

## GENERAL TERMS AND CONDITIONS

Effective and governing any and all Proposals submitted on or after January 1<sup>st</sup> 2016

### STATUTORY NOTICES

Chapter 501, Florida Statutes:

#### PLACEMENT IN ESCROW

FLORIDA CONSUMER PROTECTION LAW (FLORIDA STATUTES SECTION 501.1375(2)) STATES:

In all offers to purchase, sales agreements, or written contracts made between a building contractor or a developer and a prospective buyer of a one-family or two-family residential dwelling unit, the building contractor or developer shall notify the prospective buyer that any deposit (up to 10 percent of the purchase price) made by the buyer to the building contractor or developer shall, unless waived in writing by the buyer, be deposited in an escrow account with a savings and loan association, bank, or trust company, an attorney who is a member of The Florida Bar, a licensed Florida real estate broker, or a title insurance company authorized to insure title to real property in this state. The funds, if escrowed, may be deposited in separate accounts or commingled with other escrow or trust accounts. Any such offer, agreement, or contract used by the building contractor or developer with respect to the sale of a one-family or two-family residential dwelling unit shall contain the following legend in conspicuous type: THE BUYER OF A ONE-FAMILY OR TWO-FAMILY RESIDENTIAL DWELLING UNIT HAS THE RIGHT TO HAVE ALL DEPOSIT FUNDS (UP TO 10 PERCENT OF THE PURCHASE PRICE) DEPOSITED IN AN ESCROW ACCOUNT. THIS RIGHT MAY BE WAIVED, IN WRITING, BY THE BUYER.

Chapter 558, Florida Statutes:

#### NOTICE OF CLAIM

CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

Chapter 713, Florida Statutes:

ACCORDING TO FLORIDA CONSTRUCTION LIEN LAW (FLORIDA STATUTES, SECTIONS 713.001-713.37), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. IF

YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED, YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

Chapter 489, Florida Statutes:

PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

(850) 487-1395  
Department of Business and Professional Regulation  
Division of Regulation/Compliance – Consumer Services  
1940 North Monroe Street  
Tallahassee, FL 32399-0782  
<https://www.myfloridalicense.com>

1) Definitions

a) "Additional Services" means any and all services performed by Consultant for Owner, which are not explicitly listed in the Scope of Work & Fee Breakdown.

b) "Affiliates" shall mean any person or entity, regardless of form, now or hereafter controlled by, controlling, or under common control with a Party to this Agreement, whether directly or indirectly, through all levels..

c) "Agreement" means the accepted Fire Protection and Life Safety Consulting Proposal, with any and all attachment thereto as Consultant may from time to time include, the Scope of Work & Fee Breakdown, and all the provisions contained in this document.

d) "Business Day" means any day which is not a Saturday, Sunday or a bank holiday or public holiday in the United States.

e) "Cause" is defined as (i) a material breach of this Agreement; (ii) gross negligence in performing the obligations herein; (iii) willful dishonesty, fraud or misconduct relating to this Agreement; or (iv) a Party's conviction of, or a plea of nolo contendere to a felony or other crime involving moral turpitude.

f) "Consultant" means SLS Consulting Services, Inc..

- g) “Cost of Commitment” has the meaning set forth in Section 3(c).
- h) “Design Professionals” has the meaning set forth in Section 9(a).
- i) “Documents” has the meaning set forth in Section 5(b).
- j) “Effective Date” means the date when the Proposal is accepted.
- k) “FBC” is the 2010 Edition of the Florida Building Code.
- l) “Fees” has the meaning set forth in Section 4(a).
- m) “General Terms and Conditions” means the applicable version of this document.
- n) “Liquidated Damages” has the meaning set forth in Section 2(g).
- o) “Notice” has the meaning set forth in Section 9(d).
- p) “OFAC” has the meaning set forth in Section 8(a)(i).
- q) “Opportunity Cost” has the meaning set forth in Section 3(c)
- r) “Owner” means the person or entity to whom or which the Proposal is offered, tendered, or otherwise directed.
- s) “Party”, “Parties” means Consultant and Owner together, collectively, jointly, and severally, as the context in which the term is used requires.
- t) “Prohibited Person” has the meaning set forth in Section 8(a)(i).
- u) “Project” means the totality of the work to be performed by Consultant for Owner, according to the Scope of Work & Fee Breakdown, and including Additional Services.
- v) “Proposal” means the Fire Protection and Life Safety Consulting Proposal, proposed by Consultant to Owner, which becomes an integral part of the Agreement between the Parties once it is accepted.
- w) “Public Announcement” is the dissemination, disclosure or leaking of information to any outlet accessible to the public, including but not limited to news outlets, television, radio, print media, and internet based social media by either Party, their agents, representative or employees.
- x) “Reimbursable Expenses” has the meaning set forth in Section 4(b).
- y) “Services” means the work to be performed by Consultant for Owner according to the Scope of Work & Fee Breakdown.
- z) “Scope of Work & Fee Breakdown” means the document or documents listing the scope of the work to be performed by Consultant to Owner, as well as any subsequent revision or amendment to said documents. The Scope of Work & Fee Breakdown includes a description of the work to be performed and the prices charged to Owner for said work.

- aa) “Strategic Partners” has the meaning set forth in Section 9(t)
  - bb) “Submittals” means shop drawings, plans, product data, samples and other documentation relating to the Project.
  - cc) “Term” has the meaning set forth in Section 2(a).
  - dd) “Termination” has the meaning set forth in Section 2(b).
- 2) Term and Termination
- a) The term for the Agreement (“Term”) shall extend from the Effective Date of the Agreement through to the completion of the Project unless otherwise provided in the Proposal.
  - b) The Agreement may be terminated (“Termination”) by either Party:
    - i) Upon thirty (30) days' Notice for any reason or no reason at all where there has been no uncured breach of the terms and conditions of the Agreement by the other Party; or
    - ii) If a Party breaches any material term or condition of the Agreement and fails to cure such breach or to demonstrate to the non-breaching Party that it has not breached a material term or condition of the Agreement within ten (10) business days of Notice of said breach.
    - iii) For Cause.
  - c) Consultant may terminate the Agreement if:
    - i) Owner abandons the Project or suspends the Project for any time period in excess of sixty (60) consecutive days upon three (3) Business Days Notice;
    - ii) Owner fails to make properly due and owing payments as required by this Agreement, upon ten (10) Business Days' Notice. Owner's failure to make payments to Consultant in accordance with the Agreement constitutes a material breach of the Agreement.
  - d) In the event of Termination pursuant to this Section 2, Owner shall compensate Consultant for all Services and Additional Services performed up to the Termination date, together with all Reimbursable Expenses then due.
  - e) In the event of Consultant's failure to perform fully in accordance with this Agreement, Owner, after providing Notice, may elect to permit Consultant to continue to perform. In such event, Owner shall continue to pay Consultant in compliance with the terms of this Agreement as if Consultant were not in breach or default, and no portion of Consultant's compensation will be paid in trust to any third party or placed in escrow without Consultant's express written consent. Consultant shall only be liable to Owner for damages occasioned as a result of its breach of or under this Agreement, as such damages are limited pursuant to the terms of this Agreement or by applicable law.
  - f) If the Agreement is terminated, Consultant, upon Owner's written request, shall deliver to Owner copies of all Documents created or used by Consultant in the performance of its Services under this Agreement, in each case without encryption or with the encryption key included, so long as Owner has paid all amounts properly due and owed to Consultant. In the event of Termination pursuant to this Section 2, Consultant shall assign to Owner all, or those designated by Owner, of Consultant's project-related agreements (if any) with sub-consultants, upon Owner's request, and only after Owner has paid all amounts properly due and owed to Consultant.

g) Liquidated Damages. If Owner terminates this Agreement for any reason other than for Cause, or breaches its obligations hereunder, Owner shall pay to the Consultant an amount equal to 20% of the daily contract price for each day remaining in the Agreement Term if Termination, or for each day Owner remains in breach of this Agreement (the "Liquidated Damages"). The Parties intend that the Liquidated Damages constitute compensation and not a penalty. The Consultant's harm caused by Owner's breach or Termination of this Agreement, absent Cause, would be impossible or very difficult to accurately estimate as of the Effective Date. The Liquidated Damages are a reasonable estimate of the anticipated or actual harm arising from Owner's breach or Termination.

3) Services.

a) Consultant shall perform the Services as set forth in the Proposal or any attachments therein. The definition of Services does not include the services of sub-consultants, and the services of such sub-consultants are deemed to be Additional Services or Reimbursable Expenses - depending on whether such sub-consultants are paid hourly or in a lump sum - to be compensated in accordance with the Proposal.

b) Owner shall have the right, at its discretion, to decrease the Services or the Additional Services required of the Consultant under this Agreement at any time. However, Owner shall give reasonable Notice to Consultant before such decrease. Together with Notice of the decrease in Services, Owner may request that Consultant, at its discretion, adjust the compensation for its Services. Consultant has the sole and final authority to adjust its compensation as and to the extent Consultant deems appropriate.

c) The Parties acknowledge and agree that a reduction in the Services or Additional Services does not automatically correspond to a decrease in the compensation owed to Consultant. This is because Consultant, by committing to provide a certain amount of Services and Additional Services to Owner, may forgo the provision of the same Services or Additional Services to other potential clients ("Opportunity Cost"). Further, before the Owner requests a reduction in Services or Additional Services, Consultant may already have incurred non-refundable costs and arranged contracts with sub-consultants, sub-contractors, suppliers, and other providers of goods or services ("Cost of Commitment"). Because Opportunity Cost and Cost of Commitment are difficult or impossible to determine, Consultant shall not be required to prove the occurrence of such costs when denying a reduction in compensation.

d) To the extent that Owner, pursuant to this subsection, decreases or restricts the Services or Additional Services required of Consultant, Consultant shall bear no liability, nor be subject to any losses or damages, should the scope of the Services or Additional Services provided in accordance with said decrease or restriction prove to be insufficient to meet the purposes of the Owner or the Project.

e) Owner acknowledges and agrees that Consultant's work is performed only in Consultant's capacity as an independent contractor, as further specified in Section 9(b) below. As an independent contractor, Consultant will be merely providing non-binding advice and suggestions regarding the Project. CONSULTANT IS NEITHER THE ARCHITECT NOR THE ENGINEER OF RECORD. OWNER BEARS THE SOLE AND FINAL RESPONSIBILITY FOR IMPLEMENTING CONSULTANT'S SERVICES OR ADDITIONAL SERVICES. OWNER FURTHER BEARS THE SOLE AND FINAL RESPONSIBILITY OF ENSURING THAT ANY AND ALL SERVICES OR ADDITIONAL SERVICES PROVIDED BY CONSULTANT ARE APPROPRIATELY REVIEWED AND APPROVED BY THE ARCHITECT OF RECORD, AN ENGINEER, OR BY THE OWNER ITSELF AS FURTHER SPECIFIED IN SECTION 9(C).

4) Fees and Expenses

a) Fees. For the Services and Additional Services rendered in accordance with the terms set forth in this Agreement, Consultant shall be paid a fee in the amount specified in Section 4 of the Proposal or any attachment therein, and at the times provided for in this Section 4 (the "Fees").

b) Reimbursable Expenses. "Reimbursable Expenses" are actually and reasonably incurred out-of-pocket expenditures made by Consultant, and are in addition to any Fees for Services and Additional Services. Consultant shall be compensated for all Reimbursable Expenses without mark-up to Owner. Unless detailed in the Scope of Work & Fee Breakdown, Reimbursable Expenses will be listed on the invoices sent to Owner.

c) Budget. Owner is not to be responsible for fees or costs to Consultant in excess of the budget detailed in the Scope of Work & Fee Breakdown, unless (i) the fees or costs in excess of the budget arise for reasons outside of Consultant's control, and not otherwise caused by Consultant's act, error or omission; (ii) the additional fees and costs or the change in Services to which they pertain are pursuant to an amended Scope of Work & Fee Breakdown, or are otherwise part of the Additional Services or Reimbursable Expenses; or (iii) the additional costs and fees are necessary to comply with applicable code, statute or regulations.

d) Invoices. Fees and any Reimbursable Expenses shall be payable based upon Consultant's invoice submitted monthly in a form reasonably acceptable to Owner with sufficient detail to enable Owner to reconcile said invoice. Owner shall pay Fees based on a percentage of completion basis unless otherwise provided in the Agreement. Any invoice will be deemed conclusively accepted unless contested by Owner within thirty (30) days from the date it is sent by the Consultant. Beginning on the thirty-first (31st) day after the invoice has been sent to Owner, the full amount of an uncontested invoice shall become due and payable immediately to Consultant. If an invoice is contested only in part, the uncontested portion of the invoice will become due and payable to Consultant beginning on the thirty-first (31st) day after the invoice has been sent to Owner. The Parties will put forward their best efforts to try and resolve any difference regarding any invoice contested in full or in part.

e) Payment Timing. Invoices shall be submitted not later than the twentieth (20th) day of each month, and shall be payable within thirty (30) calendar days of Owner's receipt. Unless invoices are received by the twentieth (20th) day of each month for Fees and Reimbursable Expenses accrued during that month and projected to the end of that month, said invoice shall not be processed for payment until the next following month.

f) Late payments. Properly billed invoices are considered past due after sixty (60) calendar days. Except for invoices that Owner has successfully disputed, all past due payments shall bear interest at the lesser of the rate of ten percent (10%) per month or the highest rate permissible under Florida law, calculated daily and compounded monthly. Owner shall reimburse Consultant for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

g) Stop Work. In addition to all other remedies available under this Agreement or at law (which Consultant does not waive by the exercise of any rights hereunder), Consultant is entitled to suspend the Services immediately and without notice if Owner fails to pay any Fees or Reimbursable Expenses when due hereunder, and such failure continues for ten (10) Business Days following written Notice of failure to pay. IF CONSULTANT IS PROVIDING SERVICES ON MORE THAN ONE PROJECT FOR THE SAME OWNER, AND OWNER FAILS TO PAY FEES OR REIMBURSABLE EXPENSES AS DUE ON ANY OF ITS PROJECTS, CONSULTANT MAY SUSPEND SERVICES IN CONNECTION WITH ANY AND ALL PROJECTS FOR THE SAME OWNER, WITHOUT ANY RESTRICTION, AND REGARDLESS OF THE AMOUNT OF UNPAID FEES OR REIMBURSABLE EXPENSES.

h) Lien. Consultant reserves the right to record a construction lien claim and, if necessary, file suit for lien foreclosure to recover unpaid Fees and Reimbursable Expenses and any costs associated with collection of

funds due, including, but not limited to the expenses associated with securing lien and foreclosure. IF CONSULTANT IS PROVIDING SERVICES ON MORE THAN ONE PROJECT FOR THE SAME OWNER, AND OWNER FAILS TO PAY FEES OR REIMBURSABLE EXPENSES AS DUE ON ANY OF ITS PROJECTS, CONSULTANT MAY RECORD CONSTRUCTION LIENS ON ANY AND ALL OF THE PROPERTIES ON WHICH CONSULTANT IS PROVIDING SERVICES FOR THE SAME OWNER, WITHOUT ANY RESTRICTION, AND REGARDLESS OF THE AMOUNT OF UNPAID FEES OR REIMBURSABLE EXPENSES.

i) Release and Lien Waiver. In connection with each payment to Consultant, Consultant shall supply Owner, upon Owner's request, with a release and lien waiver and other supporting documentation in such form as shall be reasonably required by Owner or Owner's lender, acknowledging that Consultant has been paid in full for the invoice for which the check has been issued.

j) Setoff Permitted. Without prejudice to any other right or remedy it has or may have, Consultant may, with five (5) Business Days Notice to Owner, set off or recoup any liability it owes to Owner against any liability for which Consultant determines Owner is liable to Consultant under this Agreement.

#### 5) Ownership and Use of Documents

a) Consultant shall retain ownership of standard details and specifications incorporated in the Project Documents, and grant Owner an exclusive right to use them solely for the Project. Consultant is not conveying or relinquishing any rights in or to its proprietary methods, techniques, knowledge or internal documents or operations that Consultant may utilize, refer to, or otherwise exploit in carrying out its obligations under this Agreement.

b) All documents, including drawings, specifications, samples, models, calculations, work product, electronic media and renderings (colored or otherwise), and any other documents prepared or furnished by the Consultant in connection with the Project ("Documents") pursuant to this Agreement remain the property of Consultant, whether or not the Documents are utilized by Owner.

c) The retention of ownership of the Documents, as described in this Section 5 of the Agreement, is a material inducement for Consultant to have entered into this Agreement with Owner. Owner understands and agrees that, but for Consultant's retention of ownership of the Documents, Consultant would not have entered into this Agreement with Owner. By entering into this Agreement, or performing in accordance with the provisions hereto, Owner has effectively promised to Consultant that Consultant will retain ownership of the Documents, and Consultant has reasonably relied on such promise to his detriment.

d) Owner may not use, distribute, or copy the Documents outside the scope of the Project or for any of Owner's other sites or projects not included in this Agreement; nor may Owner provide the Documents to third parties, without Consultant's prior written consent. Consultant is entitled to compensation and to enjoin further use of the Documents if Owner fails to comply with this Section 5. Owner will indemnify Consultant against all claims and costs associated with a failure to comply with this Section 5, including any legal costs associated with enforcement of this section. In no event will Consultant be responsible for the consequences of any such improper use.

e) Owner shall indemnify Consultant against any first or third party claims resulting from modification of, or deviation from the Documents made by third parties.

f) Upon completion of Consultant's Services, Owner's payment of all due and payable Fees and Reimbursable Expenses, and upon Owner's written request, Consultant shall deliver to Owner all reproducible drawings made in connection with the Project to be used by Owner only for maintenance, repair or future improvement planning related to the Project.

6) Assignment. Neither this Agreement nor any interest herein, nor any claim hereunder, may be assigned or transferred by either Party without written authorization of the other Party, which may be granted or withheld in its sole discretion. Any attempt to assign or transfer any obligations, responsibilities or rights hereunder, absent written consent, will be without effect and will not affect the obligations or responsibilities of the Parties under this Agreement.

7) Insurance. Consultant shall, in connection with its performance of the Services, maintain such insurance coverage as required by Florida Statutes and by Consultant's appropriate licensing requirements. Owner is deemed to have acknowledged Consultant's insurance coverage and relieved Consultant of any disclosure of Consultant's insurance policies, coverage, and related information. At any time, prior to, or during Consultant's performance of its Services for Owner, Owner may request that Consultant provides a proof of insurance coverage as required by law. In the event that Owner required Consultant to carry insurance in an amount in excess of the statutory requirements, such additional insurance coverage shall be secured at Owner's expense.

8) Representations and Warranties.

a) Consultant Representations and Warranties. Consultant hereby represents and warrants that:

i) Consultant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, any such person, group, entity or nation (hereinafter a "Prohibited Person");

ii) Consultant is not, nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is acting directly or indirectly for or on behalf of any Prohibited Person; and

iii) From and after the effective date of the above-referenced Executive Order, Consultant (and any person, group, or entity which Consultant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Agreement or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In addition to the explicit requirements of this Section 10, Consultant agrees that it shall in all respects and to the extent applicable comply with all other rules, regulations, laws and legally binding directives of any governmental instrumentality having jurisdiction over Consultant and related to the discovery, control or limitation of any terrorist or subversive activity.

b) Owner Representations and Warranties. Owner hereby represents and warrants that:

i) Owner shall submit the Services provided by the Consultant to its architect of record, engineers, employees, agents, attorneys, or any and all other consultants, contractors, entities, or individuals, whom or which the Owner has designated to review and approve the Services provided by Consultant prior to the implementation of any of Consultant's recommendations. ANY SUCH DESIGNATED ENTITY OR INDIVIDUAL SHALL BEAR THE FULL AND FINAL RESPONSIBILITY FOR THE IMPLEMENTATION OF ANY SERVICES PROVIDED BY CONSULTANT;

ii) The Project will be designed and permitted under the FBC and the 2010 edition of the Florida Fire Prevention Code;

iii) Owner shall, at the request of Consultant, furnish information or assurances that Owner



has, or has access to, the financing and resources that may be necessary to carry out the provisions of this Agreement;

iv) Owner shall furnish information or services required and reasonably requested by Consultant pursuant to this Agreement with reasonable promptness to avoid unreasonable delay in the orderly progress of the Project;

v) If not an individual, Owner is an entity duly organized, validly existing and in good standing under the applicable laws of its State of incorporation, organization, or formation, with full legal right, power and authority to perform its obligations under this Agreement;

vi) Owner possesses full legal right to perform improvements to the Project site, subject to easements or other exceptions to title that Owner shall promptly disclose to Consultant to enable Project planning; and

vii) Owner has subjected this Agreement to its insurer, attorney, financial advisor, bank, guarantor, or any other person or entity which may advise Owner as to the legal consequences of being bound by this Agreement (collectively, the Advisors). Owner represents that any and all said persons or entities have reviewed this Agreement and not objected to its execution by Owner. By not submitting this Agreement to its Advisors, Owner waives its rights to claim any mistake, undue influence, duress, misrepresentation, fraud, unconscionability, illegality or any other claim aimed at invalidating this Agreement or any portion thereof.

#### 9) Miscellaneous

a) Coordinated Efforts. Consultant acknowledges that Owner will be engaging one or more architects, other consultants, and design professionals (collectively, "Design Professionals") in connection with the Project. To the extent that the timely and complete rendition of Services hereunder, or proper execution of the work at the Project, requires cooperation and coordination among the various Design Professionals engaged in the Project, Consultant shall coordinate its Services on a reasonable basis to cooperate with such other Design Professionals. Owner shall be available to assist in coordinating the activities of Design Professionals retained and Consultant shall notify Owner of any difficulty in connection with any coordination that Consultant believes to be necessary. Consultant shall not be liable for any delay in the preparation and delivery of its Submittals caused in whole or in part by a difficulty in the coordination or communication with the other Design Professionals, with the Owner, or with any other third party. All Design Professionals in the first instance shall use best efforts to accommodate and cooperate with each other without the involvement of Owner.

b) Independent Contractor. At all times, Consultant will be acting in the role of independent contractor and not as an employee of Owner, and Consultant will not be entitled to any benefits accorded to any employee of Owner, including, without limitation, retirement, health insurance or life insurance. Consultant will be responsible for payment of all taxes or other legally required deductions in connection with the compensation for the Services set forth herein.

c) No Responsibility to Consultant. As specified above in section 3 (e), Consultant is not the architect of record for the Project. Nothing in this Agreement, its execution, or compliance with the clauses and terms defined herein, shall be construed or interpreted in a way which, implicitly or explicitly, imposes any responsibility on Consultant for the provision of its Services. In accordance with section 8 (b)(i) Owner shall designate a competent individual or entity to review and approve the Services provided by Consultant. Such individual or entity shall bear the full and final responsibility for any act, error, or omission in the Services provided by the Consultant. Owner acknowledges and agrees that it may not seek any remedy against Consultant unless and until Owner has exhausted any and all other remedies available to him against the individual or entity he designated to review and approve the Services and Additional Services provided by the Consultant.

d) Notice. All notices required or permitted to be given pursuant to this Agreement ("Notice") shall be a hard copy, in writing, and shall be deemed validly given if (i) delivered by hand (with signed receipt), or (ii) sent by a mail or courier service (such as FedEx or USPS) with tracking or proof of delivery provided, and addressed as follows:

If to Owner:

Refer to Owner's information provided on the cover page or on the signature page of each individual Proposal.

If to Consultant:

SLS Consulting, Inc.  
1825 Ponce de Leon Boulevard, Suite 565  
Coral Gables, Florida 33134  
(305) 461-9852

e) Headings. The captions and headings herein contained are for information only, and in no way modify or limit the terms, provisions or conditions of this Agreement.

f) Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Sections and Exhibits mean the Sections and Exhibits of this Agreement; (ii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. Where applicable and suggested by the context, words in the singular shall include the plural and vice-versa. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

g) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

h) No Third-party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

i) Publicity. Unless otherwise required by applicable law, neither Party may make any Public Announcements relating to any other Party to this Agreement, or the transactions contemplated by this Agreement, or otherwise communicate with any news media without prior written consent of the other Party, which consent may be withheld, conditioned or delayed. The Parties shall cooperate as to the timing and contents of any such consented to announcement. No disclosure made pursuant to legal process will be deemed a Public Announcement if the disclosing Party provides immediate Notice of any such required disclosure, and cooperates with the other Party's efforts, if any, to challenge the disclosure requirement.

j) Force Majeure. A Party is not in breach of this Agreement, nor can it hold the other Party responsible for any cessation, interruption or delay in the performance of its obligations, excluding payment obligations, due to earthquake, flood, fire, storm (including hurricane and tropical storm), natural disaster, war, terrorism, armed conflict, labor strike, unavoidable casualty, serious injury or illness, boycott or similar events beyond the reasonable control of the Parties. The Party relying on this provision shall (i) give prompt written Notice of the force majeure event, and (ii) take all reasonable steps necessary to mitigate the effect of the force

majeure event. If a force majeure event extends for a period in excess of thirty (30) consecutive calendar days, either Party may terminate this Agreement immediately upon written Notice.

k) Entire Agreement. This Agreement includes the Proposal and any exhibits, constituting the entire binding contract between the Parties. No provisions of this Agreement shall be changed or modified, nor shall this Agreement be discharged, in whole or in part, except by an agreement in writing and signed by the Parties.

l) Severability. If any provisions of this Agreement are deemed invalid by a court of competent jurisdiction or to be invalid or unenforceable as against any person, Party or under certain circumstances, the remaining provisions of this Agreement and the applicability of such provisions to other persons, Parties or circumstances will not be affected. Each provision of this Agreement, except as otherwise herein provided, will be valid and enforced to the fullest extent permitted by law.

m) Waiver. The failure of either Party to insist upon the strict performance of any provisions of this Agreement, or the failure of either Party to exercise any right, option or remedy hereby reserved, is not a waiver of any such provision, right, option or remedy, or a waiver of a subsequent breach thereof. The consent or approval by Owner of any act by Consultant requiring Owner's consent or approval does not waive or render unnecessary the requirement for Owner's consent or approval of any subsequent similar act by Consultant. Payment by Owner of any amount due hereunder with the knowledge of a breach of any provision of this Agreement is not a waiver of such breach. No waiver of any of the conditions or provisions of this Agreement or any of the rights of either Party hereunder is effective or binding unless such waiver is in writing and signed by the Party claimed to have given, consented to or suffered by waiver.

n) Choice of Law. This Agreement is governed by Florida law and applicable federal laws, without regard to conflict of law provisions.

o) Owner Financing. Owner may finance construction of the Project through a construction loan or other means. Consultant shall comply with all reasonable requests of the lender as well as all reasonable amendments to the terms of this Agreement, provided such amendments do not materially alter the rights or obligations of Consultant. In the event of foreclosure on the Project, Owner's lender shall succeed to Owner's rights and obligations under this Agreement, and Consultant shall perform Services required to be performed by Consultant pursuant to this Agreement in exchange for the consideration Owner is obligated to pay Consultant pursuant to this Agreement.

p) No Personal Liability. The directors, officers, members, shareholders, employees, or agents of the Parties, or any of their successors and assigns or of any of the foregoing entities bear no personal liability with respect to any of the terms, covenants, obligations and conditions of this Agreement.

q) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Photographic or electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

r) Controlling Document. In the event of a conflict between the General Terms and Conditions, the terms of the General Terms and Conditions supersede and control. In the event of a conflict between the terms of the Proposal and any exhibits comprising the Agreement, the General Terms and Conditions supersede and control.

s) Survival. Sections 6, 7, 9, 10, and 11 shall survive the expiration or Termination of this Agreement, together with any other provision, or portion thereof, strictly necessary for the interpretation of the surviving clauses.

t) No Tying. Consultant may own, control, or benefit from, directly or indirectly, other companies or entities (“Strategic Partners”). Consultant may, from time to time, offer to Owner the products or services provided by the Strategic Partners. Owner is not in any way bound to accept the goods or services of the Strategic Partners. Consultant’s offering of goods and services provided by the Strategic Partners is for informational purposes only and in no way is Consultant’s provision of Services or Additional Services to Owner conditioned upon Owner’s acceptance of the goods or services provided by the Strategic Partners. Owner understands and agrees that if Owner accepts any goods or services provided by the Strategic Partners, Owner does so at Owner’s own risk and by Owner’s own free choice.

10) Dispute Resolution

a) Choice of Venue. The Parties shall resolve disputes arising under this Agreement in a court of competent jurisdiction in the County of Miami-Dade, Florida. The Parties irrevocably consent, for themselves and their legal representatives, partners, successors and assigns, to the jurisdiction of the courts of the State of Florida and the United States District Court for the Southern District of Florida for all purposes in connection with any proceeding which arises from or relates to this Agreement; it being expressly agreed by the Parties that any claims brought hereunder may not be challenged on motion by either Party based upon any forum non conveniens considerations.

b) Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY FLORIDA LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

c) Mediation.

i) Prior to any legal action, the Parties must attempt to settle disputes by non-binding mediation. Demand for mediation shall be filed in writing with the other Party and with the American Arbitration Association. The Parties shall demand mediation within thirty (30) calendar days of a claim, dispute or other matter in question arises. In no event may a demand for mediation be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of response or limitations.

ii) Mediation must be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association (“Association”) then in effect and utilizing a single mediator. The choice of mediator is subject to the agreement of the Parties, and the Parties shall share the cost of the mediation equally. The Parties shall have the right to designate a mediator acceptable to both of them and thereby bypass the Association, but they still shall follow its mediation rules.

iii) Unless mutually agreed by the Parties, any mediation that does not result in either a resolution of the dispute or a recommendation of the mediator within sixty (60) calendar days of the date when the request for mediation is filed is deemed unsuccessful and terminated.

iv) The mediation must be held in the County of Miami-Dade, Florida, unless another location mutually is agreed upon. Agreements reached in mediation are enforceable as settlement agreements in any court of competent jurisdiction. The mediator shall have no power to bind the Parties absent their consent, or

otherwise to impose any resolution upon either Party. All proceedings in mediation will be by way of settlement discussions and may not be used or admissible in any legal proceeding, for any purpose.

d) Unless otherwise agreed in writing or unless the nature of the dispute renders it impossible or commercially impractical for Consultant to continue performance until the dispute is resolved, the Consultant shall continue to fully perform all Services required under the Agreement, and maintain progress during any mediation or legal proceedings, and Owner shall continue to make payments of sums not in dispute to Consultant pursuant to this Agreement. Consultant shall require all of its sub-consultants to agree to the same dispute resolution provisions contained in this Agreement, and to consent to any joinder or consolidation request.

e) Consultant shall fully cooperate with and assist Owner in connection with any dispute resolution proceeding involving Owner and an issue relating to Consultant's Services, unless Consultant is a Party to the dispute. Such assistance shall include, by way of example only: meetings with Owner, its consultants and attorneys; review of documents; and appearance at depositions and any formal proceedings. To the extent that Consultant is required to cooperate with Owner pursuant to this provision, Owner shall compensate Consultant for its time, at its then hourly rates.

f) None of the provisions in this Section 10 of the Agreement shall be interpreted as an admission of liability by the Consultant, nor shall they be interpreted to: (i) relieve Owner of its obligation to have Consultant's Services reviewed and approved by Owner's architect of record; (ii) relieve Owner of its obligation to exhaust any and all remedies available to it against any of the Owner's insurance policies, assets, or any other third party other than the Consultant; or (iii) cancel, limit, reduce, restrict, or in any way alter or disavow, any of Consultant's disclaimers of liability, limitations of liability, or limitation of damages provisions set forth in this Agreement.

#### 11) Limitations of Liability and Damages.

a) Limited Liability. CONSULTANT'S LIABILITY TO OWNER FOR ANY ACTS OR OMISSIONS OF CONSULTANT OR ITS SUB-CONSULTANTS, SUB-CONTRACTORS, EMPLOYEES, SERVANTS OR AGENTS OR FOR ANY BREACHES OF THIS AGREEMENT BY CONSULTANT SHALL BE LIMITED TO A MAXIMUM OF TWENTY (20) PERCENT OF THE TOTAL GROSS AMOUNT PAID TO CONSULTANT BY OWNER UNDER THIS AGREEMENT UP TO THE DATE OF SAID ACT OR OMISSION. THIS LIMITATION OF LIABILITY IS NOT INTENDED TO RELEASE CONSULTANT FROM CONSULTANT'S OWN NEGLIGENCE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION ON THE EXTENT OF INDEMNIFICATION AND LIABILITY BEARS A REASONABLE COMMERCIAL RELATIONSHIP TO THE CONTRACT AND IS PART OF THE PROJECT SPECIFICATIONS OR BID DOCUMENTS, IF ANY. IN THE EVENT THAT OWNER WISHES TO INCREASE THE MAXIMUM AGGREGATE LIABILITY AMOUNT OF CONSULTANT, THEN SAME SHALL BE ACCOMPLISHED BY WRITTEN AGREEMENT OF THE PARTIES WHEREIN OWNER SHALL BE REQUIRED TO PAY FOR ANY AND ALL SURCHARGES AND RELATED COSTS FOR ANY AND ALL INCREASED INSURANCE PREMIUMS OR COSTS LEVIED UPON CONSULTANT. CONSULTANT ASSUMES NO LIABILITY FOR ANY DELAY IN THE PREPARATION AND DELIVERY OF ITS SUBMITTALS, EXCEPT AS SUCH DELAYS ARE CAUSED SOLELY BY THE GROSS NEGLIGENCE OF CONSULTANT. SHOULD ANY PORTION OF THE INDEMNIFICATION UNDER THIS SECTION BE FOUND TO BE IN VIOLATION OF FLORIDA LAW, IT SHALL BE REDUCED TO PROVIDE VALID INDEMNIFICATION TO THE FULLEST EXTENT PERMITTED BY FLORIDA LAW. OWNER SHALL SECURE INSURANCE AT ITS OWN EXPENSE TO COVER THE RISK OF ANY ADDITIONAL DAMAGES THAT OWNER MAY CLAIM OR SUSTAIN. CONSULTANT ASSUMES NO LIABILITY FOR ANY DAMAGES EXCEPT AS STATED IN THIS PARAGRAPH.

b) Limited Damages. CONSULTANT WILL NOT BE LIABLE TO OWNER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES. CONSULTANT ASSUMES NO LIABILITY TO OWNER WHATSOEVER IF OWNER DOES NOT ACCEPT AND PERMIT THE SUBMISSION OF PLANS PREPARED BY CONSULTANT, EXCEPT FOR DAMAGES, AS LIMITED HEREINABOVE, FOR CONSULTANT'S FAILURE TO PREPARE AND PROVIDE SIGNED AND SEALED PLANS IF CONSULTANT IS OBLIGATED TO DO SO AS SET FORTH IN THE PROPOSAL, AND OWNER HAS NOT INTERFERED WITH CONSULTANT'S ABILITY TO DO SO.

c) Waiver of Subrogation and Indemnification. OWNER WAIVES SUBROGATION AND AGREES TO INDEMNIFY CONSULTANT, REGARDLESS OF FAULT, FOR ANY CLAIMS, DEMANDS, JUDGMENTS, OR ACTIONS THAT ANY INSURER, FIRST OR THIRD PARTY MAY ASSERT OR PURSUE AGAINST CONSULTANT IN CONNECTION WITH ANY EFFORT TO SEEK CONTRIBUTION OR INDEMNIFICATION FROM CONSULTANT FOR AMOUNTS PAID TO OR DEMANDED BY OWNER.

d) Exhaustion of Remedies. OWNER ACKNOWLEDGES THAT PRIOR TO ENTERING THIS AGREEMENT IT WILL HAVE SECURED INSURANCE COVERAGE IN AN AMOUNT SUFFICIENT TO COVER ANY AND ALL CLAIMS WHICH COULD POTENTIALLY ARISE AGAINST CONSULTANT. OWNER FURTHER AGREES THAT PRIOR TO BRINGING ANY ACTION OR SEEKING ANY REMEDY OR INDEMNIFICATION AGAINST CONSULTANT, OWNER MUST EXHAUST ALL OTHER AVAILABLE REMEDIES FROM ITS OWN INSURANCE POLICIES, FROM ITS ASSETS, AND FROM OTHER THIRD PARTIES.

e) Extension of Disclaimers. ANY AND ALL LIMITATIONS OF LIABILITY AND DAMAGES INCLUDED IN THIS SECTION AND DIRECTED TO CONSULTANT SHALL EXTEND TO CONSULTANT'S EMPLOYEES, AGENTS, PRINCIPALS, SUB-CONTRACTORS, ASSIGNS, JOINT-VENTURERS, AND RELATED COMPANIES.

f) Detrimental Reliance. OWNER ACKNOWLEDGES THAT THE LIMITATION OF LIABILITY, AND THE LIMITATION OF DAMAGES CLAUSES IN THIS AGREEMENT ARE MATERIAL INDUCEMENTS FOR CONSULTANT TO HAVE ENTERED INTO THIS AGREEMENT, AND THAT BUT FOR OWNER'S ACCEPTANCE OF THOSE CLAUSES, CONSULTANT WOULD NOT OTHERWISE HAVE ENTERED INTO THIS AGREEMENT.

g) Extension of Obligations. UNLESS OTHERWISE EXPRESSLY AGREED UPON IN WRITING BY CONSULTANT, THESE GENERAL TERMS AND CONDITIONS SHALL ALSO GOVERN ANY OTHER WORK, INCLUDING WORK PERFORMED BY CONSULTANT ON BEHALF OF ANY OWNER AFFILIATE. AS SUCH, REFERENCE TO THE "OWNER" IN THIS DOCUMENT SHALL ALSO MEAN OWNER "AFFILIATES" FOR PURPOSES OF ENFORCING THESE GENERAL TERMS AND CONDITIONS IN CONNECTION WITH SAID OTHER WORK BY CONSULTANT, IF ANY.