

December 17, 2021

Proposal No. HACIX21007P

Mr. Tracy Mercer, Special Projects Department Director
City of Haines City
620 East Main Street
Haines City, Florida 33844

**RE: PROJECT AGREEMENT 21-07 TO RETAINER AGREEMENT – LAKE TRACY RAIN GARDEN
CONSTRUCTION SERVICES**

Dear Ms. Mercer:

We are pleased to submit two (2) copies of this Agreement to the City to provide construction engineering services for the referenced Project. This Agreement describes our scope of services to assist the City with performing bidding and construction engineering services for this important Project.

Upon review and approval, please sign and return one (1) executed copy of this Agreement to our office.

Please call me if you have any questions. We sincerely appreciate the opportunity to assist the City of Haines City with this important Project.

Sincerely
Pennoni



Steven L. Elias, P.E.
Municipal Division Manager



Roger L. Homann
Project Manager

PROJECT AGREEMENT 21-07

by and Between

CITY OF HAINES CITY – and – PENNONI ASSOCIATES

Project

LAKE TRACY RAIN GARDEN CONSTRUCTION SERVICES

- 1.0 GENERAL:** This is Project Agreement 21-07 under the Retainer Agreement between the City of Haines City (City, Client, or Owner) and Pennoni Associates Inc. (Engineer or Pennoni) for continuing professional engineering services dated 25 March 2021. Except as provided for herein, the provisions of the Retainer Agreement between the City and Engineer shall apply to this Project Agreement.
- 2.0 EMPLOYMENT:** The City hereby retains the continuing professional engineering services of Engineer, in consideration of the mutual covenants contained herein, and agrees in respect to the performance of professional engineering services by Engineer and the payment for those services by City as set forth herein.
- 3.0 PROJECT BACKGROUND AND DESCRIPTION:** The City was awarded Section 319 Grant funding (Award number C9-99451521-0) from the Florida Department of Environmental Protection (FDEP) and the Environmental Protection Agency (EPA) for four Rain Garden and stormwater improvement projects that were previously designed by others. Specifically, the project components to be constructed include the: 1) Lake Tracy rain garden Best Management Practices (BMP's); 2) Ledworth Avenue rain garden BMP's; 3) John's Avenue bioswale BMP's; and 4) 9th Street bioswale BMP's. The goal of these projects is to construct improvements to achieve nutrient load reductions to improve the quality of nearby surface waters.

Because this Project is funded by the FDEP 319 grant program, certain administrative requirements are necessary to comply with Funding Agency requirements. To manage the Project in a cost-effective manner, it is necessary for the City to lead certain administrative and compliance efforts, in conjunction with construction engineering efforts to be provided by Pennoni. Based on discussions with City staff, the scope of work herein for this Project was based on the following assumptions:

- Design Plans, Specifications, and bidding documents prepared by others will be utilized for this project;
- Bidding documents will be gathered, compiled, and prepared by the City;
- The City/purchasing department will lead bidding efforts (advertisement, conducting meetings, etc.) with technical assistance provided by Pennoni.

- The City will prepare and process a Quality Assurance Project Plan for approval by FDEP for post-project sampling and monitoring to help evaluate nutrient loading reduction;
- Quarterly reports that may be required by the Funding agency will be prepared and submitted by the City.
- Public Education efforts as required by the Funding agency will be performed by the City.
- Limited bidding and construction engineering support services will be provided by Pennoni to help ensure the Project is constructed in accordance with the design plans prepared by others.

4.0 PURPOSE: The purpose of this Agreement is to authorize Pennoni to provide the services described in Section 5.0 herein for the fee described in Section 6.0 herein.

5.0 SCOPE OF WORK: Pennoni will provide, or obtain from others, professional engineering design services for this Project. Pennoni's services will include serving as the City's engineering representative for the Project, providing customary professional civil engineering and consulting services. Pennoni makes no warranties, express or implied, under this Agreement or otherwise, in connection with Pennoni's services. The following sections describe Pennoni's scope of work for this Project.

5.1 Bidding Phase: Pennoni will provide assistance to the City in obtaining, receiving, and evaluating bids and awarding and executing the Construction Contract as described below.

5.1.1 Kick-off Meeting: Meet with City staff to verify Project objectives including but not limited to the Project construction scope, Funding Agency Project requirements, and bidding documents compiled by the City (latest drawings signed and sealed by Engineer of Record, specifications, permits, project manual, etc.) which will be provided to bidders.

5.1.2 Pre-Bid Conference: Attend a Pre-Bid Conference conducted by the City to review and answer questions from prospective bidders regarding the Construction Documents and to tour the Project Site as needed.

5.1.3 Respond to Questions: Provide technical input to assist the City in providing written responses to questions from bidders.

5.1.4 Addenda: Provide the City technical input to assist the City in preparing and issuing Addenda to the Construction Documents, if required, which will address the questions raised at the Pre-Bid Conference and respond to other issues and questions (City will coordinate with Engineer of Record to obtain any design plan revisions).

5.1.5 Bid Review: Assist the City in reviewing bids submitted to the City, tabulate the bids, check the low bidders' references, and submit a bid award letter of recommendation for the lowest, responsible bidder.

5.1.6 Assist with Completing Construction Contract: After the City awards the bid, assist the City with preparing and executing the Construction Contract with the Contractor.

5.2 Technical Services During Construction:

- 5.2.1 Issue Construction Documents:** Assist the City to provide one (1) copy of Construction Documents (i.e. Construction Plans/Specifications and contract documents) to the selected Contractor (signed and sealed construction plans/specification to be collected from the Engineer of Record by the City).
- 5.2.2 Respond to Questions:** Provide technical assistance to help the City respond to the Contractor's questions to help clarify the intent of the design documents.
- 5.2.3 Pre-Construction Meeting:** Conduct one pre-construction conference with representatives of the City and the Contractor to provide a clear understanding of the objectives and goals to be achieved in this Project and prepare a written summary of the salient points of this meeting and distribute to the appropriate parties.
- 5.2.4 Construction Observation and Engineering Support:** Provide construction engineering support and make periodic visits (5 months of construction activities assumed and an average of 1 site visit/3 hours per week of site observer time budgeted) to the site during construction to observe and document the construction for conformance with the general intent of the civil construction plans, specifications, and permits prepared by Pennoni. This does not include constant inspection as might be provided by a resident engineer.
- 5.2.5 Shop Drawing Review:** Review Contractor's shop drawing submittals, respond to the Contractor's requests for information, and maintain a log of associated correspondence.
- 5.2.6 Pay Application Review:** Review and provide technical assistance to help the City process Contractor pay applications.
- 5.2.7 Progress Meetings:** Prepare for and conduct two progress meetings (as applicable) and prepare meeting summary memorandum(s) to document discussions.
- 5.2.8 Substantial Completion:** When the site work construction is substantially complete and when requested by the contractor(s) and approved by the City, conduct one site visit to observe the substantially completed construction, prepare a punch list of the observed work items to be completed in general conformance with the approved plans and permits, and provide the City and the Contractor with the punch list.
- 5.2.9 Final Completion:** When the site work construction is 100% complete and when requested by the Contractor and approved by the City, make one site visit per project to observe the complete construction and to review the completed punch list items.

5.3 Operational Services:

- 5.3.1 As-Built Drawings: The construction Contract Documents stipulate that the Contractor shall provide As-Built Drawings of the project after the improvements are completely constructed. The Contract Documents also require the Contractor to provide Pennoni with certified (signed and sealed by a Florida Registered Professional Land Surveyor and Mapper) and electronic drawings in AutoCAD and GIS shapefile format, which clearly illustrate the as-built conditions of the site work construction. These as-builts shall fulfill the requirements of the City, FDEP, and Pennoni and will be used as the basis of our Record Drawings.
- 5.3.2 Record Drawings: Based on the Contractor's as-builts, prepare Record Drawings of the project improvements to identify construction deviations based on data collected and provided to the Engineer.
- 5.3.3 Certification: If construction is deemed sufficient by Pennoni (compaction tests, survey data, etc.) provide a Certification(s) of Completion submittal to SWFWMD for the completed project as applicable (Please note that any deviations from the approved construction plans, such as pipe slope, elevation differences, separation requirements, etc., which call into question the functionality of the systems to function as designed, could require additional services on Pennoni's part that are not included herein).
- 5.4 **Exclusions**: All other services not explicitly described in Items 5.1 - 5.3 above and based on the assumptions described herein will be performed as an Additional Service upon request and written approval by the City, including but not limited to the following:
- Subcontracted environmental specialty consultants;
 - System-wide modeling or stormwater system assessment, permitting, design plan revisions, and design;
 - Site, boundary, or wetland surveys;
 - Right-of-way or easement acquisition assistance or preparing legal description documents to support these efforts ;
 - Construction Services for any periods of time past the original construction contract duration.
 - All other services not explicitly described in Section 5.0.

6.0 PENNONI'S COMPENSATION

6.1 Our lump sum fees, excluding reimbursable costs, to provide the above-described services are given below.

Bidding Phase	\$8,500
Construction Engineering Phase	\$21,500
Operational Phase	<u>\$2,500</u>
Total.....	\$32,500

NOTE: Post Construction monitoring, QA/QC plan compliance, etc. that may be required to comply with funding award requirements is to be planned and performed by the City.

6.2 Should the Client elect to expand the Scope of Work to include work tasks not covered in this agreement, Pennoni will perform the requested additional work tasks based on: (A) A mutually agreed upon fixed fee; or (B) The time we spend and the costs we incur to perform the work in accordance with our current Schedule of Hourly Rates and Reimbursable Costs (Exhibit 2).

6.3 It is understood and agreed that cost tradeoffs among the various cost categories and work tasks are allowable, so long as the total estimated cost of all work tasks is not exceeded without the City's written approval.

7.0 CITY'S RESPONSIBILITIES: The City shall do the following in a timely manner so as to assist Pennoni in its work and not delay the performance of services by Pennoni.

7.1 Designate a City representative with respect to the services to be rendered under this Supplement who will lead all Funding Agency Program compliance and coordination efforts; and have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to Pennoni's services for this Project.

7.2 Coordinate with the Engineer of Record and obtain all construction plans (signed and sealed and digital), technical specifications, agency permits, etc. as required to facilitate construction of this Project.

7.3 Compile all bid package documents (technical specifications, City bidding and contract documents, Funding Agency bid documents as applicable, etc.) required to bid this project, advertise bidding, and lead pre-bid meeting/addendum/contract execution efforts.

7.4 Promptly review, comment on, and return Pennoni's submittals.

7.5 Payment of all permit application and review fees and other costs not included in this proposal are the responsibility of the City.

- 7.6 Promptly advise Pennoni when the City becomes aware of any defect or deficiency in Pennoni's services.
- 7.7 Furnish Pennoni with all information as to City requirements, including any special or extraordinary considerations for the Project, and make available existing pertinent data as identified in the Scope of Work as necessary (maps, as-built drawings, etc.).
- 7.8 Provide access to all City sites and facilities related to the Project.
- 7.9 Lead all coordination and compliance requirements with the funding agency (FDEP and EPA) including, but not limited to: preparing Quality Assurance Project Plan submittal, approval, and implementation efforts, post monitoring and reporting efforts, public education and outreach efforts,
- 7.10 Provide review(s) of Pennoni construction documents for technical and legal sufficiency.

8.0 OTHER MATTERS

- 8.1 Our attached Standard General Conditions (Attachment B), and other provisions described in the referenced Retainer Agreement between City and Engineer shall apply to this Project Agreement as applicable. References to the Pennoni/ Consultant/ Engineer regarding Limitation of Liability also pertain to the Project's Engineer of Record.
- 8.2 The obligation to provide services under this Project Agreement may be terminated by either party upon seven days written notice, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Pennoni will be paid for all services rendered.
- 8.3 Because Pennoni has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional, familiar with the construction industry. Pennoni cannot and does not guarantee that proposals, bids, or actual costs will not vary from opinions of probable cost prepared by it. If at any time the City wishes greater assurance as to the amount of any cost, the City shall employ an independent cost estimator to make such determination.
- 8.4 This proposal may be void if not executed within 45 days.
- 8.5 In the performance of its work, Pennoni will rely on readily available and historic information (plans, as-built drawings, manuals, specifications, reports, etc.) provided by the City and by others without research to verify the accuracy of said information.

8.6 PURSUANT TO 588.0035 F.S., AN AGENT OR INDIVIDUAL EMPLOYEE OR AGENT OF PENNONI ASSOCIATES, INC CANNOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS PROFESSIONAL SERVICES CONTRACT OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER. BY SIGNING THIS AGREEMENT, YOU HAVE ACCEPTED THIS LIMITATION OF LIABILITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the

_____ of _____ 2021.
(Day) (Month)

CITY OF HAINES CITY

Attest, City Clerk

Mayor, City of Haines City

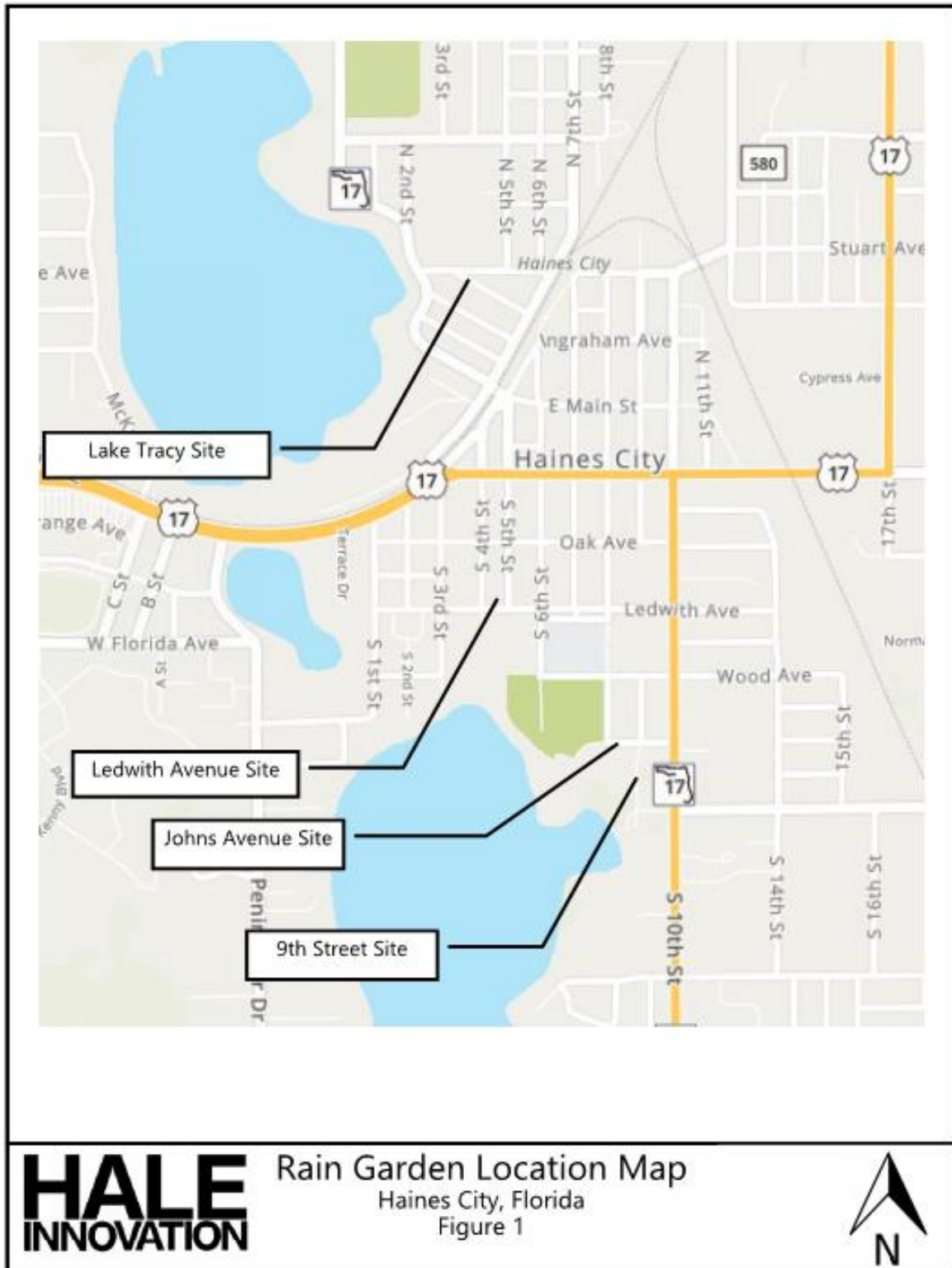
PENNONI ASSOCIATES INC.



BY: _____
Brian Diehl, P.E., Regional Vice President

DATE: 12/17/21

ATTACHMENT A – Project Location Map



ATTACHMENT B – STANDARD GENERAL CONDITIONS



PENNONI ASSOCIATES INC.
GENERAL TERMS & CONDITIONS
[PROJECT No.]

1. Unless withdrawn sooner, proposals are valid for thirty (30) days.
2. The technical and pricing information in proposals is the confidential and proprietary property of Pennoni Associates Inc. ("Pennoni") or any Pennoni subsidiary or affiliate. Client agrees not to use or to disclose to third parties any technical or pricing information without Pennoni's written consent.
3. The agreement created by the Client's acceptance of a proposal and these Terms & Conditions is hereinafter referred to as the "Agreement." If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Pennoni to proceed with the services, then Client shall be deemed to have accepted the terms of the proposal and these General Terms & Conditions. If there is a conflict or inconsistency between any express term or condition in the proposal and these General Terms & Conditions, then the proposal shall take precedence. The proposal and these General Terms & Conditions constitute the entire Agreement, and supersede any previous agreement or understanding.
4. Payment is due upon receipt of invoices as submitted. If Client chooses to make any payment via major credit card, Client agrees to pay a 3% surcharge or 1.03 times the total amount invoiced. Client agrees to pay interest at the rate of 1½ percent per month on invoices that are more than 30 days past due. If an invoice is 30 or more days past due, then Pennoni may suspend services and refuse to release work on this Agreement or any other agreement between Client and Pennoni until Client has paid all amounts due. Unless Pennoni receives written notice of Client's dispute of an invoice within 30 days of the invoice date, the invoice will be presumed correct. If payment is not made in accordance with the Agreement, then Client agrees to pay reasonable costs and attorney's fees incurred by Pennoni to collect payment.
5. All drawings, sketches, specifications and other documents ("Documents") in any form, including electronic, prepared by Pennoni are instruments of Pennoni's services, and as such are and shall remain Pennoni's property. Upon payment in accordance with the Agreement, Client shall have the right to use and reproduce the Documents solely for the purposes of constructing, remediating, using or maintaining the project contemplated by the Agreement ("Project"). The Documents are prepared for use on this Project only, and are not appropriate for use on other projects, any additions or alterations of the Project, or completion of the Project by others. Client shall not use the Documents in violation of this paragraph without Pennoni's express written consent; and such use is at the Client's sole risk. Client agrees to indemnify, defend and hold harmless Pennoni from any claims, damages, losses, liabilities and expenses arising from such prohibited use.
6. The proposed fees and schedule constitute Pennoni's best estimate of the charges and time required to complete the Project. As the Project progresses, facts uncovered may dictate revisions in scope, schedule or fee. The hourly rate schedule for services provided on a time and material basis will be subject to increases annually.
7. Fee and schedule commitments will be subject to change for delays caused by Client's failure to provide specified facilities or information, or for delays caused by third parties, unpredictable occurrences or force majeure.
8. Where the method of payment is based on time and materials, Client agrees that the following will apply: The minimum time segment for charging work is one-quarter hour, except the minimum time segment for charging of field survey work is four (4) hours. Client reimbursable expenses include travel and living expenses of personnel when away from the home office on business connected with the Project; subcontractor and subconsultant costs; identifiable communications, mailing and reproduction costs; identifiable drafting and stenographic supplies; and expendable materials and supplies purchased specifically for the Project. A ten (10) percent administrative and handling charge will be added to client reimbursable expenses.
9. Client's termination of this Agreement will not be effective unless Client gives Pennoni seven (7) days prior written notice with accompanying reasons and details, and affords Pennoni an opportunity to respond. Where the method of payment is "Lump Sum," Client agrees that the final invoice will be based on services performed to the effective date of cancellation, plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation. Where the method of payment is time and materials, Client agrees that the final invoice will include all services and direct expenses up to the effective date of cancellation plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation.
10. Pennoni will maintain at its own expense Workman's Compensation insurance, Commercial General Liability insurance, and Professional Liability insurance.
11. Neither the Client nor Pennoni shall assign this Agreement without the written consent of the other.

12. Pennoni does not represent or warrant that any permit or approval will be issued by any governmental or regulatory body. Pennoni will endeavor to prepare applications for such permit or approval in conformance with applicable requirements; but, in view of the complexity of and the frequent changes in applicable rules and regulations and interpretations by the authorities, Pennoni cannot guarantee that any such application will be considered complete or will conform to all applicable requirements.
13. Pennoni will perform its work in accordance with generally accepted professional standards. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED. This Agreement is solely for the benefit of the Client and its successors. There is no third-party beneficiary of this Agreement.
14. CLIENT AND PENNONI HAVE CONSIDERED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, AS WELL AS PENNONI'S TOTAL FEE FOR SERVICES. CLIENT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, PENNONI'S TOTAL AGGREGATE LIABILITY (INCLUDING THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND CONSULTANTS) TO THE CLIENT (AND ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT) FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES IS LIMITED TO THE TOTAL FEE RECEIVED BY PENNONI UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO, PENNONI'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, OR BREACH OF CONTRACT OR WARRANTY.

IN THE EVENT THE CLIENT IS UNABLE TO ACCEPT THE ABOVE LIMITATION OF LIABILITY, PENNONI AGREES TO INCREASE THE LIMITATION TO \$1,000,000 UPON ITS RECEIPT, PRIOR TO PERFORMING ANY SERVICES, OF CLIENT'S WRITTEN AGREEMENT TO PAY AN ADDITIONAL SUM OF NOT LESS THAN 10% OF THE TOTAL FEE UNDER THIS AGREEMENT OR \$1,000, WHICHEVER IS GREATER.

15. Client shall make no claim against Pennoni unless the Client first provides a written certification, executed by an independent design professional, specifying those acts or omissions which the independent design professional contends is a violation of generally accepted professional standards and upon which the claim will be premised. The independent design professional must be licensed to practice in the state where the Project is located and in the discipline related to the claim. Client agrees that the independent design professional's certification is a condition precedent to the Client's right to institute any judicial proceeding.
16. If required under the scope of services, Pennoni shall visit the Project site to become generally familiar with the progress and quality of the work for which Pennoni prepared contract documents, and Pennoni shall not make exhaustive or continuous onsite inspections. Pennoni's services do not include supervision or direction of the contractor's work. Observation by Pennoni field representatives shall not excuse the contractor for defects or omissions in its work. Pennoni shall not control construction means, methods, techniques, sequences, or procedures, and the contractor is solely responsible for all work on the Project, including safety of all persons and property.
17. If Client does not retain Pennoni to render construction phase services, then Client waives any claim it may have against Pennoni and agrees to indemnify, defend, and hold harmless Pennoni from any loss or liability, including attorneys fees and other defense costs, arising out of or related to the interpretation of Pennoni's plans and specifications, the review of shop drawings, the evaluation of contractor's request for change orders, or the failure to detect and correct obvious errors or omissions in Pennoni's plans and specifications.
18. Unless and until a court determines that Pennoni's preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, specifications and/or Pennoni's giving or failure to give instructions is the primary cause of any damage, claim, loss or expenses, Client shall indemnify, defend and hold harmless Pennoni and its officers, employees and consultants from and against all damages, claims, losses or expenses, including reasonable attorneys fees and other costs of defense, arising out of this Agreement. In the event the Client is required to defend Pennoni under this paragraph, Pennoni shall have the right to select its attorneys.
19. Client agrees to pay reasonable expert witness fees if Pennoni or any of its employees is subpoenaed to testify as a fact or opinion witness in any court proceeding, arbitration, or mediation to which the Client is a party.
20. Unless otherwise provided in this proposal, Pennoni shall have no responsibility for the discovery, presence, handling, removal, or disposal of hazardous materials or underground structures at the Project site.
21. Client and Pennoni waive consequential damages arising out of this Agreement.
22. This Agreement shall be governed by the laws of the State of Florida.
23. Both Pennoni and Client agree to waive the right to subrogation for covered losses and each shall obtain similar waivers from Owner, subcontractors, property and casualty insurers, and any other party involved in this Project.