, expense, costs, and attorneys' fees, including appellate proceedings, which the Obligee sustains because of default by the Principal under Paragraph 1 of this Bond;

then this Bond is void; otherwise this Bond remains in full force and effect.

BE IT FURTHER KNOWN: Any changes in or under the Subcontract and compliance or noncompliance with formalities connected with the Subcontract or with the changes shall not affect the obligation of the Principal and the Surety, or either of them under this Bond.

THIS BOND DATED THE _____ DAY OF _____, 200__.

Signed, sealed and delivered in the presence of:

Witnesses as to Principal

**PRINCIPAL
Company**

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____, as _____ of _____, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

ATTEST:

SURETY

Witnesses as to Surety:

(Printed Company Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Printed Name)

(Business Address)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, as _____ of _____, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

EXHIBIT G
PROFESSIONAL DESIGN SERVICES
RRSCC Commitment No. COMMITMENT NUMBER
USF Project Number 579