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**AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE**

Prepared by



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**AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between Harbor Bay Community Development District (“Owner”), and _____ (“Design-Builder”).

PROJECT INFORMATION

Project: Harbor Bay Community Development District – Design-Build of Master Seawall Project

Design-Build Contract: _____ (“Contract”)

Owner’s Consultant: Cardno Limited

Engineer: Design-Builder has retained _____ (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Gregory Woodcock, Cardno Limited, 20203 Cortez Blvd, Brooksville, Florida 34601, greg.woodcock@cardno.com, (352) 754-1240; Christopher Gamache, P.E., Cardno Limited, 380 Park Place Blvd, Suite 300, Clearwater, Florida 33759, christopher.gamache@cardno.com, (727) 431-1615.
2. Design-Builder’s Authorized Representative: _____

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

1.01 *General Description of Work*

- A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: the stabilization of certain canal retaining walls and berm rehabilitation within the community of MiraBay, as more fully described in the engineering documents and specifications contained within the Contract Documents.

ARTICLE 2 – CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

~~2.2 *Contract Times: Dates*~~

- ~~A. Design Builder will substantially complete the Work on or before [].~~
- ~~B. Design Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, on or before [].~~

2.02 *Contract Times: Days*

- A. Design-Builder will substantially complete the Work within [] days after the Effective Date.
- B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within [] days after the Effective Date.
- ~~C. Design-Builder shall attain the following Milestone(s):~~
 - ~~1. Milestone 1 [event & date/days]~~
 - ~~2. Milestone 2 [event & date/days]~~
 - ~~3. Milestone 3 [event & date/days]~~

2.03 *Liquidated Damages; Early Completion Bonus*

- A. Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 above, and that Owner will suffer financial and other losses if the Work is not completed ~~and Milestones not achieved~~ within the times specified in Paragraph 2.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Design-Builder shall pay Owner ~~}\${200}~~ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.02.A above for Substantial Completion until the Work is substantially complete, for up to 90 days.
 - 2. Completion of Remaining Work: After Substantial Completion, if Design-Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Design-Builder shall pay Owner ~~}\${200}~~ for each day that expires after such time until the Work is completed and ready for final payment, for up to 90 days.
 - 3. Liquidated damages for failing to timely attain Substantial Completion, and final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence. In no event shall liquidated damages be collected or imposed for more than 90 consecutive days.
 - ~~4. Milestones: Design-Builder shall pay Owner ~~}\${~~ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.~~
 - 4. Design-Builder and Owner agree that the liquidated damages specified in this Paragraph 2.03 have a reasonable relationship to actual damages and that such liquidated damages represent a good faith effort to estimate actual damages. Furthermore, Design-Builder and Owner agree that the liquidated damages in this Paragraph 2.03 do not operate as a penalty.
- B. *Bonus:* Design-Builder and Owner further recognize that the Owner will realize financial and

other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Design-Builder agree that as a bonus for early completion, Owner shall pay Design-Builder \$[500] for each day prior to the time specified in Paragraph 2.02 for Substantial Completion {as set forth in this Agreement as of the Effective Date} or [as duly adjusted pursuant to the Contract] that the Work is substantially complete. The maximum value of the bonus shall be limited to \$[10,000].

~~Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 2.02 above, plus any extensions thereof allowed in accordance with the Contract. In the event Contractor fails, without reasonable cause, to complete the Work and achieve the Milestones within the times specified in Paragraph 2.02 above, the parties explicitly recognize that Owner may seek to recover from Contractor, in a court of competent jurisdiction, actual damages (including but not limited to consequential and other damages) suffered by Owner due to said failure.~~

ARTICLE 3 – CONTRACT PRICE

3.01 *Stipulated Sums*

A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

1. For all Work other than Unit Price Work, a lump sum of: \$[]. Unit Pricing, as shown in the Design-Builder’s Proposal attached hereto, shall be used in connection with pricing for change orders. There will be no charge for mobilization unless re-mobilization becomes necessary.

2. ~~For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):~~

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

~~The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 12.02 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner.~~

~~3. Total of Lump Sum Amount and Unit Price Work (subject to final Unit~~

Price adjustment) \$[].

1. ~~For all Work, at the prices stated in Design Builder's Proposal, attached hereto as an exhibit.~~

~~3.02 Changes in Contract Price Based on Cost of the Work~~

- A. ~~If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of [] ***[insert multiplier for such design services]***, which covers labor costs, overhead, and profit.~~
- B. ~~If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.~~

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

- A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

4.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder's Applications for Payment on or about the 10~~25~~th day of each month during performance of the Work as provided in Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner (i.e., by the first of the month) and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

Prior to 50 percent completion of the Work, the Owner may withhold from each progress payment made to the Design-Builder an amount not exceeding 10 percent of the payment. After 50 percent completion of the Work, the Design-Builder may present a payment request for up to one half of the retainage held, less such amounts as may be withheld pursuant to this Contract or applicable law. After 50 percent completion of the Work, and until final completion and acceptance of the Work by Owner, the Owner may, in its sole discretion, reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the Design-Builder. Five percent of the Contract Price will be retained until final completion, acceptance of the Work by the Owner, and final payment to the Design-Builder.

1. ~~Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments~~

~~previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.~~

~~a. [] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and~~

~~b. [] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage)~~

~~B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design Builder to [] percent **[Note: a typical amount here is 100%]** of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less [] percent **[Note: a typical amount here is 200%]** of Owner's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~

~~C. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.~~

4.03 *Final Payment*

A. ~~Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions and subject to final acceptance by Hillsborough County, and/or other governmental entities, as applicable, Owner shall pay the remainder of the Contract Price.~~

ARTICLE 5 – INTEREST

5.01 *Interest Rate*

A. ~~All amounts not paid when due shall bear interest at the rate of [] percent per annum, or if applicable at the rate stated in a governing prompt payment statute. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74, Florida Statutes.~~

ARTICLE 6 – DESIGN-BUILDER'S REPRESENTATIONS

6.01 *Representations*

A. Design-Builder makes the following representations for Owner's reliance:

1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may

affect cost, progress, and performance of the Work.

4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.
5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder's safety precautions and programs.
6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement, as modified herein (pages 1 to ~~{14}~~, inclusive).
 2. Performance bond (pages ~~{ 1}~~ to ~~{4}~~, inclusive).
 3. Payment bond (pages ~~{ 1}~~ to ~~{4}~~, inclusive).
 4. ~~Other bonds.~~

a. [] (pages [] to [], inclusive).

5. General Conditions, as modified herein (pages {1} to {65}, inclusive).

6. Supplementary Conditions (together, "Supplementary Conditions") (pages {1} to {3}, inclusive).

a. Supplementary Conditions Relating to Subsurface Conditions and Insurance Requirements (pages 1 to 3, inclusive)

7. Conceptual Documents (i.e., the Design Criteria Package).

8. Addenda, if any (numbers [] to [], inclusive).

9. Design-Builder's Proposal.

10. Proposal Amendment(s), if any.

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

a. Work Change Directives.

b. Change Orders.

c. Record Drawings and Record Specifications

12. Other Exhibits to this Agreement (enumerated as follows):

a. ~~Resolution &~~ the Project Manual (pages [] to [], inclusive)

b. Permits (pages [] to [], inclusive)

c. Pricing Sheet for Design-Build of Master Seawall Project

d. Technical Documents

B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 8 – MISCELLANEOUS

8.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

8.02 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

8.03 *Successors and Assigns*

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

8.04 *Severability*

- A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 Assignment of Warranties

Design-Builder shall assign to Owner all warranties extended to Design-Builder by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Design-Builder shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner.

8.06 *Design-Builder's Certifications*

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.07 Direct Purchase of Materials

- A. Owner represents to Design-Builder that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Design-Builder with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials ("Direct Purchase Materials")

necessary for completion of the Work directly from the suppliers to take advantage of Owner's tax exempt status.

- B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Design-Builder with a list of materials that will be treated as Direct Purchase Materials.
- C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner's consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by Owner and if the original contract contemplated sale of materials and installation by the same person, the change order needs to reflect sale of materials and installation by different legal entities.
- D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Design-Builder. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties, and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Design-Builder will use in the identified public works; (2) the vendor's invoice will be issued directly to the governmental entity; (3) payment of the vendor's invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of delivery by the vendor.
- E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Design-Builder as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Design-Builder.
- F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.
- G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Design-Builder, as Owner's agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties, bonds, and guarantees for all material and products as required under the Contract Documents. All contract terms, including but not limited to warranties, payment and performance bonds, and other forms of indemnification, provided by Design-Builder as part of Contract shall continue to apply to all Direct Purchase Materials, as though Design-Builder had purchased the Direct Purchase Materials.
- H. Design-Builder shall maintain builder's risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in

Owner's sole discretion, Owner shall maintain such insurance.

8.08 Construction Defects

PURSUANT TO SECTION 558.005, FLORIDA STATUTES, CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

8.09 Public Records

Design-Builder understands and agrees that all documents of any kind provided to District in connection with this Agreement may be considered public records in accordance with Chapter 119, Florida Statutes, and other Florida law. Accordingly, Design-Builder agrees to comply with all such laws, and cooperate with the District in retaining such records for the applicable time periods established under Florida law, and provision of such records in response to such requests. Design-Builder shall promptly notify the District in the event that Design-Builder receives a request for any such records.

8.10 Restriction on Removal of Fill Dirt from Work Site

Design-Builder acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the District.

8.11 Public Entity Crimes

Pursuant to Section 287.133(3)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Design-Builder represents that in entering into this Contract, Design-Builder has not been placed on the convicted vendor list within the last 36 months and, in the event that Design-Builder is placed on the convicted vendor list, Design-Builder shall immediately notify the District whereupon this Contract may be terminated by the District.

8.12 Scrutinized Companies

Design-Builder represents that in entering into this Contract, neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, and in the event such status changes, Design-Builder shall immediately notify Owner.

8.13 Phases

As noted in the bid documents, the District, in its sole and absolute discretion, may additionally direct that the Project be delivered in multiple phases rather than all at once, or may elect to terminate this Contract early for no cause, in the event that the District desires to proceed with only a portion of the Project. Such options, if exercised, shall in no way impact the pricing of the Project, nor constitute a delay, and shall be considered a termination for convenience within the meaning of Section 15.03 of the General Conditions.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [] (which is the Effective Date of the Contract).

OWNER:

DESIGN-BUILDER:

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)