

**DESIGN-BUILD AGREEMENT
BETWEEN
THE EAST ORANGE COUNTY WATER DISTRICT
AND
SNYDER LANGSTON
FOR DESIGN AND CONSTRUCTION OF DISTRICT OFFICE**

January __, 2023

Article 1	GENERAL PROVISIONS	2
1.1	Basic Definitions.....	2
1.1.1	Acceleration Proposal Request.	2
1.1.2	Applicable Law.....	2
1.1.3	As-Builts.	2
1.1.4	Change Order (CO).....	2
1.1.5	Change Order Request (COR).	2
1.1.6	Construction Change Directive (CCD).....	2
1.1.7	Construction Documents.....	3
1.1.8	Contract.....	3
1.1.9	Contract Documents.....	3
1.1.10	Contract Sum (Price).....	3
1.1.11	Contract Time.	3
1.1.12	Day.....	3
1.1.13	Design and Performance Criteria.....	4
1.1.14	Design Consultant.....	4
1.1.15	Design-Build Team Members.....	4
1.1.16	Owner or District.	4
1.1.17	Drawings.	4
1.1.18	Extraordinary Measures.....	4
1.1.19	Field Directive.	4
1.1.20	Final Completion.	4
1.1.21	Force Majeure.	5
1.1.22	Modifications.....	5
1.1.23	Notice of Completion.....	5
1.1.24	Project.	5
1.1.25	Project Manager.....	5
1.1.26	Reasonably Inferable.	5
1.1.27	Separate Contractors.	5
1.1.28	Services.....	5
1.1.29	Specifications.....	6
1.1.30	Substantial Completion.....	6
1.1.31	Superintendent.	6
1.1.32	Third Party.	6
1.1.33	Turnkey Contract Basis.....	6
1.1.34	Underground Facility.....	6
1.1.35	Work.	6
1.1.36	Owner’s Representative.....	7
1.1.37	Quality Control (QC).....	7
1.1.38	Quality Assurance (QA).	7
1.1.39	Schedule of Values.	7
1.1.40	Project Manager (PM).....	7
1.1.41	Inspector.....	8
1.2	Correlation and Intent of the Contract Documents.....	8
1.2.1	Intent.	8
1.2.2	Inconsistencies.....	8

	1.2.3 Severability.	8
1.3	Commencement of Construction Phase.	8
1.4	Execution of Contract Documents.	9
	1.4.1 Signatures.	9
	1.4.2 Design-Builder Representations.	9
1.5	Ownership and Use of Drawings, Specifications and Other Instruments of Service.	9
	1.5.1 Ownership of Contract Documents.	9
	1.5.2 Intellectual Property Rights.	10
1.6	Publicity.	10
Article 2	OWNER.	10
2.1	General.	10
2.2	Information and Services Required of the Owner.	10
	2.2.1 Permits and Fees.	10
	2.2.2 Survey and Locating of Utilities.	11
	2.2.3 Time for Furnishing.	11
2.3	Owner’s Right to Stop the Work.	11
2.4	Owner’s Right to Carry Out the Work Due to Partial Default in a Specific Segregated Area of Work.	11
2.5	Suspension of Operations.	12
2.6	Owner’s Right to Commence or Continue Operations.	12
Article 3	DESIGN-BUILDER’S SCOPE OF WORK AND RESPONSIBILITIES.	13
3.1	General.	13
	3.1.1 Definition.	13
	3.1.2 Performance – Single Point Responsibility.	13
3.2	General Description and Scope of Work.	13
	3.2.1 Furnish Material and Services.	13
	3.2.2 Scope of Services.	14
	3.2.3 Design-Builder License.	14
	3.2.4 Subcontractor Licenses.	14
3.3	Design Development Services.	14
	3.3.1 General Scope.	14
	3.3.2 Design Professional Licensing Requirements.	14
	3.3.3 Standard of Care.	15
	3.3.4 Design Responsibility.	15
	3.3.4.1 Design Organization.	15
	3.3.4.2 Design-Builder’s Design Manager.	16
	3.3.4.3 Investigations.	16
	3.3.5 Design Packages.	17
	3.3.5.1 Description.	17
	3.3.6 Design Development Phase Services.	17
	3.3.6.1 Preliminary Design Completion.	17
3.4	Final Design and Construction.	19
	3.4.1 Completion of Design.	19
	3.4.2 Pre-Final Design – Construction Documents Phase.	19

3.4.3	Final Design – Construction Documents Phase.....	20
	3.4.3.1 Verification.	20
	3.4.3.2 Correction.	20
	3.4.3.3 Deliverables.	20
3.4.4	Design Review Submittals.....	21
	3.4.4.1 The Design-Builder Shall Maintain a Written Record of all Formal Internal Design Reviews.	21
	3.4.4.2 Design Review – Submittal Review Comments.	22
	3.4.4.3 Design Review and Comment Resolution Meetings.	22
	3.4.4.4 Approval of Final Design Documents.	22
	3.4.4.5 Final Design Certification.	22
3.5	Supervision and Construction Procedures.	23
	3.5.1 Full Time Supervision.....	23
	3.5.2 Staff.....	23
	3.5.3 Right to Remove.	24
3.6	Construction Phase Services.	24
	3.6.1 General.....	24
	3.6.2 Performance by Qualified Individuals.....	24
	3.6.3 Design-Builder’s Means and Methods.....	24
	3.6.4 Design-Builder’s Vicarious Liability.....	25
3.7	Labor and Materials.	25
	3.7.1 Design-Builder to Provide.	25
	3.7.2 Quality.....	25
	3.7.3 Coordination.	25
	3.7.4 Labor Discipline.....	25
	3.7.5 Skilled Labor.....	25
	3.7.6 Procurement and Installation of Materials and Equipment.....	26
3.8	Warranty and Correction.....	26
	3.8.1 Warranty.	26
	3.8.2 Commencement of Correction Periods.....	26
	3.8.3 No Limitation.....	26
	3.8.4 Overlap.....	27
	3.8.5 Owner’s Right to Correct.....	27
	3.8.6 Procurement and Assignment of Warranties.	27
	3.8.7 Survival of Warranties.	27
3.9	Taxes.....	28
	3.9.1 Payment.....	28
	3.9.2 Liability for Employee Payments.	28
3.10	Permits, Fees and Notices.	28
	3.10.1 Responsibility for Permits and Fees.	28
	3.10.2 Notices.	28
	3.10.3 Construction Contrary to Law.	28
3.11	Design-Builder’s Key Personnel, Design Consultants and Subcontractors.....	28
	3.11.1 Design-Builder’s Key Personnel.....	29
	3.11.2 Changes in Design-Builder’s Key Personnel, Design Consultants and Subcontractors.....	29

3.11.3	Qualifications and Licenses.....	29
3.12	Design-Builder’s Schedules.....	29
3.12.1	Project Schedule.....	29
3.12.2	Format.....	29
3.12.3	Updates.....	30
3.12.4	Rain Delays.....	30
3.13	Documents and Samples at the Site.....	30
3.13.1	As-Built and Record Documents.....	30
3.14	Shop Drawings, Product Data and Samples.....	30
3.14.1	Shop Drawings.....	30
3.14.2	Product Data.....	31
3.14.3	Samples.....	31
3.14.4	Purpose.....	31
3.14.5	Painting Submittals.....	31
3.15	Use of Site.....	31
3.15.1	Coordination.....	31
3.15.2	Security.....	31
3.15.3	Parking, Lay-Down Areas and Site Office.....	32
3.16	Responsibility for Environmental Compliance.....	32
3.17	Cleaning Up.....	32
3.17.1	Continuous Obligations.....	32
3.17.2	Design-Builder and its Subcontractors shall:.....	32
3.17.3	Water Pollution Control.....	33
3.17.4	Additional BMPs.....	33
3.17.5	Final Completion.....	33
3.18	Access to Work.....	34
3.19	Royalties, Patents and Copyrights.....	34
3.19.1	Royalties and License Fees.....	34
3.19.2	Infringement.....	34
3.19.3	Defend Suits.....	34
3.20	Indemnification.....	34
	By way of limitation, with respect to “design professional” liability, as that term is defined by California Civil Code section 2782.8(c), relative to Design-Builder’s work as a design professional, the indemnification obligations set forth in this Section 3.20 shall only apply to claims that arise out of, pertain to, or related to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Design-Builder, as well as any sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (“Design-Builder Sub-Professionals”), performing work as a design professional, except: those arising from the sole negligence, active negligence, or willful acts of Owner; and does not apply to any passive negligence of Owner unless caused at least in part by the Design-Builder or Design-Builder Sub-Professionals.....	35
3.20.1	Stop Payment Notice Claims.....	35

3.21	Coordination with Neighboring Property.	36
3.22	Value Engineering, Substitution, Cost Analysis, Constructability and Coordination Review.	36
	3.22.1 Value Engineering.	36
	3.22.2 Submission of Proposals.	36
	3.22.3 Construction Feasibility and Coordination.	36
3.23	Peer Review.	37
Article 4	ADMINISTRATION OF THE CONTRACT	37
4.1	Owner’s Representative and Project Manager.....	37
	4.1.1 Authority.....	37
4.2	Administration of the Contract.	37
	4.2.1 Site Visits.....	37
	4.2.2 No Estoppel.....	37
	4.2.3 Certificates for Payment.	38
	4.2.4 Rejection of Work Testing and Inspection.	38
	4.2.5 Contract Modifications.	38
	4.2.6 Substantial Completion and Project Closeout.....	38
4.3	Claims and Disputes. This Section is intended as a summary of the provisions of Chapter 9 (commencing with Section 9201) of Part 1 of Division 2 and, to the extent applicable, Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (“Claims Resolution Statutes”) and is subject to the actual provisions of the Claims Resolution Statutes. To the extent the provisions set forth herein conflict with the procedures required for construction claims in the aforementioned authority, the statutory requirements shall control.	38
	4.3.1 Definition.	38
	4.3.2 Notice and Time Limits on Claims.....	39
	4.3.3 Resolution.	39
	4.3.4 Continuing Contract Performance.	39
	4.3.5 Claims for Changed, Concealed, or Unknown Conditions.....	39
	4.3.6 Claims for Additional Cost and/or Time.	40
	4.3.6.1 General.....	40
	4.3.6.2 Content of Written Notice.....	40
4.4	Dispute Resolution – Meet and Confer.....	41
4.5	Mediation.	41
	4.5.1 Mediation is Condition Precedent to Other Actions.....	41
	4.5.2 Mediation Rules.....	41
	4.5.3 Initiation of Mediation.	41
	4.5.4 Share Mediator’s Fee.	42
	4.5.5 Location of Mediation.....	42
	4.5.6 Enforcement of Agreements Reached.	42
Article 5	SUBCONTRACTORS AND DESIGN CONSULTANTS	42
5.1	Definitions.....	42
	5.1.1 Subcontractor.	42
	5.1.2 Sub-subcontractor.	42

5.2	Award of Subcontractors and Other Contracts for Portions of the Work.....	42
5.2.1	Objection to Design Consultants and Subcontractors.....	42
5.2.1.1	Owner Objection.....	42
5.2.1.2	Contract Sum or Contract Time.....	43
5.2.1.3	No Change of Previously Selected Entity.....	43
5.3	Design Consultant and Subcontractor Relations.....	44
5.3.1	Agreements.....	44
5.3.2	Precedence.....	44
5.4	Contingent Assignment of Design Consultant, Subcontractor and Material Supply Agreements.....	44
Article 6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS.....	45
6.1	Owner’s Right to Perform Construction and to Award Separate Contracts.....	45
6.1.1	Owner’s Right to Perform.....	45
6.1.2	Interpretation of Contract Documents.....	45
6.1.3	Coordination.....	45
6.2	Mutual Responsibility.....	45
6.2.1	Access.....	45
6.2.2	Notice of Discrepancies.....	45
6.3	Owner’s Right to Clean Up.....	46
6.4	Independent Testing.....	46
6.4.1	Owner Testing.....	46
6.4.2	Design-Builder Duties.....	46
Article 7	CHANGES IN THE WORK.....	46
7.1	General.....	46
7.1.1	Owner’s Right to Order Changes.....	47
7.1.2	Basis for Agreement.....	47
7.1.3	Change in Contract Documents.....	47
7.2	Change Orders (CO).....	47
7.2.1	Definition.....	47
7.2.2	Computation.....	47
7.2.3	Accord and Satisfaction.....	47
7.3	Construction Change Directives (CCD).....	48
7.3.1	General.....	48
7.3.2	Use.....	48
7.3.3	Duty to Proceed.....	48
7.3.3.1	Pricing.....	48
7.3.4	Agreement.....	48
7.4	Computation of Cost or Credit for Changes.....	49
7.4.1	Cost or Credit.....	49
7.4.1.1	Reports by Design-Builders.....	49
7.4.2	Basis for Establishing Costs.....	50
7.4.3	Payment of Undisputed Amounts.....	51
7.4.4	Discounts, Rebates, and Refunds.....	51
7.5	Authority to Approve Changes.....	52
7.5.1	Owner’s Project Manager’s Authority.....	52

	7.5.2	Verbal Changes.....	52
	7.5.3	Unauthorized Work.....	52
7.6		Owner Originated Proposal Request.....	52
7.7		Design-Builder Originated Change Order Request (COR).	53
	7.7.1	Changes in the Basic Project Configuration.	53
7.8		Format for Proposed Cost Change.....	53
Article 8		TIME.....	54
8.1		Definitions.....	54
	8.1.1	Contract Time.	54
	8.1.2	Commencement.	55
	8.1.3	Substantial Completion.	55
		8.1.3.1 Definition.	55
	8.1.4	Liquidated Damages.	56
		8.1.4.1 Owner Damages.....	56
	8.1.5	Mutual Waiver of Indirect or Consequential Damages.	56
8.2		Progress and Completion.	57
	8.2.1	Time Is of the Essence.	57
	8.2.2	Commencement.	57
	8.2.3	Completion.....	57
8.3		Delays and Extensions of Time.	57
	8.3.1	Compensable Force Majeure Events.	57
		8.3.1.1 Definition.	57
		8.3.1.2 Remedies.....	58
		8.3.1.3 Rain Days.....	58
	8.3.2	Compensable Owner-Caused Delays.....	58
	8.3.3	Concurrent Delays.	58
	8.3.4	Claim for Additional Time.....	58
	8.3.5	Shortage of Materials.....	59
	8.3.6	Third Party Agency Delays.....	59
	8.3.7	Design-Builder Fault.....	59
	8.3.8	Change Order.	60
	8.3.9	No Waiver.	60
	8.3.10	No Release of Surety.	60
8.4		Intentionally omitted.	60
8.5		Waiver Not Precedent.	60
8.6		Schedule Requirements.....	60
	8.6.1	Design-Builder Baseline Schedule Requirements.	60
		8.6.1.1 Timing.....	60
		8.6.1.2 Design-Builder Baseline Schedule.	61
		8.6.1.3 Owner Review and Approval.....	61
		8.6.1.4 Schedule Must be Within the Given Contract Time.	61
		8.6.1.5 Intentionally omitted.	61
		8.6.1.6 Float Must be Incorporated.....	61
		8.6.1.7 Intentionally omitted.	61
		8.6.1.8 Incorrect Logic, Durations, Sequences, or Critical Path.....	61

	8.6.1.9 Trade Contractor Responsibility for Schedules Even if Schedule Issues are not Discovered.....	62
	8.6.2 Update Schedules.....	62
	8.6.2.1 Updates Shall be Based on Approved Baseline Schedule.....	62
	8.6.2.2 Schedule Updates.....	62
	8.6.2.3 Listing of Items Causing Delays.....	62
Article 9	PAYMENTS AND COMPLETION	62
9.1	Intentionally Omitted.....	62
9.2	Compensation for Design and Construction – Contract Sum.....	62
	9.2.1 Contract Sum.....	62
	9.2.2 Allowance Items and Allowance Values.....	62
9.3	Alternates.....	63
9.4	Schedule of Values.....	64
9.5	Applications for Payment.....	64
	9.5.1 Process for Applications for Payment.....	64
	9.5.1.1 Requests for Payment on Account.....	65
	9.5.1.2 Authorization.....	65
	9.5.2 Documentation.....	65
	9.5.3 Payment for Stored Materials.....	66
	9.5.4 Payment to Design Consultants and Subcontractors.....	66
	9.5.5 Substantial Completion Payment Application.....	66
	9.5.6 Warranty of Title and No Liens.....	67
9.6	Certificates for Payment.....	67
	9.6.1 Owner Action.....	67
	9.6.2 Representation.....	68
9.7	Decisions to Withhold Certification for Payment.....	68
	9.7.1 Basis for Decision to Withhold.....	68
	9.7.2 Withhold for Disputes.....	69
	9.7.3 Stop Payment Notice Claims.....	69
	9.7.3.1 Liability.....	69
	9.7.3.2 Release of Payments Withheld.....	69
9.8	Progress Payments.....	70
	9.8.1 Owner Payments to Design-Builder.....	70
	9.8.2 Payment Does Not Constitute Approval or Acceptance of Work.....	70
9.9	Substantial Completion.....	70
	9.9.1 Design-Builder Request for Inspection and Punch List.....	70
	9.9.2 Owner’s Inspection.....	70
	9.9.3 Certificate.....	70
	9.9.4 Owner’s Acceptance.....	71
9.10	Partial Occupancy or Use.....	71
	9.10.1 Owner’s Rights and Allocation of Responsibility.....	71
	9.10.2 Joint Inspection.....	72
	9.10.3 No Acceptance.....	72
	9.10.4 Conditions.....	72
9.11	Final Completion and Final Payment.....	72
	9.11.1 Inspection.....	73

	9.11.2 Documentation.....	73
	9.11.3 Release of Stop Payment Notices.....	74
	9.11.4 Delay Not Caused by Design-Builder.....	74
	9.11.5 Design-Builder’s Acceptance of Final Payment.....	75
	9.11.6 Owner’s Final Payment.....	75
	9.11.7 Liens After Final Payment.....	75
9.12	Substitution of Securities.....	75
Article 10	PROTECTION OF PERSONS AND PROPERTY	76
10.1	Safety Precautions and Programs.....	76
10.2	Safety of Persons and Property.....	76
	10.2.1 Precautions and Protection.....	76
	10.2.2 Notice and Compliance with Applicable Law.....	76
	10.2.3 Safeguards.....	76
	10.2.4 Notice of Hazards.....	77
	10.2.5 Damage or Loss.....	77
	10.2.6 Loading.....	77
	10.2.6.1 Review.....	77
	10.2.6.2 Modifications.....	77
	10.2.7 Accident Prevention.....	78
	10.2.8 Accident Reporting.....	78
	10.2.9 Adjoining Property.....	78
10.3	Hazardous Materials.....	78
10.4	Material Safety Data Sheets and Compliance with Proposition 65.....	78
	10.4.1 Material Safety Data Sheets.....	78
	10.4.2 Health and Safety Code.....	79
10.5	Design-Builder Materials.....	79
10.6	Emergencies.....	79
10.7	Protection of the Work.....	79
Article 11	INSURANCE AND BONDS	79
11.1	Design-Builder’s Liability Insurance.....	79
	11.1.1 Design-Builder’s Insurance Requirements.....	79
	11.1.2 Owner’s Insurance.....	83
11.2	Fire Insurance.....	83
11.3	Other Insurance.....	83
11.4	Proof of Carriage of Insurance.....	83
11.5	Compliance.....	83
11.6	Waiver of Subrogation.....	84
11.7	Performance and Payment Bonds.....	84
	11.7.1 Bond Requirements.....	84
	11.7.2 Surety Qualification.....	84
Article 12	UNCOVERING AND CORRECTION OF WORK.....	85
12.1	Uncovering of Work.....	85
	12.1.1 Specific Request.....	85
	12.1.2 No Specific Request.....	85

12.2	Correction of Work.....	85
12.2.1	Before Or After Final Completion.....	85
12.2.1.1	Warranty Obligation.....	85
12.2.2	After Final Completion.....	85
12.2.2.1	Warranty Obligation.....	85
12.2.3	Destruction or Damage.....	87
12.2.4	No Limitation.....	87
12.2.5	Acceptance of Nonconforming Work.....	87
Article 13	MISCELLANEOUS PROVISIONS.....	87
13.1	Governing Law.....	87
13.2	Successors and Assigns.....	87
13.3	Written Notice.....	88
13.4	Rights and Remedies.....	88
13.4.1	Cumulative Rights.....	88
13.4.2	No Waiver.....	88
13.5	Tests and Inspections.....	88
13.5.1	Required Tests, Inspections, and Costs.....	88
13.5.2	Additional Tests and Inspections.....	89
13.5.3	Documentation.....	89
13.5.4	Observation of Tests.....	89
13.5.5	Time.....	89
13.6	Maintenance, Inspection, and Audit of Records.....	89
13.7	Independent Contractor.....	90
13.8	Keys and Access.....	90
13.9	Survival of Terms.....	90
13.10	Cooperation With Labor.....	90
13.10.1	General.....	90
13.10.2	Picketing.....	91
13.10.2.1	Reserve Gate System.....	91
13.10.2.2	Sympathy Strike.....	91
13.10.3	Labor Disputes.....	91
13.11	Compliance With Restrictions.....	91
Article 14	91
14.1	Termination by the Design-Builder.....	91
14.1.1	Work Stoppage Not Caused by Owner.....	91
14.1.2	Work Stoppage Caused by Owner.....	92
14.2	Termination by the Owner for Cause.....	92
14.2.1	Grounds.....	92
14.2.2	Owner's Rights.....	93
14.2.3	Costs.....	93
14.2.4	Erroneous Termination.....	93
14.3	Suspension by the Owner.....	94
14.3.1	Suspension For Convenience.....	94
14.3.1.1	Owner's Discretion.....	94
14.3.1.2	Recommendation Upon Notice.....	94

14.3.2	Suspension For Cause.	94
14.3.3	Responsibilities of Design-Builder During Suspension Periods.	94
14.4	Termination by the Owner for Convenience.	94
14.4.1	Grounds.	95
14.4.2	Design-Builder Actions.	95
14.4.3	Compensation.	95
Article 15	96
15.1	Normal Hours of Work.	96
15.2	Saturday, Sunday, Holiday and Overtime Work.	96
15.3	DIR Registration.	97
15.4	Wage Rates – Prevailing Wage Requirement.	97
15.5	Hours of Labor.	98
15.6	Records of Wages Paid.	99
15.7	Monitoring and Enforcement by Labor Commissioner.	100
15.8	Apprentices.	101
15.8.1	Employment of Apprentices.	101
15.8.2	Apprentice Wages and Definitions.	102
15.8.3	Submission of Contract Information.	102
15.8.4	Apprentice Fund.	102
15.8.5	Design-Builder Compliance.	102
15.9	Prohibition against use of Debarred Contractors.	103
15.10	Character of Workers.	103
15.11	Worker’s Compensation.	103
Article 16	ADDITIONAL PROVISIONS 103	103
16.1	References to Other Documents.	103
16.2	Owner’s Representative.	103
16.3	Design-Builder’s Project Representative.	104
16.4	Equal Employment Opportunity and Affirmative Action.	104
16.5	Interest.	104
Article 17	ENUMERATION OF CONTRACT DOCUMENTS.....	105
17.1	Contract Documents.	105
17.1.1	Agreement.	105
17.1.2	Supplementary Conditions.	105
17.1.3	Preliminary Design Documents/Project Information.	105
17.1.4	Addenda.	105
17.1.5	Construction Documents.	105
17.1.6	Other Documents.	106
Article 18	SIGNATURES.....	107
18.1	Representations.	107

**DESIGN-BUILD AGREEMENT BETWEEN THE EAST
ORANGE COUNTY WATER DISTRICT AND SNYDER
LANGSTON FOR DESIGN AND CONSTRUCTION OF
DISTRICT OFFICE**

This **AGREEMENT** made as of the ____ day of _____, in the year 2023 (“Effective Date”) by and between the following Parties, for services in connection with the Project identified below:

Owner:

East Orange County Water District
185 N. McPherson Rd.
Orange, CA 92869

Design-Builder:

Project:

EOCWD Administration Office Building Replacement

The Owner and Design-Builder are sometimes individually referred to as “Party” and who hereinafter may be referred to collectively as the “Parties” in this Agreement.

RECITALS

Owner desires to utilize the services of Design-Builder as an independent Design-Builder to provide Design-Build services for the EOCWD Administration Office Building Replacement Project within the City of Orange, on certain Owner owned property located at 185 N. McPherson Road, Orange, CA 92869, also identified as Orange County Assessor Parcel No. 383-091-01.

Design-Builder represents that it is fully qualified to perform such services by virtue of its experience and the training, education, and expertise of its principals and employees.

Owner desires to retain Design-Builder and Design-Builder desires to serve Owner to perform these services in accordance with the terms and conditions of this Agreement.

The Project is a prevailing wage project subject to the Public Contract Code except for any provisions related to competitive bidding requirements.

The Parties therefore agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 **Basic Definitions.**

The following shall not be construed as a comprehensive list of all definitions in the Contract Documents and there may be other terms defined within the Contract Documents.

1.1.1 **Acceleration Proposal Request.**

Owner's written request to Design-Builder to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work when the need for such measures is not due to the fault of the Design-Builder.

1.1.2 **Applicable Law.**

Laws, statutes, ordinances, building codes, rules, and regulations relating to the Work.

1.1.3 **As-Builts.**

A full set of construction plans prepared by Design-Builder clearly, accurately and neatly marked showing the condition of the Work as actually built, including, without limitation, drawings revised and annotated to show all changes, deviations from the last revision of plans and specifications and the exact locations of all pipe, fillings, valves, structures or other portions of the Work that are shown diagrammatically in the Contract Documents. As-Builts shall be delivered to the Owner within **thirty (30) days** of final completion.

1.1.4 **Change Order (CO).**

As more specifically described in Article 7 below, a Change Order ("CO") is a written document reflecting the agreement between the Owner and Design-Builder for a change in the terms or conditions of the Contract, if any; a specific change in the scope of Work, if any; the amount of the adjustment, if any, in the Contract Sum; and the adjustment, if any, in the Contract Time.

1.1.5 **Change Order Request (COR).**

As more specifically described in Paragraph 7.7 below, a Change Order Request ("COR") is a written document originated by the Design-Builder, supported by backup documentation which describes an instruction issued by the Owner after the effective date of the Contract, which Design-Builder believes to be a Scope Change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Design-Builder.

1.1.6 **Construction Change Directive (CCD).**

As more specifically described in Paragraph 7.3 below, a Construction Change Directive ("CCD") is a unilateral written order issued by Owner directing Design-Builder to perform or

continue performance of the Work or a disputed item of Work pending resolution of a dispute concerning the Scope of the Work and entitlement to a change in the Contract Sum or Contract Time, or both.

1.1.7 Construction Documents.

All technical drawings, working Drawings, Specifications, diagrams and samples, setting forth in detail the requirements necessary for construction of the Project in accordance with the Contract Documents.

1.1.8 Contract.

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification.

1.1.9 Contract Documents.

The Contract Documents means the entire set of terms, conditions, requirements and directions which collectively constitute the obligations of the Design-Builder, and which consist of the documents enumerated as such in the Agreement between Owner and Design-Builder (hereinafter "Agreement") and all Modifications issued after execution of the Agreement.

1.1.10 Contract Sum (Price).

The Contract Sum or Price is the total compensation to be paid by the Owner to the Design-Builder for performance of the work subject to additions and deductions by Change Order and/or Construction Change Directive as provided in these Contract Documents.

1.1.11 Contract Time.

The total number of days set forth in the Construction Contract within which Substantial Completion of the Work must be achieved, beginning with the date established in the Notice to Proceed to commence the Work and ending with the date that the Notice of Substantial Completion is issued by the Owner, including approved extensions of time permitted under the terms of the Contract Documents. The Contract Time for Contractor's performance of the Work is measured in calendar days (not work days).

1.1.12 Day.

The terms "day" or "days" mean calendar days unless otherwise specifically designated in the Contract Documents. The term "Work Day" or "Working Day" shall mean any calendar day except Saturdays, Sundays and the following Owner-recognized legal holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and Friday after Thanksgiving and Christmas Day. The day before Christmas and the day before New Years are also considered non-work days.

1.1.13 Design and Performance Criteria.

Documents developed by or for the Owner to describe Owner's program requirements and objectives for the Project including, but not limited to, use, space, price, time, site requirements, special equipment and systems and other requirements governing Design-Builder's performance of the Work.

1.1.14 Design Consultant.

A qualified licensed design professional who is either an employee of Design-Builder retained by Design-Builder, or anyone under contract with Design-Builder or a Subcontractor, to furnish design services required by the Contract Documents.

1.1.15 Design-Build Team Members.

The licensed Subcontractors and Design Consultants identified in the Agreement.

1.1.16 Owner or District.

The East Orange County Water District, acting through its Board of Directors, General Manager or other Owner officials authorized to act for the Owner, acting in its proprietary rather than regulatory capacity in connection with the Project. Owner or District shall include its designated representative.

1.1.17 Drawings.

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.18 Extraordinary Measures.

Measures implemented by Design-Builder at Owner's direction to expedite the progress of design or construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures.

1.1.19 Field Directive.

A Field Directive is a unilateral written order prepared and signed by the Owner directing the Design-Builder to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

1.1.20 Final Completion.

The term Final Completion is the date, evidenced by the Owner's acceptance of a final Certificate for Payment signed and certified by the Owner's Representative, as defined in

Paragraph 9.13 below, when the Work has been completed and the requirements for Project closeout set forth in the Contract Documents including, but not limited to, those set forth in Subparagraph 9.13.2, have been satisfactorily completed.

1.1.21 Force Majeure.

The term Force Majeure shall be those events as set forth in Subparagraph 8.3.1.1.

1.1.22 Modifications.

A Modification is (i) a written amendment to the Agreement signed by both parties, (ii) a Change Order (“CO”), or (iii) a Construction Change Directive (“CCD”).

1.1.23 Notice of Completion.

Owner intends to record a Notice of Completion when all “Work” called for on the Construction Documents has been completed. The recording of a Notice of Completion shall not relieve Design-Builder from its obligation to complete all requirements of the Contract Documents.

1.1.24 Project.

The Project is the total and complete design and construction of the EOCWD Administration Office Building Replacement of which the Work is performed in accordance with the Contract Documents which may be the whole or a part and which may include construction by the Owner or by Separate Contractors.

1.1.25 Project Manager.

The term “Project Manager” means the person or persons designated by the Design-Builder with authority to bind Design-Builder to decisions made at the Project Site.

1.1.26 Reasonably Inferable.

The expression “reasonably inferable” and similar terms in the Contract Documents means reasonably inferable by a Design-Builder familiar with the Project and exercising the care, skill, and diligence required of the Design-Builder by the Contract Documents.

1.1.27 Separate Contractors.

The term Separate Contractors or Owner’s Separate Contractors means licensed contractors and/or professional engineers performing portions of the Project under separate contracts with the Owner.

1.1.28 Services.

When capitalized, Services means the total productive and operative efforts required to generate the results specified in, included in, or reasonably inferable from the Contract Documents. The term Services, when used in the Contract Documents is interchangeable with the term “Work”.

1.1.29 Specifications.

The Specifications are a portion of the Construction Documents approved by the Owner, consisting of the written requirements for materials, equipment, systems, Quality Assurance standards and workmanship for the Work, warranties, and performance of related Services.

1.1.30 Substantial Completion.

Substantial Completion shall occur as set forth in Paragraph 8.1.3 of this Agreement.

1.1.31 Superintendent.

The term “Superintendent” means the person or persons designated by the Design-Builder to represent the Design-Builder at the Project Site.

1.1.32 Third Party.

Third Party refers to any governmental, quasi-governmental or private entities that have to approve or issue permits for the work.

1.1.33 Turnkey Contract Basis.

The Design-Builder agrees to provide a completely finished project ready for use in accordance with the requirements of the Contract Documents, not to exceed the Contract Sum and within the Contract Time, as same may be adjusted in accordance with the Contract Documents. Except as otherwise provided in the Contract Documents and except for causes which are the responsibility of Owner, Design-Builder assumes all risks related to cost overruns, defects, errors, omissions and delays arising from the design and construction of the Work.

1.1.34 Underground Facility.

Underground Facility is all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any services or materials, including without limitation, electricity, gasses, steam, liquid petroleum products, telephone or other communications, cable television, water and sewage.

1.1.35 Work.

The term “Work” means the entire completed performance of the design, construction and other Services required by, and reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Design-Builder to fulfill the Design-Builder’s obligations. The Work may constitute the whole or a part of the Project. The term “Work” as used herein shall further include, without limitation, all labor, supervision, materials, special facilities, built-ins, equipment, tools, supplies, taxes, and other property and services necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Contract Documents and all work, services and materials necessary to produce fully connected, complete,

operational and functional systems and finishes. In determining what is reasonably inferable from the Contract Documents and all work, services and materials necessary to produce fully connected, complete, operational and functional systems and finishes. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together, and shall not be read by separate trade areas or design divisions, and shall be read as intending fully connected, complete, operational and functional systems and finishes. Wherever the word “work” is used, rather than the word “Work,” it shall be understood to have its ordinary and customary meaning.

1.1.36 Owner’s Representative.

The Owner’s Representative means the individual selected and authorized by Owner as its Project Manager to act upon Owner’s behalf with respect to Design-Builder and the performance of this Agreement. It is recognized and acknowledged that any actions by the Owner’s Representative relative to adjustments in the Contract Sum or Contract Time will not be binding on the Owner until ratified by the Owner’s Board.

1.1.37 Quality Control (QC).

The program of witnessing, inspecting, checking and testing in-progress work during procurement, design and/or construction, to determine if the work conforms with the specified requirements of construction.

1.1.38 Quality Assurance (QA).

A program of planned policies, procedures, detailed responsibilities, and systematic actions (including inspection, testing, documentation, and auditing) necessary to provide adequate confidence that the Work (designs, materials, alignment and grade of constructed facilities) meets the contract requirements.

1.1.39 Schedule of Values.

A detailed breakdown of the Contract Sum for each phase of the Work under the Agreement that will allow a meaningful method to measure the level of Project completion as determined by the Owner. The Design-Builder shall, at a minimum, break out separately general conditions costs, allowances, contingencies, bond costs, insurance, Design-Builder’s fee, scheduling, submittals, inspections and all major elements of the work and services provided.

1.1.40 Project Manager (PM).

Owner’s Project Manager is Owner’s authorized representative who interprets and defines Owner’s policies, renders decisions with respect to Design-Builder’s performance of the Work, approves Design-Builder’s applications for payment, reviews and approves Design-Builder schedules and submittals, reviews and approves Design-Builder’s Change Order Requests and Change Orders (subject to board ratification), reviews all quantity calculations related to pay quantities, concurs in any defective Work Notifications, and reviews and determines Substantial Completion and Final Completion of the Work. All correspondence and electronic communication to and from the Owner shall flow through the Project Manager.

1.1.41 Inspector.

Inspector shall mean those individuals required by any third party to inspect, review and approve any element of Work on the Project.

1.2 Correlation and Intent of the Contract Documents.

1.2.1 Intent.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Design-Builder as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Design- Builder shall prevail. The Design-Builder shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by Owner in writing.

1.2.2 Inconsistencies.

Nothing herein shall relieve the Design-Builder of its obligation to notify the Owner of any inconsistencies in the Contract Documents. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Design-Builder shall apply to the Owner in writing for such further written explanations as may be necessary. All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Owner.

1.2.3 Severability.

In the event any article, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable such determination, declaration, or adjudication shall in no manner affect the other articles, sections, subarticles, paragraphs, subparagraphs, sentences, clauses, or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, subarticle, paragraph, subparagraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally contained in the Contract Documents.

1.3 Commencement of Construction Phase.

Once Design-Builder has received a Notice to Proceed with Construction Phase, Design-Builder shall perform all construction services, and provide all material, equipment, tools, labor, manuals, start-up, commissioning and testing services for the Project necessary to complete the Work described in and reasonably inferable from the Contract Documents.

1.4 Execution of Contract Documents.

1.4.1 Signatures.

The Agreement shall be signed by the Owner and Design-Builder. Cover pages and tables of contents of the Agreement, General and Supplementary Conditions, if any, index pages of the preliminary design information shall be signed or initialed by the Owner and Design-Builder.

1.4.2 Design-Builder Representations.

By executing the Agreement, Design-Builder represents and warrants that: (i) the Contract Documents when approved will be sufficiently detailed to enable Design-Builder to construct the Project within the Contract Sum and Contract Time; (ii) it has visited the Project Site, familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by the Design-Builder, and the conditions reflected on any site surveys provided to or obtained by the Design-Builder; (iii) it is fully experienced, qualified and competent to perform the Services set forth in the Contract Documents; (iv) it is properly equipped, organized and financed to perform the Work; (v) it is properly permitted and licensed by the State of California and all other governmental entities to perform the Work required by the Contract and that it will retain only properly licensed Design Consultants and Subcontractors to perform the Work of the Contract; (vi) it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials; (vii) it has familiarized itself with the availability of labor, water, electric power, and roads; (viii) it has familiarized itself with uncertainties of weather or similar observable physical conditions at the Project Site; (ix) it has familiarized itself with the character of equipment and facilities needed preliminary to and during performance of the Work; (x) it has familiarized itself with the staging and material storage constraints of the Project Site and surrounding buildings and will confine its staging and storage operations to approved areas; (xi) it shall maintain the immediate surrounding areas of the Project Site in a clean and safe manner at all times; (xii) it will coordinate its design and construction activities with Owner's Separate Contractors, if any, performing work on the Project Site; (xiii) it will adhere to any assigned transit route identified by the Owner or third parties; and (xiv) it will adhere to and be bound by conditions set forth in the Contract Documents and any regulatory agency, utility, or governmental entity with jurisdiction over the Project.

1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

1.5.1 Ownership of Contract Documents.

All sketches, reports and other documents furnished by the Owner are and shall remain the property of the Owner. They are to be used only with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of the Owner's common law copyright or other reserved rights.

1.5.2 Intellectual Property Rights.

The Construction Documents, Contract Documents, Submittals and Project-related documents (including without limitation, all copies thereof) created, prepared, or issued by Design-Builder or its Design Consultants or Subcontractors, including certain design Drawings, Specifications, and electronic data shall be the property of the Owner, including without reservation any intellectual property rights. Without derogation of its intellectual property rights, the Owner hereby grants to the Design-Builder and its Subcontractors, without reservation, revocable at will of the Owner, a non-exclusive license in all Project-related documents, models, photographs, and other written expressions created by the Design-Builder for use for all purposes relating to the Design-Builder's performance of the Work including the alteration, modification, repair or completion of the Project and for no other purpose. Upon termination or cancellation of the Work, all drawings and materials shall be delivered to Owner prior to Final Payment.

1.6 Publicity.

The Design-Builder, its agents, employees, Design Consultants, Subcontractors, and suppliers shall not engage in any communication or correspondence with persons not directly involved in the construction of the Project, concerning any aspect of the construction of the Project, without the express written consent of Owner. All communications to the media, or in response to inquiries made by private citizens, shall be issued solely through the Owner.

ARTICLE 2 OWNER

2.1 General.

The Owner (used interchangeably with "District") is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's Project Manager shall act as the Owner's Representative on this Project. Whenever the Contract Documents require or permit the Owner to take or request an action or approve or disapprove of an action or request made by another party, the reference to "Owner" or "District" shall mean the Owner's representative unless the Contract Documents or context make it clear that another person is authorized to act as the Owner's Representative. All communications to the Owner shall be made through the Owner's Representative.

2.2 Information and Services Required of the Owner.

2.2.1 Permits and Fees.

Except for the permits, fees, and other items set forth under Subparagraph 3.10.1, that are the responsibility of the Design-Builder under the Contract Documents, the Owner shall pay for any other necessary assessments, permits and charges required by any regulatory agency to be secured by the Owner.

2.2.2 Survey and Locating of Utilities.

Design-Builder shall coordinate its work with all utilities, including, but not limited to electricity, water, gas, cable and telephone, and perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines.

2.2.3 Time for Furnishing.

Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Design-Builder shall make allowance in its Project schedule indicating the date by which any Owner information will be required, and shall provide sufficient advance notice to reasonably allow Owner to secure the required information so as not to impact the Project schedule.

2.3 Owner's Right to Stop the Work.

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. The Owner's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the Owner.

2.4 Owner's Right to Carry Out the Work Due to Partial Default in a Specific Segregated Area of Work.

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a **three (3) business day** period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to other remedies the Owner may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued unilaterally deducting from payments then or thereafter due the Design-Builder, the cost of correcting such deficiencies, including compensation for any additional design services and expenses made necessary by such default, neglect, or failure including compensation for the services of the Owner's Representative. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. The Owner's right to carry out the Work is in addition to and without prejudice to any other rights or remedies of the Owner. The Owner's right to issue a partial default and take over that segregated area of work includes, but is not limited to:

- (a) Failure to supply adequate workers on the entire Project or any part thereof;
- (b) Failure to supply a sufficient quantity of materials;
- (c) Failure to perform any provision of this Agreement;

- (d) Failure to comply with safety requirements, or due to Design-Builder's creation of an unsafe condition;
- (e) Cases of bona fide emergency threatening the safety of the work, public, Owner, and any property or equipment.
- (f) Failure to order materials in a timely manner that impacts the completion of the Work.
- (g) Failure to comply with submission of required Baseline or Update Schedule, failure to comply with Baseline Schedule or Update Schedule, meet critical Milestones which may result in a delay to the critical path, or delay the Contract Time;
- (h) Failure to meet the requirements of the Americans with Disabilities Act;
- (i) Failure to complete Punch List work.

2.5 Suspension of Operations.

In addition to the Owner's right to stop the Work set forth in this Agreement, the Design-Builder shall, upon receipt of Owner's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the Owner may deem advisable and designate in said notice. Upon receipt of such notice to suspend operations, the Design-Builder shall immediately confer with the Owner concerning the probable duration of such suspension and stoppage, delays, and extensions of time resulting therefrom as well as the reduction and possible elimination of the Design-Builder's field cost and such other costs and expenses as may result directly from such Work stoppage. Upon written notice from the Owner to resume operations, the Design-Builder shall promptly resume all or any part of the Work and operations including securing of materials required by said resumption notice. Design-Builder shall be compensated for suspension in accordance with Article 14 herein.

2.6 Owner's Right to Commence or Continue Operations.

The Owner may, at its option, commence or continue operations on the Project Site prior to Design-Builder's final completion of the Work. The Owner's commencement or continuation of operations shall in no way diminish the Design-Builder's obligations under the Contract Documents. The Design-Builder shall cooperate with the Owner with respect to performance of the Work.

ARTICLE 3
DESIGN-BUILDER'S SCOPE OF WORK AND RESPONSIBILITIES

3.1 General.

3.1.1 Definition.

The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder and all Design Consultants and Subcontractors shall be properly licensed to perform all Work they are contracted to perform.

3.1.2 Performance – Single Point Responsibility.

The Design-Builder is responsible for the design and construction of the Project and shall provide all services in accordance with the Contract Documents. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's representative in their administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

3.2 General Description and Scope of Work.

Design-Builder shall perform the design services ("Services") and scope of work ("Work") described in this Agreement and in the other Contract Documents as is reasonably inferable by a skilled Design-Builder as necessary to produce the results contemplated by the Contract Documents, except where the Services or Work is specifically indicated in the Contract Documents to be the responsibility of others.

3.2.1 Furnish Material and Services.

The Design-Builder shall:

- (a) Furnish all design services, investigation, labor, materials, supervision, tools and equipment to properly construct the Project in accordance with the requirements of the Contract Documents;
- (b) Submit all documents required to obtain those permits and approvals of governmental or quasi-governmental authorities and utilities;
- (c) Comply with all known interpretations of applicable law, and applicable safety, environmental and other requirements taking into account the constraints affecting the Project Site;
- (d) Design and construct the Project in accordance with all professional design and engineering principles and construction practices generally accepted as standards of the industry in the State of California, in a good and workmanlike manner, free

from defects and in accordance with the terms and conditions set forth in the Contract Documents.

Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Substantial Completion and Final Completion of the Project and elements thereof on or before the milestone deadlines provided in the Contract Documents shall be Design-Builder's sole responsibility. The costs of all such materials, Services and efforts are included in the Contract Price.

3.2.2 Scope of Services.

The scope of Services to be provided by Design-Builder is set forth in the Contract Documents.

3.2.3 Design-Builder License.

The Design-Builder shall hold either a valid California Class "A" General Engineering Contractor license or a valid Class "B" General Building Contractor license at the time of award of the Contract and shall maintain the license at all times during performance of the Work.

3.2.4 Subcontractor Licenses.

All Subcontractors shall hold the appropriate California A-General Engineering Contractor, B-General Contractor, or C-Specialty license and all Design Consultants shall hold a license in the appropriate design discipline at the time of award of the Contract and all shall maintain the license at all times during performance of the Work.

3.3 Design Development Services.

3.3.1 General Scope.

The Design-Builder shall be responsible for developing, providing, and completing all Design Documents for the Project, based on the bridging set of documents upon which the final design is based. The responsibilities of the Design-Builder shall include design management with Quality Control, the development and implementation of design procedures, the development and conducting of a design process, the preparation of all drawings and materials necessary to complete the Design Documents, and the delivery of signed and sealed design documents ready for permitting and construction.

3.3.2 Design Professional Licensing Requirements.

Owner does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, Design-Builder acknowledges that Owner has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the design of the Project, although the fully licensed design firms designated as members of the Design-Build Team Members, will perform the design services required by the Contract Documents. Nothing in this article shall create a contractual relationship between such Design Consultants and the Owner.

3.3.3 Standard of Care.

All design Services to be performed by Design-Builder, Design Consultants and their employees shall be supervised and the design performance directed by the Design-Builder, and will be performed in an expeditious and professional manner using architects, engineers and other professionals properly licensed and duly qualified in the jurisdiction in which the Project is located. All design Services performed pursuant to this Agreement shall be provided with the standard of judgment, care, knowledge and skill which prevails among design professionals, of knowledge and skill, engaged in practice within the same region of California under the same or similar circumstances, specializing in the design and construction of an office building and site improvements such as this Project in compliance with the Contract Document.

3.3.4 Design Responsibility.

Produce the complete design of the Administration Building Project as defined in the Contract Documents. The documents shall be signed and sealed by licensed design consultants in the appropriate discipline when the design is ready for construction, including but not limited to the following:

- (a) The Design-Builder shall be responsible for design of work to be approved by Third Parties as required in the Contract. Third Party work is defined as work required by a governmental or quasi-governmental entity, and/or utility companies or the like.
- (b) The Design-Builder shall manage and resolve all interfaces which two or more functional systems, subsystems or structures come into physical or functional contact.
- (c) The Design-Builder shall comply with all design requirements pertaining to any entities having jurisdiction over the Work and obtain necessary approvals from the jurisdiction or Third Parties for all design and construction.
- (d) The Design-Builder shall submit a copy of all correspondence to and from the Design-Builder or its representatives and any jurisdiction or Third Party to the Owner in order to notify the Owner of any problems.
- (e) The Design-Builder shall include design progress and changes in Design-Builder's design schedule (including Work on any design change) in the monthly Schedule Update. Allow adequate lead-time for procurement, design, design reviews, permits, approvals and submittal reviews by Third Parties and the Owner.

3.3.4.1 Design Organization.

The Owner requires the design organization maintained by the Design-Builder to maintain sufficient staff throughout the duration of the Contract to ensure the Design-Builder meets the contract requirements. The Contract organization shall prepare design documents including Design and Construction Drawings, Project Specifications and other design and engineering reports, calculations and documents to complete the design in conformance with the Contract

requirements.

3.3.4.2 Design-Builder's Design Manager.

Designate and assign a Design Manager reporting to the Design-Builder's Project Manager to manage all Work performed by the Design-Builder's design organization. The Design Manager shall have sufficient experience and background necessary to lead the design effort for this Project. The Owner shall approve the final selection of the Design Manager.

The Work shall be divided into manageable design packages as necessary that provide the best coordination and interface of design elements between the design disciplines involved and achieve the Design-Builder's schedule requirements.

The Design-Builder shall conduct an assessment and evaluation of design and shall certify to the Owner that the design satisfies the Contract Document requirements, including those for:

- (a) Accuracy;
- (b) Adequacy;
- (c) Conformance to standards of practice,
- (d) Compliance with codes and standards;
- (e) Cost effectiveness;
- (f) Quality; and
- (g) Fitness for purpose and/or function as specified in the Contract Documents.

3.3.4.3 Investigations.

During this phase the Design-Builder secures and confirms the following:

- (a) Field data investigation on existing site, including location of existing utilities that will interface with the proposed new and/or modified facilities.
- (b) Confirm or produce topographic information of the site where infrastructure sitework will take place, and area on the site that may be used as borrow areas.
- (c) Conceptual and a significant degree of detailed design of the Project.
- (d) Site planning for the Project and strategically arranging the initial structures and buried infrastructure.
- (e) Advising the Owner and facilitating Owner participation in all material decision making about the Project.

- (f) Coordinate with Owner relative to Supervisory Controls and Data Acquisition (SCADA) system and security/surveillance system.

3.3.5 Design Packages.

3.3.5.1 Description.

To the extent the logical sequence of work warrants it, **within thirty (30) days** of a Notice to Proceed with the design, the Design-Builder shall develop and submit for approval a plan and schedule for packaging the design documents for the Work into a series of groupings or design packages. The design packages shall provide a logical and efficient method for completing the design and construction of the Project within the approved project schedule and in conformance with Contract documents. If separate design packages are not warranted, Design-Builder shall so advise the Owner and shall proceed with a single, comprehensive design package.

The Design-Builder shall conduct meetings and coordinate with all approving governmental agencies, utility owners or other Third Parties for their submittal requirements and design review process for obtaining all approvals and permits. The Design-Builder shall invite Owner to all meetings with the Third Parties.

The Design Package Plan and Submittal Schedule for each category shall consist of description and scope of design work for each Design Package, including limits and interface points, schedule of design review stages and dates, identification of the responsible engineer, and location(s) where design work will be performed. The mutually agreed to design package plan and submittal schedule shall be incorporated into the Baseline Schedule and be reviewed monthly in accordance with the general requirements until design is complete.

3.3.6 Design Development Phase Services.

During the design process, based on the bridging set of documents, the Design-Builder shall develop project-specific Project Specifications in CSI format and drawings based on the specific materials, products, equipment, procedures and methods that the Design-Builder intends to use, and shall comply with local agency and Third Party standards.

3.3.6.1 Preliminary Design Completion.

This section applies to design activities and the design requirements of the City of Orange and other Third Party requirements.

The Design-Builder is required to perform and provide the following for Owner review and approval:

- (a) Detailed schematic plans that include colored site plans at a scale required to adequately present to the Owner showing the pedestrian access and safety, security, hardscape areas and materials, trees and landscaped areas and recommended plant materials, pedestrian and street lighting.

The completion of preliminary design develops a clear indication of design solutions for the Project requirements. Utility and structure conflicts will be identified and necessary relocation plans developed. The design criteria, performance specifications, technical provisions and other documents are finalized in conjunction with all necessary reviews by Third Parties and design standards established. At the completion of preliminary design, major features of design will have advanced and most drawings and other documents will be approximately 80% complete.

The completion of Preliminary Design may include, but not be limited to the following:

- (a) All drawings stated or identified. A list of drawings including standard drawings. Most major project elements should appear on the drawings and specifications.
- (b) Performance specifications including technical provisions and Design Criteria.
- (c) The basic layout of all drawings has been completed.
- (d) Facility equipment sizes and locations must be shown on the drawings.
- (e) Status report listing data or information from others that affect completion of project scope definition and data or information specifically excluded or missing from the documents. The report shall indicate the impact dates and other direction or status.

Civil Design:

Roadway and off-site modifications developed to include details of typical sections and pavement structure including calculations.

Utility Requirements:

- (a) Solutions coordinated with utility owners for utility relocations, abandonment and temporary supports shall be nearing completion.
- (b) Early relocation design work shall be completed and prepared for separate construction proposals.

3.4 Final Design and Construction.

3.4.1 Completion of Design.

Following acceptance by the Owner of the Preliminary Design, detailed construction documents shall be prepared and shall include but not be limited to technical drawings, design details, schedules, diagrams, calculations, and specifications in general conformance with the CSI format setting forth the requirements of the construction of the Work, customarily necessary for the use of those in the building trades and as required for regulatory agency approvals, for warranties and for Owner operation and maintenance. Present initial documentation required to request deviations from the Owner or Third Party design criteria or standards.

In addition, structural calculations, hydrology/drainage reports, construction sequencing, and street closure requests. Interim reviews shall be at 90% approval (pre-final design phase) and at 100% completion (final design phase). The Final Design shall include all completed Preliminary Design items.

3.4.2 Pre-Final Design – Construction Documents Phase.

The Pre-Final Design occurs at approximately the 60% completion when the drawings and Specifications are essentially complete. The plans must show all the details necessary for construction and have been coordinated among the various disciplines. All design review and lessons learned comments received from prior reviews shall have been reviewed and resolved. The following items shall be checked during the pre-final design review:

- (a) Applicable design criteria, codes and standards, including Third Party requirements.
- (b) Interface requirements with other elements.
- (c) Comments and action items from earlier design reviews.
- (d) Comments and concerns from the external and constructability reviews.
- (e) Cost effectiveness/value engineering.
- (f) Schedule compliance.
- (g) Clarity of intent.
- (h) Standard and directive drawings.
- (i) Adherence to direction provided by the Owner.

The Pre-Final design provides an opportunity for all participating agencies to review the proposed construction to serve as a basis for obtaining concurrence from city, county, state and federal agencies, and utilities. Pre-Final includes all disciplines that are complete and the coordination among the various disciplines and the details necessary for construction.

Incorporation of all previous validated design review comments into the plans and specifications occurs at this time.

Pre-Final Design may include, but not be limited to the following:

- (a) All drawings required for agency review and approval, including permit applications.
- (b) Final documentation of all design.
- (c) Complete technical specifications.
- (d) Identification of any identified issues that may impact the schedule or the Contract Sum.
- (e) List of pre-construction activities to be done by others.
- (f) Preliminary Construction Schedule.

3.4.3 Final Design – Construction Documents Phase.

3.4.3.1 Verification.

During the final design phase, the Design-Builder shall verify that the concepts and information presented and contained in Contract Documents have been followed and Contract requirements have been met throughout the development of Project design.

3.4.3.2 Correction.

Following the review of the pre-final design submittals and receipt of comments, the Design-Builder will revise the drawings to reflect the necessary corrections to comply with standards, permits, and other requirements of the contract and conduct comment resolution meeting(s) for each submittal. The Design-Builder will then revise, supplement if necessary and resubmit 100% or Final Design plans for approval.

3.4.3.3 Deliverables.

The Final Design Package shall include but not be limited to: detailed, 100% complete and checked Design Drawings, Project Specifications, reports, supporting calculations and design documentation necessary for final Owner and Third Party approval and for construction of the Work. All documentation, including but not limited to: written approval of design deviations from Owner or Third Party design standards and/or criteria shall be provided to Owner prior to the Final Design.

This phase will produce all system drawings and specifications required for Third party review and approval, including building department approvals and permit applications. Final documentation of all design calculations, complete specifications, geotechnical Design Summary Report.

3.4.4 Design Review Submittals.

The Design Review Submittals shall be consistent with the Baseline Schedule (and updates) and Owner obligations. The design reviews shall not commence until all required Design-Builder internal design reviews have been accomplished in accordance with of the general requirements.

Each Design Review Submittal package shall include Design Drawings, Project Specifications and supporting data, reports and such information as needed to advance to the next stage of design or the start of construction whichever is applicable. The Design-Builder shall use an electronic system to submit drawings/design documents for review and obtain comments from reviewers throughout the project. Review comments (internal and external) will be input to an electronic database and shall be tracked to resolution prior to final design approval.

Allow **fifteen (15) calendar days** for Owner response to any Design Review. Allow sufficient time for any required Third Party reviews. Incorporate this schedule into Design-Builder's Baseline Schedule and provide submittal dates, and report progress and updates in the Monthly Updated Schedule. The Design-Builder shall respond to all Owner and Third Party comments within **seven (7) calendar days** of receipt of written comments. The Design-Builder shall show the exact timing of reviews and resolution of comments through the Weekly Progress Meetings and in the three week Look-Ahead Schedule.

3.4.4.1 The Design-Builder Shall Maintain a Written Record of all Formal Internal Design Reviews.

Reports of Design reviews shall be submitted to the Owner within seven (7) calendar days of completion of the review. Items found during reviews, surveillances, or audits by the Design-Builder or his design team requiring correction shall be documented on comment sheets and tracked for resolution by the Design-Builder.

The Owner may require the Design-Builder to re-submit additional background Design Package documents for review where the information submitted is considered insufficient to conduct a proper review or actions arising from the Design Review require significant revisions.

Design-Builder shall bear the time and cost impacts to the Design-Builder for resubmissions or revisions arising from the Design Reviews and caused by Design-Builder's non-compliance with the Contract requirements or inadequacy or incompleteness of the submittal, including the time taken for the Owner to review the revisions. The Design-Builder shall be responsible for submitting all necessary design documents to all applicable agencies or entities having jurisdiction over the Project including, but not necessarily limited to, the City of Orange and all other applicable agencies. The Design-Builder shall provide written responses and resolutions prior to resubmittal to Owner and third parties for all design submittal review comments received by Design-Builder.

The Design-Builder shall be responsible for addressing and/or incorporating all internal and external comments. The Design-Builder shall provide the Owner a copy of all comments that are made and a copy of how each comment has been addressed within seven (7) calendar days.

3.4.4.2 Design Review – Submittal Review Comments.

The Design-Builder shall provide written responses and resolutions prior to resubmittal to Owner and third parties for all design submittal review comments received by Design-Builder.

The Design-Builder shall be responsible for addressing and/or incorporating all internal and external comments. The Design-Builder shall provide the copy of all comments that are made and a copy of how each comment has been addressed within seven (7) calendar days.

3.4.4.3 Design Review and Comment Resolution Meetings.

A joint comment resolution meeting will be scheduled by the Design-Builder to discuss responses to the Owner and Third Party review comments and to determine the review comments to be incorporated into the design documents. More than one (1) joint comment resolution meeting per design submittal may be necessary in order to discuss all design review submittal review comments. The Design-Builder shall prepare meeting notes of the joint comment resolution meetings and submit the meeting notes to Owner within five (5) calendar days.

3.4.4.4 Approval of Final Design Documents.

When all comments to Final Design Submittal for each Design Package have been satisfactorily addressed and all City of Orange and other Third Party or jurisdictional approvals obtained, the Owner will sign and indicate on the Final Design documents “Approved for Construction”. This designation is intended to comply with the provisions of Government Code 830.6. The Design-Builder is to obtain all required Third Party and jurisdictional approvals.

3.4.4.5 Final Design Certification.

When the final 100% design for a Design Package has been completed, the Design-Builder’s Design Manager shall submit verification and certification that:

- (a) The Design-Builder has obtained all required Third Party approvals and permits;
- (b) The design documents meet the Contract requirements; and
- (c) The Work shown on the Design Documents is ready for construction to completion.

3.4.5 Termination for Convenience Option

At the completion of the Conceptual Design and prior to the commencement of Final Design, Owner and Design-Builder will mutually agree that Conceptual Design, Conceptual Design Pricing and Owner Conceptual Plan/Pricing Review stage has been completed. At that time, Owner shall provide notice to Design-Builder that such reviews are complete, after which Design-Builder or Owner shall each have the option of within ten (10) calendar days to terminate the remainder of the Agreement for convenience. Such termination shall be accomplished by written notice delivered by the terminating party to the other at least fifteen (15) calendar days prior to the effective date of termination. Upon such termination for convenience, the parties shall

follow the provisions of Sections 14.4.2 and 14.4.3 below. In such case, the Lump Sum Payment due to Design-Builder shall not exceed \$ **TBD** , and any documents created by Design-Builder relative to the Project shall be delivered to and thereafter be under the ownership and control of Owner. If either party terminates the Agreement pursuant to this section, then Design-Builder shall have no further liability or obligations to Owner under this Agreement, except those liabilities relating to Work completed through Conceptual Design, but excluding liabilities relating to any future modification to the Drawings or Specifications performed by others. If the Agreement is not terminated within ten (10) calendar days of the Conceptual Design, Conceptual Design Pricing and Owner Conceptual Plan/Pricing Review stage, then Owner and Design-Builder shall remain bound as otherwise provided by this Agreement, and Owner will issue a Notice to Proceed with Final Design and Construction.

3.5 Supervision and Construction Procedures.

3.5.1 Full Time Supervision.

Design-Builder shall keep on the Work at all times during the progress of the Work, a competent, English speaking construction Superintendent satisfactory to the Owner. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the Owner. The Superintendent shall represent Design-Builder and shall be fully authorized to receive and fulfill any instruction from the Inspector, the Owner or any Owner Representative. All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No work shall begin on any day by any Subcontractor or other person on the Project Site until Superintendent has arrived, nor shall any Work continue during the day after the Superintendent has departed from the Project Site. The Project Manager shall have authority to bind Design-Builder through the Project Manager's acts. The Project Manager shall have the authority to bind Design-Builder. Before commencing the Work, Design-Builder shall give written notice to Owner of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed or replaced except written consent of Owner, unless a superintendent proves to be unsatisfactory to Design-Builder and ceases to be in its employ, in which case, Design-Builder shall notify Owner in writing. Design-Builder shall provide a replacement superintendent approved by the Owner prior to performing additional work.

3.5.2 Staff.

Notwithstanding other requirements of the Contract Documents, the Design-Builder shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

3.5.3 Right to Remove.

Owner shall have the right, but not the obligation, to require the removal for good cause from the Project of any superintendent, staff member, agent, or employee of Design-Builder, Subcontractor, Design Consultant, or any material or equipment supplier.

3.6 Construction Phase Services.

3.6.1 General.

Within the time frame specified in the Notice to Proceed by the Owner, the Design-Builder will begin the construction phase of the Project.

3.6.2 Performance by Qualified Individuals.

Construction Services shall be performed by Design-Builder and/or by qualified and licensed Subcontractors and Suppliers who are selected, paid and acting in the interest of the Design-Builder in accordance with the procedures outlined in the Contract Documents. Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.6.3 Design-Builder's Means and Methods.

Design-Builder represents and warrants that it is a sophisticated Design-Builder who possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of similar size, complexity and nature of this Project.

The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be responsible for and have sole control over construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Design-Builder determines that such means, methods, techniques, sequences, or procedures may not be safe, the Design-Builder shall give timely written notice within **ten (10) calendar days** to the Owner and shall not proceed with that portion of the Work until such safety concerns are resolved by Design-Builder. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

3.6.4 Design-Builder's Vicarious Liability.

Design-Builder shall be responsible to Owner for acts and omissions of Design-Builder's employees, Design Consultants, Consultants, Subcontractors, Sub-subcontractors, and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract (or other arrangement) with the Design-Builder.

3.7 Labor and Materials.

3.7.1 Design-Builder to Provide.

Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, material, equipment, tools, staging, storage, sanitation facilities, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.7.2 Quality.

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Design Builder shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in Contract Documents will result.

3.7.3 Coordination.

The Design-Builder shall coordinate its Work with that of all others on the Project as well as any other ongoing projects that would impact the Work including deliveries, storage, installations, and construction utilities. The Design-Builder shall be responsible for the space requirements, locations, and staging of its equipment in areas and locations approved by Owner. Where the proper and most effective space requirements, locations, and routing cannot be made as indicated in the Contract Documents, the Design-Builder shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

3.7.4 Labor Discipline.

The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.7.5 Skilled Labor.

None but skilled workmen shall be employed on any portion of the Work. When required in writing by the Owner, the Design-Builder or any Design Consultant, Subcontractor shall discharge any person who is, in the reasonable opinion of the Owner, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the

Work except with the consent of the Owner. Such discharge shall not be the basis of any claim for compensation or damages against the Owner or any of its officers or agents.

3.7.6 Procurement and Installation of Materials and Equipment.

Design-Builder shall: (i) place orders for all materials and equipment, taking into account current market and delivery conditions necessary to meet the Construction Schedule; (ii) purchase and expedite the procurement of long lead time items to obtain their delivery by the required dates; and (iii) arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Design-Builder fail in this duty, Owner reserves the right to order such materials and equipment as the Owner may deem advisable to maintain the schedule for the Work or the Contract Time and all expenses shall be charged to and paid for by Design-Builder within the Contract Sum. Design-Builder shall keep the Owner informed of the status of procurement and shall promptly notify Owner in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project.

3.8 Warranty and Correction.

3.8.1 Warranty.

The Design-Builder warrants to the Owner that: (i) materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; (ii) the Work will be of good quality and free from defects; (iii) the Work will conform to the requirements of the Contract Documents; and (iv) Design-Builder will deliver a Project free of stop notice claims, subject to Design-Builder's receipt of all undisputed payments due under the Contract. Work not conforming to these requirements, including substitutions not properly approved, shall be deemed defective. Design-Builder's warranty excludes improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2 herein. The cost of providing all warranties specified in the Contract Documents and performing all corrective work relating to such warranties shall be included in the Contract Sum.

3.8.2 Commencement of Correction Periods.

In accordance with Paragraph 12.2 herein, in addition to warranties required elsewhere in the Contract Documents, and except with respect to any special extended warranties, Design-Builder shall, and hereby does, warrant all Work for a one-year warranty period, starting from the date of Substantial Completion of the entire Work, unless a longer period of time is prescribed by law or required by special provisions elsewhere in the Contract Documents and shall repair or replace any and all such Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials, without expense whatsoever to Owner. Warranty periods do not commence when a particular subcontractor's work is complete.

3.8.3 No Limitation.

Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder might have under the Contract

Documents. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work. Neither the making of Final Payment nor the use or occupancy of the Work, in whole or in part, by Owner, shall constitute acceptance of Work not in accordance with the Contract Documents or relieve the Design-Builder from liability for faulty or defective Work.

3.8.4 Overlap.

Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Design-Builder shall be bound by the more stringent requirements.

3.8.5 Owner's Right to Correct.

If Design-Builder fails to commence corrections within **three (3) business days** after receipt of written notice of a defect, failure, or abnormality of the work, Owner, under the provisions of Article 12 herein, may proceed to have defects repaired and made good at the expense of Design-Builder. If, in the opinion of the Owner, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the Owner or to prevent interruption of operations of the Owner, the Owner may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Design-Builder. Such action by the Owner will not relieve the Design-Builder of the warranties provided in this Article or elsewhere in the Contract Documents. In the event of an emergency where in the judgment of the Owner, delay could cause serious loss or damages, repairs or adjustments may be made by the Owner, without giving notice to the Design-Builder, and the cost of the work shall be paid by the Design-Builder. Notwithstanding the foregoing, in the event of a dangerous or emergency condition, when reasonably feasible, Owner will provide Design-Builder with notice and an opportunity to repair.

3.8.6 Procurement and Assignment of Warranties.

Design-Builder shall obtain in the name of Owner, or transfer or assign to Owner or Owner's designee prior to the time of Final Completion of the Work, any and all warranties or guarantees which Design-Builder is required to obtain pursuant to the Contract Documents and which Design-Builder obtained from any other person or entity other than Design-Builder including, but not limited to, Subcontractors and manufacturers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties. Design-Builder shall secure written warranties from all Subcontractors in the form approved by Owner. Design-Builder and its Consultants and Subcontractors shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system in the Project to the Owner.

3.8.7 Survival of Warranties.

The provisions of this Paragraph 3.9 shall survive Design-Builder's completion of the Work or termination of Design-Builder's performance of the Work.

3.9 Taxes.

3.9.1 Payment.

The Design-Builder shall pay all applicable federal, state, and local sales, consumer, use, and similar taxes for the labor, materials or services provided by the Design-Builder for the Work and such taxes shall be included in the Contract Sum.

3.9.2 Liability for Employee Payments.

Design-Builder accepts full liability for the payment of any and all contributions, deductions, or taxes for social security, unemployment insurance, old age and survivor's benefits, medical and health benefits, or for any other purpose now or hereafter imposed under any applicable law measured by the wages, salary or other remuneration paid to persons employed by or on behalf of Design-Builder for the Work. Design-Builder covenants and agrees to observe and fully comply with all Applicable Law, including procurement of any necessary occupational licenses, permits and inspection certificates.

3.10 Permits, Fees and Notices.

3.10.1 Responsibility for Permits and Fees.

Prior to execution of the Agreement, the Owner and Design-Builder shall identify all necessary permits, certificates, licenses, and fees required to complete the Work. The Owner shall pay for all permits, certificates, governmental fees, licenses, and inspections which are necessary for proper execution of the Work, or which are customarily secured after execution of the Contract, including, but not limited to, all permanent utility connections. If, for expediency, Design-Builder advances the fees, Design-Builder shall submit to Owner copies of receipts for reimbursement without mark-up.

3.10.2 Notices.

The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

3.10.3 Construction Contrary to Law.

If the Design-Builder performs any Work when the Design-Builder knows or should have reasonably known it would be contrary to applicable law, Design-Builder shall assume full responsibility therefore and shall bear all costs directly or indirectly attributable to the correction of the Work.

3.11 Design-Builder's Key Personnel, Design Consultants and Subcontractors.

3.11.1 Design-Builder's Key Personnel.

Design-Builder represents to Owner that certain key personnel, including, but not limited to, the Design-Builder's Project Manager, Design Manager, Superintendent, Construction Manager, Lead Civil Engineer, Lead Structural Engineer, Quality Control Manager, and Safety Manager, shall not be changed without approval by Owner and will perform services required by the Contract Documents.

3.11.2 Changes in Design-Builder's Key Personnel, Design Consultants and Subcontractors.

Design-Builder understands and acknowledges that its selection by Owner was, in part, based on the Design-Builder's Design Consultants, Subcontractors, and key personnel. Design-Builder shall not make changes to its Design Consultants, key personnel or Subcontractors, or reduce their responsibilities for this Project without the prior written approval of the Owner. Prior to making any changes to the key personnel, Design Consultants or Subcontractors, the Design-Builder shall submit the qualifications and experience of the Design-Builder's proposed replacement for the Owner's approval. If Owner determines, with good cause, that the performance of any person or entity employed by Design-Builder is unsatisfactory, then at the written request of Owner, Design-Builder shall remove, reassign, or replace such individual or entity.

3.11.3 Qualifications and Licenses.

Work furnished by or on behalf of Design-Builder shall be performed by persons: (i) qualified to perform the Work assigned to them; (ii) licensed to practice their respective trades or professions where required by Applicable Law in the State where the Project is located; and (iii) who shall assume professional responsibility for any design documents furnished by them. Design-Builder's key personnel, Design Consultants and Subcontractors shall be experienced in projects of similar nature and complexity to the Project.

3.12 Design-Builder's Schedules.

3.12.1 Project Schedule.

At such time as agreed upon by the Parties, Design-Builder will prepare and submit to Owner a Baseline Project Schedule for the Work which will be approved by the Owner. Any revisions or updates to the Schedule are subject to review and approval by Owner.

3.12.2 Format.

The Project Schedule shall be in a detailed precedence critical path management ("CPM") or Primavera-type format, which shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of design, construction and occupancy; (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; and (iv) identify the date of Substantial Completion. At a minimum the Project Schedule shall depict the

schedule for Work on a discipline by discipline and trade by trade basis and tasks within each discipline and trade.

3.12.3 Updates.

With each Application for Payment submitted by Design-Builder (other than the final Application for Payment), the Design-Builder shall submit to the Owner an updated Project Schedule revised to indicate the portion of the Work executed, all progress slippages, corrective actions taken, or slippage carry-over, for all anticipated delays or difficulties, and all other information required to accurately present the actual status of the progress of the Work as of the date of the Application for Payment. In the event any update to the Project Schedule indicates any delays to the Contract Time that are the fault of Design-Builder or others for whom Design-Builder is responsible, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary.

3.12.4 Rain Delays.

In scheduling the Work, Design-Builder shall allot sufficient time to account for the number of work days, by month, set forth in Article 8 herein, for which the effects of normal rainfall are expected to prevent Work.

3.13 Documents and Samples at the Site.

3.13.1 As-Built and Record Documents.

Design-Builder shall maintain at the Project Site and shall make available to Owner, one copy of the Construction Documents, Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders in good order (the "Record Documents"). The Record Documents shall include a set of "As-Built" Construction Documents, which shall be continuously updated during the prosecution of the Work. The prints for "As-Built" Construction Documents will be a set of blackline prints produced by Design-Builder and approved by Owner at the start of construction. Design-Builder shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Owner-approved Construction Documents made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Construction Documents; (iv) the actual installed position of equipment, piping, conduits, and all other elements of the Project; and (v) such other information as Owner may reasonably request. In addition, Design-Builder shall continuously update its Construction Documents in CADD format.

3.14 Shop Drawings, Product Data and Samples.

3.14.1 Shop Drawings.

Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Subcontractor, Sub subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.14.2 Product Data.

Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

3.14.3 Samples.

Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.14.4 Purpose.

Shop Drawings, Product Data, Samples, and similar submittals (“Submittals”) are not Contract Documents. The purpose of these Submittals is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents, and to allow for coordination between the Project participants. The Design-Builder shall designate with sufficient advance notice which submittals require any action by the Owner, allowing sufficient time for action by the Owner so as to not delay the Project. Informational submittals upon which the Owner is not expected to take responsive action will be identified by the Design-Builder.

3.14.5 Painting Submittals.

No painting work that may be required shall be performed without approval of the colors by the Owner through the presentation of a mockup prepared by the Design-Builder and its painting subcontractor.

3.15 Use of Site.

3.15.1 Coordination.

Design-Builder expressly acknowledges that Owner, its own forces, and Owner’s Separate Contractors may be working simultaneously with Design-Builder on the Project during certain periods of time in certain portions of the Project Site. Design-Builder and Owner will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by Owner’s Separate Contractors and personnel to minimize any interruption of services to such persons, including, without limitation, utilities, ingress and egress, and parking. Design-Builder and Owner mutually agree to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation.

3.15.2 Security.

The Design-Builder shall be responsible for providing security at the site of the Work with all such costs included in the Contract Sum. A temporary fence shall surround the Project Site, including the staging area and lay-down area, where required unless otherwise requested by Owner. In addition, the Design-Builder shall take all necessary precautions and provide fencing,

barricades, signs, notices, shoring, bracing, passageways, lights, and such other materials, equipment, and services as may be required (including, without limitation, such protections as may be required by applicable laws).

3.15.3 Parking, Lay-Down Areas and Site Office.

The Design-Builder shall coordinate with the Owner and obtain all construction related parking, lay-down areas and location of any site office (“Construction Facilities”) and temporary sanitation facilities. The cost of all Design-Builder related Construction Facilities shall be included in the Contract Sum.

3.16 Responsibility for Environmental Compliance.

Design-Builder is responsible for compliance with all federal, State, and local environmental laws, ordinances, and requirements applicable to the Project. The Contract Price includes compensation for Design-Builder's performance of all such requirements.

3.17 Cleaning Up.

3.17.1 Continuous Obligations.

The Design-Builder shall keep the Project Site and surrounding area free from accumulation of waste materials or rubbish at all times. As construction is completed on a daily basis, paved surfaces adjoining the Project shall be broomed clean and other surfaces of the Project Site raked clean. If the Design-Builder defaults or neglects to maintain the Project free from accumulation of waste and rubbish as set forth above, and fails within a **forty-eight (48) hour period** after receipt of oral notice, promptly confirmed in writing, to commence and continue clean-up of the Project Site, with diligence and promptness, the Owner may after such **forty-eight (48) hour period**, immediately, without prejudice to other remedies the Owner may have, provide such clean-up. In such case, an appropriate Construction Work Directive shall be issued deducting from payments then or thereafter due the Design-Builder the cost of correcting such clean-up. If payment then or thereafter due the Design-Builder is not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner on demand.

3.17.2 Design-Builder and its Subcontractors shall:

- (a) Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- (b) Remove waste materials, debris, and rubbish from site and dispose off site legally.
- (c) Design-Builder shall take appropriate action to insure that an unreasonable amount of dust does not originate from the Project Site.
- (d) Spoil sites shall not be located where spoil shall be washed back into a street gutter, storm drain, runoff conveyance or ocean.

- (e) Water containing mud, silt, or other pollutants from activities, shall not be allowed to enter the storm sewer system or placed in locations that may be subject to storm runoff.
- (f) Any equipment or vehicles driven and/or operated by Design-Builder or its subcontractors and consultants, within or adjacent to a street gutter, storm drain, or runoff conveyance shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- (g) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity or whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
- (h) Design-Builder shall comply with all litter and pollution laws. All Subcontractors and Sub-subcontractors, and their employees, shall also obey these laws and it shall be the responsibility of the Design-Builder to insure compliance.

3.17.3 Water Pollution Control.

To the extent necessary, Design-Builder shall be responsible for the preparation of a Storm Water Pollution Prevention Plan (SWPPP) and implementation of minimum Best Management Practices (BMPs) as required for the execution of the work under the Contract Documents. Design-Builder is directed to comply with applicable requirements of the BMPs to reduce pollutants from entering the storm drain system.

Design-Builder shall maintain copies of these BMP fact sheets (guidance paper) at the Project Site and shall make these fact sheets available during construction activities. Best Management Practices shall be defined as any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution. These BMPs have been selected from the California Stormwater Best Management Practice Handbook - Municipal, Construction, and Industrial & Commercial Volumes. These handbooks contain a full description of each BMP and provide for its implementation.

3.17.4 Additional BMPs.

Design-Builder may be required to implement additional BMPs as a result of a change in actual field conditions, Design-Builder activities, or construction operations. Design-Builder shall select the appropriate and necessary BMPs in order to achieve the BMP objective.

3.17.5 Final Completion.

At the earliest opportunity but no later than at Final Completion of the Work, the Design-Builder shall immediately remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery, and surplus materials.

3.18 Access to Work.

The Design-Builder shall provide the Owner and its respective representatives access to the Work in preparation and progress wherever located.

3.19 Royalties, Patents and Copyrights.

3.19.1 Royalties and License Fees.

The Design-Builder shall pay all royalties and license fees.

3.19.2 Infringement.

Should the Design-Builder become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, the Design-Builder shall (a) immediately cease the copying and any other activity which is the potential source of infringement; and within seven (7) calendar days (b) investigate the potential infringement; (c) submit to the Owner copies of all documents relating to that awareness, the notice, or the object thereof; and (d) issue to the Owner a complete written response and analysis of the potential infringement and the course of action recommended by the Design-Builder.

3.19.3 Defend Suits.

The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Construction Documents, or other documents prepared by or on behalf of the Owner.

3.20 Indemnification.

To the maximum extent permitted by law, and except as provided for in this Section 3.20, the Design-Builder shall fully indemnify, hold harmless, and defend the Owner, its directors, officers, employees, representatives and their successors and assigns (“Indemnitees”) from and against any and all demands, liability, loss, suit, claim, action, cause of action, damage, cost, judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including any fees of accountants, attorneys, experts or other professionals, and costs of investigation, mediation, arbitration, litigation and appeal), in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising out of Work performed by Design-Builder, or any of its officers, agents, employees, Subcontractors, sub-Subcontractors, Design Consultants, or any person for whose acts any of them may be liable regardless of whether such claim, suit or demand is caused, or alleged to be caused, in part, by an Indemnitee, including, but not limited to:

- (a) Bodily injury, emotional injury, sickness or disease, or death to any persons;

- (b) Failure of Design-Builder, its Design Consultants or its Subcontractors to comply with the provisions for insurance;
- (c) Failure to comply with any applicable law, statute, code, ordinance, regulation, permit or order;
- (d) Misrepresentation, misstatement, or omission with respect to any statement made in or any document furnished by the Design-Builder in connection therewith;
- (e) Breach of any duty, obligation, or requirement under the Contract Documents;
- (f) Claims arising out of failure to protect the property, property damage or use and enjoyment of any utility provider, adjacent property owner or any other person or entity; or
- (g) Failure to make payment of all employee benefits, prevailing wages or any applicable labor code requirements.

This indemnity provision is effective regardless of any prior, concurrent or subsequent passive negligence by Indemnitees, except that, to the limited extent mandated by California Civil Code section 2782, the Design-Builder shall not be responsible for liabilities which arise from the sole or active negligence or willful misconduct of Indemnitees. The obligation as set forth above shall not be restricted in any way by any limitation on the amount or type of damages alleged, including strictly financial damage claims.

By way of limitation, with respect to “design professional” liability, as that term is defined by California Civil Code section 2782.8(c), relative to Design-Builder’s work as a design professional, the indemnification obligations set forth in this Section 3.20 shall only apply to claims that arise out of, pertain to, or related to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Design-Builder, as well as any sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (“Design-Builder Sub-Professionals”), performing work as a design professional, except: those arising from the sole negligence, active negligence, or willful acts of Owner; and does not apply to any passive negligence of Owner unless caused at least in part by the Design-Builder or Design-Builder Sub-Professionals.

In claims against any Indemnitee by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

3.20.1 Stop Payment Notice Claims.

Should any Subcontractor, Design Consultant, supplier, or other person claiming by or through the Design-Builder or any such Design Consultant, Subcontractor or supplier, or any of them, make a record, file, or maintain any action on or respecting a claim of stop payment notice, relating to the Work, if not the result of Owner’s failure to make payments due under this

Agreement, the Design-Builder shall immediately and procure, furnish, and record appropriate statutory release bonds which will extinguish or expunge such stop notice. If not bonded around, Owner shall withhold 125% of the amount of the Stop Payment Notice until released.

3.21 Coordination with Neighboring Property.

To the extent required, Design-Builder shall coordinate with affected property owners, businesses, tenants, and their customers and contractors to provide access to neighboring property and shall implement measures to minimize disruption to operations and occupancy of neighboring property owners, businesses, tenants, and their customers and contractors.

3.22 Value Engineering, Substitution, Cost Analysis, Constructability and Coordination Review.

3.22.1 Value Engineering.

Upon request by Owner, Design-Builder shall provide value engineering recommendations for alternatives to construction means and methods of performing the Work as well as substitution of materials. The purpose of value engineering is to assist in achieving all of the Owner's design objectives including, without limitation, the time of construction, Construction Cost, functional performance and aesthetic goals. Factors that the Design-Builder shall consider in making such recommendations include, without limitation, site use, newly-developed/state-of-the-art building materials, equipment and systems, availability of labor, methods of construction and other similar items benefiting from evaluation prior to the completion of the Drawings and Specifications. Particular attention shall be given to alternate design proposals, possible cost savings and time savings, and identification of options that will maximize the benefits that the Owner will derive from the completion of the Work. If reasonably requested by the Owner, the Design-Builder shall prepare a specific analysis of the cost-effectiveness and performance capabilities of any building system or component specified for the Work. Design-Builder shall also make recommendations on site logistics and any other studies that are required to complete the Work successfully. Design-Builder acknowledges that it will not rely on or act on any value engineering proposals or substitution request unless approved in writing by the Owner. Owner is under no obligation to accept any value engineering proposal or substitution request submitted by Design-Builder.

3.22.2 Submission of Proposals.

Design-Builder shall submit each value engineering proposal or substitution request to the Owner in writing in accordance with Paragraph 3.4 of this Agreement. Design-Builder shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any value engineering proposal or substitution request unless the Owner, in a Change Order or Construction Work Directive, accepts such proposal or request.

3.22.3 Construction Feasibility and Coordination.

On at least a monthly basis or such other intervals identified in the Contract Documents, Design-Builder shall meet with the Owner, its Separate Design Builders (if any) and Owner's Project Manager to coordinate the Contract Documents, for the purpose of continuing construction

feasibility, identifying conflicts, missing information or gaps in the planned Scope of Services and to take appropriate action to ensure the full scope of intended Work is performed efficiently and economically.

3.23 Peer Review.

Design-Builder is aware and agrees that the Owner has the right to submit the preliminary or final design documents at any state to independent reviewers. Design-Builder agrees to fully cooperate, and to contractually secure the agreement of its design consultants furnishing such design to cooperate with such reviewers and to respond to comments made by such reviewers, as Owner deems appropriate, provided such comments are given to Design-Builder in a timely manner and which does not interfere with the schedule for completing the project design. The obligation to cooperate with independent reviewers includes responding in an objective professional manner to requests for information of such reviewers, entering into a dialogue with the reviewer regarding the comments of the reviewers and modifying or supplementing the documents as may be required by Owner in its reasonable discretion.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 Owner's Representative and Project Manager.

4.1.1 Authority.

The Owner's Representative has the authority to recommend or deny approval of all commercial matters (time, money, and interpretation of the contract) pertaining to the Contract. It is acknowledged, however, that any and all changes to the Contract Sum, or approval of Change Orders and Change Order Requests require approval of the General Manager.

4.2 Administration of the Contract.

4.2.1 Site Visits.

The Owner's Representative will visit the site at intervals appropriate to the stage of the Design-Builder's operations or at such intervals otherwise agreed in writing by Owner to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed. Based on these site visits, the Owner's Representative will keep the Owner informed of the progress and quality of the Work and will advise the Design-Builder of any observed defects and deficiencies in the Work for correction by the Design-Builder.

4.2.2 No Estoppel.

Neither the Owner nor its Representative will be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner and its representative will not be responsible for acts or omissions of the Design-Builder, Design Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Approval and/or acceptance of all or any portion of the Work shall in no way relieve the Design-Builder from its obligation to construct each portion of the Work

in accordance with the Contract Documents and the Owner shall not be estopped or otherwise prevented from asserting any claim it might have against the Design-Builder as a result of any such acceptance or approval.

4.2.3 Certificates for Payment.

Based on an evaluation of the Design-Builder's Applications for Payment, the Owner's Representative will review and certify the amounts due the Design-Builder and will issue Certificates for Payment in such amounts.

4.2.4 Rejection of Work Testing and Inspection.

The Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, they will have authority to require inspection or testing of the Work in accordance with Paragraph 13.5 below, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, Design Consultants, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.5 Contract Modifications.

The Owner or the Owner's Representative will prepare Change Orders and Construction Change Directives.

4.2.6 Substantial Completion and Project Closeout.

The Owner's Representative will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related close out documents required by the Contract and assembled by the Design-Builder, and will issue a final Certificate for Payment upon Design-Builder's satisfaction of the requirements of the Contract Documents.

4.3 Claims and Disputes. This Section is intended as a summary of the provisions of Chapter 9 (commencing with Section 9201) of Part 1 of Division 2 and, to the extent applicable, Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code ("Claims Resolution Statutes") and is subject to the actual provisions of the Claims Resolution Statutes. To the extent the provisions set forth herein conflict with the procedures required for construction claims in the aforementioned authority, the statutory requirements shall control.

4.3.1 Definition.

The term "Claim" or "Claims" shall mean a separate demand by the Design-Builder for: (i) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner; (ii) payment by Owner of money or damages arising from Work done by or on behalf of the Design-Builder pursuant to this Contract and payment of which is not otherwise

expressly provided or the Design-Builder is not otherwise entitled to; or (iii) an amount the payment of which is disputed by the Owner. The term "Claim" does not include a Change Order Request submitted by Design-Builder pursuant to Article 7 of this Agreement. If a Change Order Request is rejected by Owner, in whole or in part, pursuant to the provisions of Section 7, then, upon rejection, Design-Builder may pursue a Claim for the rejected portion.

4.3.2 Notice and Time Limits on Claims.

If the Design-Builder wishes to make a Claim for an increase in the Contract Sum or an extension of the Contract Time, the Design-Builder shall give the Owner written notice thereof within **ten (10) calendar days** after the occurrence of the event giving rise to such Claim. In the case of a Change Order Request, the event giving rise to the Claim is the written rejection by Owner. The written notice must comply with the requirements of this Article 4 and Article 8, if applicable, herein. This notice shall be given by the Design-Builder before proceeding to execute Work affected by the event, except in an emergency endangering life or property, in which case the Design-Builder shall proceed in accordance with Article 10 below. Owner shall conduct a reasonable review of the claim and endeavor, within a period not to exceed 45 days, provide Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Notwithstanding the time frames set forth in this section, Owner shall endeavor to expedite consideration of a Claim when feasible.

4.3.3 Resolution.

A Change Order or Construction Change Directive will be issued to Design-Builder within a reasonable period of time, in no event greater than 30 days, after Owner's approval of any undisputed portion of a Claim specifying the additional cost and/or time, if any. Notwithstanding the time frames set forth in this section, Owner shall endeavor to expedite approval of the Change Order or Construction Change Directive.

4.3.4 Continuing Contract Performance.

No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Parties may otherwise agree in writing. Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed work, Owner shall have the right to unilaterally issue a Construction Change Directive and Design-Builder shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in Paragraph 7.4 herein.

4.3.5 Claims for Changed, Concealed, or Unknown Conditions.

The Design-Builder shall notify the Owner of the following Project Site conditions in writing within **ten (10) calendar days** upon their discovery and before they are disturbed;

- (a) Subsurface or latent physical conditions differing materially from those identified in Design-Builder's reasonable investigations and included in the Contract Documents;

- (b) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character being performed;
- (c) Material differing from that represented in the Contract Documents which the Design-Builder believes may be hazardous waste, as defined in the California Health and Safety Code, that is required to be removed to a Class 1, Class 2, or Class 3 disposal site in accordance with the provisions of existing law; and
- (d) Any unidentified biological or archeological conditions.

The Owner will promptly investigate unknown conditions or conditions which appear to be concealed. If the Owner determines that the conditions fall within one of the four categories set forth above and will materially affect the cost or time to complete the Work, a Change Order or Construction Change Directive will be issued adjusting the compensation for such portion of Work in accordance with the requirements of the Contract Documents. If the Owner determines that the conditions do not justify an adjustment in the Contract Sum and/or the Contract Time, the Design-Builder will be notified in writing. Should the Design-Builder disagree with the decision, it may submit a written notice of potential claim to the Owner before commencing the disputed Work. In the event of such a dispute, the Design-Builder shall not be excused from any scheduled completion date provided by the Contract Documents and shall proceed with all Work to be performed under the Contract Documents. The Design-Builder's failure to give notice of changed conditions within **ten (10) calendar days** of their discovery and before they are disturbed shall constitute a waiver of all Claims in connection therewith.

4.3.6 Claims for Additional Cost and/or Time.

4.3.6.1 General.

If Design-Builder wishes to make a Claim for an increase in the Contract Sum and/or Contract Time, Design-Builder shall provide written notice within **ten (10) calendar days**, as provided in Subparagraph 4.3.2 herein, before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Article 10. If the Design-Builder believes additional cost is involved for reasons including, but not limited to: (i) any written interpretation pursuant to Subparagraph 4.2.4 above; (ii) a verbal order for a change in the Work as more specifically described in Subparagraph 7.5.2 below; (iii) failure of payment by the Owner; or (iv) any order by the Owner to stop Work where the Design-Builder was not at fault, Claims shall be filed in accordance with the procedures established herein. To the extent a subcontractor, or lower tier subcontractor, lacks legal standing to assert a claim against Owner because of a lack of privity of contract, Design-Builder may present to Owner a Claim on behalf of the subcontractor.

4.3.6.2 Content of Written Notice.

Design-Builder shall waive all rights to assert a Claim for additional cost and/or time unless such notice is given as required in this paragraph. The written notice shall set forth:

- (a) The date of the event or occurrence giving rise to the claim and, if applicable, the date when the event ceased;
- (b) The nature of the event or occurrence and reasons for which the Design-Builder believes additional cost and/or Time will or may be due;
- (c) The nature of the cost and/or time involved;
- (d) Design-Builder's plan for mitigating such costs and/or delay;
- (e) If ascertainable, the amount of the potential costs and length of potential delay and if not ascertainable, the Design-Builder's best estimate of Cost and/or Time and
- (f) Reasonable documentation to support the Claim.

4.4 Dispute Resolution – Meet and Confer.

The parties agree to meet and confer in good faith to resolve any problems, disagreements or disputes that may arise under this Agreement, and Design-Builder may demand in writing, sent via registered or certified mail, return receipt requested, a meet and confer for settlement of any disputed portions of their Claim. Upon receipt of such demand, Owner shall schedule a meet and confer within 30 days. Any dispute remaining after such meeting shall go to mediation as specified herein, upon the initiation by a party.

4.5 Mediation.

4.5.1 Mediation is Condition Precedent to Other Actions.

Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 Mediation Rules.

The Owner and Design-Builder shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the Parties agree to submit the matter to mutually agreeable neutral.

4.5.3 Initiation of Mediation.

Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Owner and Design-Builder shall attempt to agree on a mediator within 10 working days after the disputed portion of the claim has been identified in writing. If the Parties cannot agree, the mediator shall be selected in accordance with the Mediation Rules of the American Arbitration Association or the rules of such other organization administering the mediation.

4.5.4 Share Mediator's Fee.

The parties shall share the mediator's fee and any filing fees equally.

4.5.5 Location of Mediation.

The mediation shall be held in Orange County, California, unless another location is mutually agreed upon.

4.5.6 Enforcement of Agreements Reached.

Fully signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.5.7 Claims Process If No Resolution Reached

If after the meet and confer conference and associated mediation, any portion of the claim remains in dispute, the Design-Builder may file a claim pursuant to Government Code Section 900 *et seq.*, and such claim shall be a pre-requisite to any subsequent litigation. For claims of \$375,000 or less, such cases shall be submitted to judicial arbitration pursuant to applicable law.

ARTICLE 5 SUBCONTRACTORS AND DESIGN CONSULTANTS

5.1 Definitions.

5.1.1 Subcontractor.

A Subcontractor is a person or entity who has a direct contract with the Design-Builder to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor.

5.1.2 Sub-subcontractor.

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor.

5.2 Award of Subcontractors and Other Contracts for Portions of the Work.

5.2.1 Objection to Design Consultants and Subcontractors.

5.2.1.1 Owner Objection.

The Design-Builder shall not contract with a proposed person or entity to whom the Owner in good faith has made reasonable and timely objection.

5.2.1.2 Contract Sum or Contract Time.

If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Design Consultant or Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be adjusted by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute's Work. No increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in providing the information described in Subparagraph 5.2.1 above.

5.2.1.3 No Change of Previously Selected Entity.

The Design-Builder shall not change a Design Consultant, Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitute.

5.3 Design Consultant and Subcontractor Relations.

5.3.1 Agreements.

By appropriate written agreement, the Design-Builder shall require each Design Consultant and Subcontractor, to the extent of the Work to be performed by the Design Consultant and Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Design Consultant or Subcontractor's Work, which the Design-Builder, by Contract Documents, assumes toward the Owner. Each such agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Design Consultant or Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Design Consultant or Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Owner. The Design-Builder shall require each Design Consultant or Subcontractor to enter into similar agreements with their Sub-subcontractors. The Design-Builder shall make available to each proposed Design Consultant or Subcontractor, prior to the execution of the agreement, copies of the Contract Documents to which the Design Consultant or Subcontractor will be bound by this Paragraph 5.3, and identify to the Design Consultant or Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents, which variances shall be modified to be consistent with the Contract Documents.

5.3.2 Precedence.

If any provision of any subcontract or supply agreement is inconsistent with any provision of the Contract Documents or the intent of the Contract Documents, then the Contract Documents shall control.

5.4 Contingent Assignment of Design Consultant, Subcontractor and Material Supply Agreements.

Each Design Consultant, Subcontractor and supplier agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- (a) Assignment is effective only after termination of this Agreement by the Owner for cause and only for those subcontracts which the Owner accepts by notifying the Design Consultant, Subcontractor or supplier, and Design-Builder in writing;
- (b) Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract; and
- (c) Upon exercise of this right of assignment, Owner has the right to reassign the agreement.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 Owner's Right to Perform Construction and to Award Separate Contracts.

6.1.1 Owner's Right to Perform.

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Paragraph 4.3 herein.

6.1.2 Interpretation of Contract Documents.

When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "contractor" in the Contract Documents in each case shall mean the Owner's Separate Contractor who executes each Separate Contractor agreement.

6.1.3 Coordination.

The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. Upon Owner's approval, the revised Construction Schedule shall then constitute the schedule to be used by the Design-Builder, Separate Contractors, and the Owner until subsequently revised and approved by Owner. If such revision impacts the time or cost of performance, Design-Builder shall be entitled to a change order increasing the Contract Time and the Contract Sum, as appropriate.

6.2 Mutual Responsibility.

6.2.1 Access.

The Design-Builder shall afford the Owner and Separate Contractors reasonable opportunity for storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Contract Documents.

6.2.2 Notice of Discrepancies.

If any part of the Design-Builder's Work depends on proper execution or results upon the work of the Owner or any Separate Contractor, the Design-Builder shall, prior to proceeding with the Work, promptly report in writing to the Owner any discrepancies or defects in such other work discovered by Design-Builder that render it unsuitable for such proper execution and results.

Failure of the Design-Builder to so report shall constitute an acceptance of the Owner's or Separate Contractor's work as fit and proper to receive the Design-Builder's Work.

6.3 Owner's Right to Clean Up.

If a dispute arises among the Design-Builder, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and reasonably allocate the cost among those responsible.

6.4 Independent Testing.

6.4.1 Owner Testing.

The Owner will retain and pay for services of an independent testing laboratory to perform services specifically required by the governing code authority, and as additionally requested by Owner. Design-Builder shall identify the independent testing required for the Project and define the scope of the services required for implementation by Owner. Owner will be responsible for conducting such testing.

6.4.2 Design-Builder Duties.

The Design-Builder shall:

- (a) Notify the Owner and the testing laboratory sufficiently in advance of the required test to allow for its assignment of personnel and scheduling of tests;
- (b) Cooperate with testing and inspection personnel, provide access to the work and to off-site fabrication facilities;
- (c) Furnish copies and records of mill test reports or any testing conducted offsite;
- (d) Employ and pay for services of the same independent testing laboratory to perform additional inspections, sampling, and testing required when initial tests indicate Work does not comply with Contract requirements;
- (e) Be responsible for all scheduling of inspections and tests; and
- (f) Not proceed with Work requiring inspection if the appropriate inspector is absent.

ARTICLE 7 CHANGES IN THE WORK

7.1 General.

7.1.1 Owner's Right to Order Changes.

The Owner, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order or Construction Change Directive and shall be performed according to the applicable requirements of the Contract Documents.

7.1.2 Basis for Agreement.

A Change Order shall be based upon agreement among the Owner and Design-Builder. A Construction Change Directive may or may not be agreed to by the Design-Builder.

7.1.3 Change in Contract Documents.

Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Design-Builder shall proceed promptly with the change, unless otherwise provided in the Change Order or Construction Change Directive. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Construction Change Directive. Design-Builder shall not be obligated to institute any changes until such times as Owner provides an executed Change Order or Construction Change Directive.

7.2 Change Orders (CO).

7.2.1 Definition.

A Change Order ("CO") is a written document prepared by the Owner reflecting the agreement between Owner and Design-Builder upon all of the following:

- (g) The changes in terms or conditions of the Contract, if any;
- (h) The specific change in the Work, if any;
- (i) The amount of the adjustment, if any, in the Contract Sum; and
- (j) The extent of the adjustment, if any, in the Contract Time.

7.2.2 Computation.

Methods used in determining adjustments to the Contract Sum may include those listed in Paragraph 7.4 below.

7.2.3 Accord and Satisfaction.

Agreement on any Change Order shall be a full compromise and settlement of all adjustments to Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or

cumulative effect of said impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. By execution of any Change Order, Design-Builder and, by extension, its Design Consultants, subcontractors and suppliers, agrees that the Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Change Order. No action, conduct, omission, product failure or course of dealing by the Owner shall act to waive, modify, change, or alter the requirement that Change Orders must be in writing, signed by the Owner and Design-Builder and that such written Change Orders are the exclusive method for effectuating any undisputed change to the Contract Sum and/or Contract Time.

7.3 Construction Change Directives (CCD).

7.3.1 General.

A Construction Change Directive (“CCD”) is a unilateral written order prepared and signed by the Owner, directing Design-Builder to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD shall also be issued by Owner to direct Design-Builder to perform or continue performance of the Work or a disputed item of Work pending resolution of a dispute concerning the Scope of Work.

7.3.2 Use.

A CCD shall be used in the absence of total agreement on the terms of a Change Order or for disputes involving entitlement.

7.3.3 Duty to Proceed.

Upon receipt of a CCD, the Design-Builder shall promptly proceed with the Work involved and advise the Owner of the Design-Builder’s agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.3.1 Pricing.

If the Design-Builder does not within five (5) days indicate in writing its disagreement with the method of pricing provided in the CCD, Design-Builder shall be deemed to agree with the method of pricing the change. If the Design-Builder indicates its disagreement with the method of pricing or if no method of pricing is provided in the Change Directive, the increase in cost or credit to the Contract Sum for the change shall be determined by cost in accordance with Subparagraph 7.4.1 and the provisions of Subparagraphs 7.4.2, 7.4.3 and 7.4.4 shall apply to the change. Design-builder shall be paid the amounts indicated in the CCD and an acceptance of those sums shall not be considered a waiver of its claims.

7.3.4 Agreement.

A CCD is effective immediately whether or not it is signed by the Design-Builder. If the Design-Builder ultimately signs a CCD such agreement shall be effective immediately and shall be recorded as a final Change Order.

7.4 Computation of Cost or Credit for Changes.

7.4.1 Cost or Credit.

The cost or credit to the Owner resulting from a change in the Work shall be determined by Owner by one or more of the following methods:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) Unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) The agreed upon prices for certain additions or deletions in the scope of work as provided in the Schedule of Values attached hereto as Exhibit "C".
- (d) By cost of material and labor, as defined in 7.4.1.1 (a), (b), (c) and (d) below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus agreed upon markup of 15% for overhead and profit for the subcontractor performing the work, plus 10% for overhead and profit for Design-Builder. Such costs shall be itemized by craft directly allocable to the change in the Work. If the cost is determined by this method the following requirements shall apply:

7.4.1.1 Reports by Design-Builders.

- (a) General: At the close of each working day, the Design-Builder shall submit a report relative to the changed work to the Inspector with a copy the Owner, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Design-Builder. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Design-Builder.
- (b) Labor: Show names of workers, classifications, and hours worked.
- (c) Materials: Describe and list quantities of materials used by which subcontractor, and identify supplier of the materials.
- (d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

- (e) Other Services and Expenditures: Describe in such detail as the Owner may require.

7.4.2 Basis for Establishing Costs.

- (a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers as designated by the Department of Industrial Relations (“DIR”), plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Design-Builder establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- (b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery and any allowable discounts.
- 1) The Owner reserves the right to approve materials and sources of supply or to supply materials to the Design-Builder if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.
- (c) Tool and Equipment Rental. The Design-Builder will be paid for the use of the Contractor or leased Equipment, and for equipment rented by the Contractor or any Subcontractor for actual use in construction of the Project. No payment will be made for the use of tools which have a replacement value of \$500 or less.
- 1) Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed those in the Rental Rate Blue Book for construction in effect at the time of commencement of the claimed work. Equipment used for more than seven (7) days shall be at the lower weekly or monthly rate as applicable. No payment shall be made for passenger carrying vehicles or pick-up trucks of less than 1-ton capacity, or any computer or surveying equipment.
 - 2) The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.
 - 3) Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, it shall be

returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

- 4) All equipment shall be acceptable to the Project Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change, which results in a net decrease in the Contract Sum, shall be actual net cost as determined herein. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase/decrease, if any, with respect to that change.

- (d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work and which are of a type not ordinarily available from the Design-Builder or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- (e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.
- (f) Overhead. Overhead, including direct and indirect costs, shall be submitted with the Change Order Request and shall be fully inclusive of: home office overhead, off-site supervision, Change Order preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs. Overhead for a subcontractor, exclusive of profit, shall not exceed 10% of actual cost.

7.4.3 Payment of Undisputed Amounts.

Pending final determination of the total cost of a Change, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an approved Change Order or Change Directive, indicating the parties' agreement with part or all of such costs.

7.4.4 Discounts, Rebates, and Refunds.

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Design-Builder and the Design-Builder

make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.5 Authority to Approve Changes.

7.5.1 Owner's Project Manager's Authority.

The Owner or Owner's Representative must authorize any changes in the Work. Such changes shall be effected by written order and shall be binding on the Design-Builder.

7.5.2 Verbal Changes.

Any oral order, direction, instruction, interpretation, or determination from the Owner shall not be binding. All orders, directions, instructions, interpretations and determinations from Owner shall be provided to Design-Builder in writing. If any such written order, direction, instruction, interpretation, or determination from the Owner, in the opinion of the Design-Builder, causes a Change in the Work, or otherwise requires an adjustment to the Contract Sum or the Contract Time, Design-Builder shall submit a Change Order Request to the Owner within **ten (10) calendar days** of Design-Builder's receipt of the written order, direction, instruction, interpretation, or determination. Time is of the essence in Design-Builder's written notice pursuant to the preceding sentence, so that the Owner can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation, or determination giving rise to Design-Builder's notice.

7.5.3 Unauthorized Work.

Any Work performed by the Design-Builder not indicated on the Contract Documents or any changes in the Work performed or provided by the Design-Builder without notice to the Owner, shall be considered unauthorized and at the sole expense and risk of the Design-Builder. Unauthorized work so performed will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any such unauthorized work may be ordered removed at the Design-Builder's sole cost and expense.

7.6 Owner Originated Proposal Request.

Owner may issue a request, in writing, to Design-Builder, describing a proposed change to the Work and requesting the Design-Builder submit an itemized proposal in a format acceptable to Owner within **twenty (20) calendar days** after Owner issues the request. The Design-Builder's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in the Contract and/or Paragraph 7.4 herein), and Design-Builder's proposed methods to minimize costs, delay, and disruption to the performance of the Work. Owner's proposal request does not authorize the Design-Builder to commence performance of the change, unless otherwise specified in writing. If Owner desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Change Directive procedures set forth above.

7.7 Design-Builder Originated Change Order Request (COR).

If the Design-Builder alleges that instructions issued by the Owner after the date of the Contract may result in changes to the Contract Sum or Contract Time, or the Design-Builder otherwise becomes aware of the need for or desirability of a change in the Work, or Design-Builder becomes aware of other circumstances that require a change in the Contract Sum or Contract Time, Design-Builder may submit a written Change Order Request (“COR”) to the Owner in writing, in a format acceptable to Owner within a reasonable time after becoming aware of the need for a Change Order. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the Construction Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the costs and credits claimed by the Design-Builder. A CPM schedule fragment may be required, at Owner’s reasonable request, to support and justify any additional time of performance requested by the Design-Builder. Any COR that is approved by the Owner will be incorporated in a Change Order or Construction Change Directive. If the COR is denied but the Design-Builder believes that it does have merit, the Design-Builder shall proceed with the disputed Work and may submit a Claim in accordance with the procedures set forth herein.





7.7.1 Changes in the Basic Project Configuration.

Except as authorized by a Change Order, Design-Builder shall not make any material change in the basic Project configuration approved in the Final Design. A Change Order will be required only for a material change made outside the Contractor’s control. An Owner directed change will be covered by a Change Order whether material or not. A material change is one that causes one of the following:

- (a) A change in the requirements of Third Parties after the Final Design is approved;
- (b) A change that increases the scope of any required environmental mitigation; or
- (c) A change required due to the discovery of unknown underground site conditions or utility relocation that could not have been discovered during the course of reasonable site investigation prior to the approval of the Final Design.

7.8 Format for Proposed Cost Change.

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract.

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)		
(b) Labor (attach itemized hours and rates)		

(c)	Equipment (attach invoices)	_____	_____
(d)	Subtotal	_____	_____
(e)	If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (15%) of item (d).	_____	_____
(f)	Liability and Property Damage Insurance, Worker's, Compensation insurance, Social Security, and Unemployment Taxes, _____ percent (___%) of Item (b).	_____	_____
(g)	Subtotal	_____	_____
(h)	Design-Builder's Overhead and Profit, not to exceed ten percent (10%) of Item (g).	_____	_____
(i)	Subtotal	_____	_____
(j)	Bond not to exceed _____ percent (___%) of Item (i).	_____	_____
(k)	TOTAL	_____	_____

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Design- Builder's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project including overhead, small tools of less than \$500 value, consumables (items which are consumed in the performance of the work which are not part of the finished product and profit). It shall also encompass incidental job burdens, field, jobsite and home office expenses of all types, supervisor expenses of all types, and all other overhead, general condition, and indirect costs and expenses. Any costs or expenses not included are deemed waived.

**ARTICLE 8
TIME**

8.1 Definitions.

8.1.1 Contract Time.

The Contract Time is the period of time allocated in the Contract Documents from the date of commencement provided in Owner's Notice to Proceed for Substantial Completion of the Work. Contract Time shall be measured in calendar days.

8.1.2 Commencement.

The date of commencement of the Work shall be stated in a Notice to Proceed delivered by Owner to Contractor.

8.1.3 Substantial Completion.

The Design-Builder shall achieve Substantial Completion of the Design Services no later than _____ (____) days from the date of execution of the Contract. The Substantial Completion of the Construction Phase provided in Paragraph 3.1 above shall be ___ days after the Date of Commencement stated in a Notice to Proceed as to the Construction Phase, subject to Modification of this "Contract Time" approved by Owner. The date of commencement of the Construction Phase shall be no earlier than ten (10) days after Owner has delivered the building permit to Design-Builder.

8.1.3.1 Definition.

Substantial Completion is defined to mean the stage in the progress of the Work when:

- (a) The Work is sufficiently complete in accordance with the Contract Documents as determined by the Owner and certified by the Owner or Owner's Representative so that the Owner can fully occupy and utilize the Work, or portions thereof, for its intended use.
- (b) All systems included in the Work, or portions thereof, are operational as designed and tested;
- (c) All performance tests are conducted to demonstrate that performance requirements have been met;
- (d) All final finishes required by the Contract Documents for Work, or portions thereof, are in place; and
- (e) Design-Builder has submitted to Owner a written certification, to the best of Design-Builder's knowledge at the time, that: (i) all remaining Work shall be completed within **forty-five (45) calendar days** following the Date of Substantial Completion; (ii) the property will be free of stop notices and claims within thirty (30) calendar days of Owner making final payment to Design-Builder; and (iii) written warranties, operations and maintenance manuals and reproducible Record Documents, including As-Built Drawings and Specifications, will be completed and submitted to Owner within **sixty (60) calendar days** following the date of Substantial Completion and as a condition to receipt of Final Payment.

8.1.4 Liquidated Damages.

8.1.4.1 Owner Damages.

Owner and Design-Builder acknowledge and agree that if Design-Builder fails to achieve Substantial Completion within the date specified or otherwise fails to achieve Substantial Completion of the Work within the Contract Time (as such may be extended in accordance with the Contract Documents) without any fault of Owner, its consultants, and anyone for whom they are responsible, Owner will suffer as a result of Design-Builder's failure, substantial indirect consequential damages, which are both extremely difficult and impracticable to ascertain. Therefore, Owner and Design-Builder, having reasonably endeavored, but failed, to ascertain an amount bearing a reasonable relationship to the indirect consequential damages that Owner will incur if Design-Builder fails to achieve Substantial Completion of the Work on the date established and having ascertained that such damages will accelerate as the delay in Substantial Completion increases, agree that in the event Design-Builder fails to achieve Substantial Completion of the entire Work within the date established in this Agreement, Design-Builder shall pay to Owner as liquidated damages, and not as a penalty but as a reasonable estimate of the amount of indirect and consequential damages Owner will suffer, the following amounts:

(1) \$0 per day for each calendar day from the first (1st) day through the sixtieth (60th) day after the scheduled Substantial Completion date during which Design-Builder fails to achieve Substantial Completion of the Design or Construction Phase milestones, as the case may be; and

(2) \$1,250,000 per day for each calendar day from the sixty-first (61st) calendar day after the schedule Substantial Completion date during which Design-Builder fails to achieve Substantial Completion of the Design or Construction Phase milestones, as the case may be.

8.1.5 Mutual Waiver of Indirect or Consequential Damages.

Owner and Design-Builder acknowledge and mutually agree that this liquidated damages provision shall apply to indirect damages caused by Design-Builder's failure to achieve Substantial Completion on the dates established in this Agreement and without any fault of Owner (as such may be extended in accordance with the Contract Documents). Owner and Design-Builder mutually waive any other indirect or consequential damage claims, disputes or other matters in question arising out of or relating to the Project and/or this Project. These liquidated damages shall not apply to any direct cost or damages incurred by Owner in connection with Design-Builder's failure to achieve Substantial Completion with the date specified including, but not limited to, additional costs related to inspection and testing of the Work.

For purposes of this waiver, consequential damages are defined as follows:

- (a) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- (b) Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, impaired bonding capacity or loss of future bonuses as a result, and for loss of profit except anticipated profit arising directly from the Work.

8.2 Progress and Completion.

8.2.1 Time Is of the Essence.

Time limits stated in the Contract Documents are of the essence in the Contract. By executing the Contract and any modifications relating to Substantial Completion or Contract Time the Design-Builder confirms that the Contract Time stated herein is a reasonable period for performing the Work, that the Design-Builder will bear the risk of delay to the Substantial Completion of the Project and that the Contract Sum was established with full knowledge of this risk.

8.2.2 Commencement.

The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required to be furnished by the Design-Builder to the Owner as specified in the Agreement and attached Exhibits. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 Completion.

The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Design-Builder shall at no cost to the Owner, take all measures necessary, including working such overtime, additional shifts, weekends or holidays as may be required to ensure that the Project is completed within the Contract Time.

8.3 Delays and Extensions of Time.

8.3.1 Compensable Force Majeure Events.

8.3.1.1 Definition.

“Force Majeure” shall mean any of the following events, which materially and adversely affect Design-Builder’s obligations hereunder and which event could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder: earthquake; epidemic, pandemic, blockade, rebellion, war, terrorism, riot, act of sabotage, or civil commotion; industry-wide labor strike or local labor strike unrelated to the Project which has a material adverse impact on the Project; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the site which is required to be reported to the California Environmental Protection Agency, Department of Toxic Substances Control; discovery at, near, or on the site of any species listed as “threatened,” “protected” or “endangered” under the Federal or State Endangered Species Act; extreme winds that make construction activities unsafe and fire.

8.3.1.2 Remedies.

If the Critical Path of the Work is delayed by Force Majeure events, provided that the aforesaid causes were not foreseeable and did not result from the acts of the Design-Builder, and provided further that the Design-Builder has taken reasonable precautions to prevent further delays owing to such causes, then the Design-Builder shall be entitled to an equitable adjustment of the Contract Time and/or compensation for reasonable additional costs directly resulting from such delays, but not for any additional home office overhead, profit or fee, subject to the requirements of Article 8 herein, and further provided Design-Builder complies with the notice and procedural requirements of Article 7 herein.

8.3.1.3 Rain Days.

Design-Builder and Owner agree the Design-Builder is not entitled to a time extension for "Rain Days," unless the total number of days exceeds 12 over the course of the Project. A time extension shall be granted for every Rain Day in excess of the allotment noted above. A "Rain Day" is defined as any day, including a dry out day, in which the Design-Builder is prevented from proceeding with seventy-five percent (75%) of the normal labor and equipment force on that date for a critical path activity. .

8.3.2 Compensable Owner-Caused Delays.

No claims asserting that early completion could have been achieved but for actions that would qualify for compensable delay will be accepted. If the date for Substantial Completion of the Work is delayed as a result of modified Project scope, the wrongful acts or negligence of the Owner or anyone for whom Owner is legally liable and are unforeseeable and are unreasonable under the circumstances involved, the Design-Builder shall be entitled to an equitable adjustment of the Contract Time and/or compensation for reasonable additional costs directly resulting from such delays, but not for any additional home office overhead, profit or fee, subject to the requirements of Article 8 herein, and further provided Design-Builder complies with the notice and procedural requirements of Article 7 herein.

8.3.3 Concurrent Delays.

To the extent the Design-Builder is entitled to an extension of time due to an excusable delay, but the performance of the Work would have been suspended, delayed, or interrupted by the fault or neglect of the Design-Builder or by an inexcusable delay, the Design-Builder shall be entitled to an extension of the Contract Time, but shall not be entitled to any additional cost during the period of such concurrency.

8.3.4 Claim for Additional Time.

Any claim for extension of the Contract Time shall be made in writing to the Owner and submitted as a Change Order Request in accordance with the requirements of Paragraph 7.7. The delay must be supported by the Contract Schedule current at the commencement of the event giving rise to the delay. The delay must impact the critical path of the completing of the Project

by delaying a work activity that could not be delayed without impacting the substantial completion of the Project as a whole.

8.3.5 Shortage of Materials.

An extension of time will not be granted for a delay caused by a shortage of materials or commercial unavailability, except Owner furnished materials, unless the Design-Builder furnishes to the Owner documented proof that the Design-Builder has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Design-Builder shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in Substantial Completion of the Work which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the reasonable satisfaction of the Owner that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

8.3.5.1 Material and Labor Price Escalation. Design-Builder will make its best effort to award Subcontracts in a timely manner so as to mitigate the effects of material and labor escalations. If a specific commodity escalates during the course of the Project by a factor of greater than 30%, and the Subcontractor refuses to honor its price, Design-Builder will be entitled to a Change Order for the costs, as approved by Owner, associated with settling the Subcontractor's claim.

8.3.6 Third Party Agency Delays.

Design-Builder is aware that governmental and quasi-governmental agencies, and other agencies or entities may be required to approve Design-Builder-prepared drawings or approve a proposed installation. Design-Builder has endeavored and will continue to use its best efforts to include the time impacts and expected review/compliance periods which may be caused by such agencies in the Contract Time. Thus, Design-Builder will be entitled to make claim upon the Owner for an extension of time arising from the delays caused by such agencies or entities. In addition, Design-Builder and Owner agree that such delays shall be compensable to Design-Builder pursuant to Section 8.3.1. For purposes of demonstrating a delay applicable to this section, the agreed upon Project Schedule shall be the basis for determining the extent of such delay.

To the extent that the completion of the Work is dependent by any actual construction work by the above agencies, Design-Builder's schedule shall contain reasonable milestone dates for completion of that Work. To the extent that action required by an agency impacts the schedule, Design-Builder shall be entitled to a non-compensable extension of time as its sole remedy.

8.3.7 Design-Builder Fault.

No extension of time will be granted under this Article 8 for any delay to the extent: (i) that performance was so delayed by any Design-Builder induced causes, including but not limited to

the fault or negligence of the Design-Builder or its Consultants or Subcontractors; or (ii) for which any remedies are provided for or excluded by any other provision of the Contract.

8.3.8 Change Order.

A Change Order will be issued to the Design-Builder within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, the new date or number of calendar days after the date of commencement for achieving Substantial Completion of the Work or specified portions of the Work, and the adjustment to the Contract Sum, if any.

8.3.9 No Waiver.

Neither the grant of an extension of time beyond the date fixed for Substantial Completion of the Work, or any milestone (if applicable) nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for Substantial Completion of the Work, shall be deemed to be a grant of any future extensions, a waiver by the Owner of the Owner's right to abrogate this Contract for abandonment or failure to complete within the time specified, or to impose and deduct damages as may be provided in the Contract Documents.

8.3.10 No Release of Surety.

An extension of time granted shall not release Design-Builder's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the completion and Final Acceptance of Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

8.4 Intentionally omitted.

8.5 Waiver Not Precedent.

A waiver or failure by the Owner to enforce any requirements of this Article 8 in connection with any or all past delays shall not constitute a waiver of, and shall not preclude Owner from enforcing, such requirements in connection with any present or future delays.

8.6 Schedule Requirements.

8.6.1 Design-Builder Baseline Schedule Requirements.

8.6.1.1 Timing.

Within **thirty (30) calendar days** after Owner issues a Notice to Proceed for the Construction Phase of the Work, Design-Builder shall submit a practical schedule showing the order in which the Design-Builder proposes to perform the Work, the durations of each category

of Work, and the dates on which the Design-Builder contemplates starting and completing the categories of the Work.

8.6.1.2 Design-Builder Baseline Schedule.

This first schedule which outlines the Design-Builder's view of the practical way in which the Work will be accomplished is the Design-Builder Baseline Schedule. If the Design-Builder fails to submit the Baseline Schedule within the **thirty (30) days** noted, the Owner may withhold processing and approval of that portion of the progress payments attributable to the schedules

8.6.1.3 Owner Review and Approval.

The Owner will review both a paper and electronic copy of the Baseline Schedule and note comments or as otherwise noted in this Article and either approve or disapprove the Design-Builder Baseline Schedule.

- (a) All Baseline, Update, and Recovery Schedules shall be prepared using an accepted electronic scheduling program acceptable to Owner. All Schedules shall be delivered in an electronic format usable by the Owner. All logic ties and electronic information shall be included in the electronic copy of the schedule that is delivered to the Owner.

8.6.1.4 Schedule Must be Within the Given Contract Time.

The Design-Builder Baseline Schedule shall not add durations that cause the Contract Time to be exceeded and shall not exceed time limits set forth in the Contract Documents.

8.6.1.5 Intentionally omitted.

8.6.1.6 Float Must be Incorporated.

The schedule must indicate the beginning and completion of all phases of construction and shall use the "Critical Path Method" (commonly called CPM) for the planning and scheduling of all Work required under the Contract Documents. Baseline Schedule must incorporate all Milestones and apply Float as deemed appropriate in the Design-Builder's discretion. The Baseline Schedule shall note durations that will not be adequate or should be shortened based on Design-Builder's Review. The Baseline Schedule is critical to Coordination, sequencing of trades, and to ensure monitoring of the progress of the Work.

8.6.1.7 Intentionally omitted.

8.6.1.8 Incorrect Logic, Durations, Sequences, or Critical Path.

The Owner may reject or indicate durations, sequences, critical path or logic in the Baseline or Updated Schedule are not acceptable and request changes. The electronic copy of the Schedules shall have adequate information so logic ties, duration, sequences and critical path may be reviewed electronically.

8.6.1.9 Trade Contractor Responsibility for Schedules Even if Schedule Issues are not Discovered.

Failure on the part of the Owner to discover errors or omissions in schedules submitted shall not be construed to be an approval of the error or omission and a flawed schedule is not grounds for a time extension.

8.6.2 Update Schedules.

8.6.2.1 Updates Shall be Based on Approved Baseline Schedule.

The Baseline Schedule shall be used to build future schedule updates. Schedule Updates shall be a CPM based schedule consistent with the Baseline Schedule requirements of 8.6.1.

In the case that no Baseline Schedule has been approved, Schedule updates shall be provided monthly. Design-Builder shall be held to the Article 8.6.1 unapproved Baseline Schedule, inclusive of all Milestones, adjusted for comments and all required Baseline Schedule inclusions.

8.6.2.2 Schedule Updates.

Design-Builder shall update the Baseline Schedule each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the Work in progress, estimated start dates for Work scheduled to start at future times and changes in duration of Work items.

8.6.2.3 Listing of Items Causing Delays.

Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the latest approved Baseline Schedule. Simply stating "Owner Delay" or "Third Party Delay" shall be an inadequate listing.

**ARTICLE 9
PAYMENTS AND COMPLETION**

9.1 Intentionally Omitted.

9.2 Compensation for Design and Construction – Contract Sum.

9.2.1 Contract Sum.

The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract. The Contract Sum shall be \$_____, subject to adjustments as set forth in the Contract Documents.

9.2.2 Allowance Items and Allowance Values.

To the extent that allowance items are included in the Contract Sum:

- (a) Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Sum.
- (b) Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.
- (c) No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s).
- (d) The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.
- (e) Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs incurred by Design- Builder for the particular Allowance Item and the Allowance Value.

9.3 Alternates.

The Contract Sum does not include the following alternates, which are described in the Contract Documents and may be accepted by Owner by Change Order or Construction Work Directive; provided, however, that the Design-Builder shall furnish the Owner with no less than **fourteen (14) calendar days** prior written notice of the date by which the Owner must accept the alternates for the prices set forth in this Subparagraph.

[Describe or cross-reference Exhibit "D"]

9.4 Schedule of Values.

Upon agreement as to the Contract Sum, Design-Builder shall submit to the Owner a Schedule of Values allocated to various portions of the Work and shall be based on the subcontractor bids. Values shall not be front loaded. The Schedule of Values shall be approved by the Owner and attached to the Agreement as an Exhibit. The approved Schedule of Values shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

9.5 Applications for Payment.

9.5.1 Process for Applications for Payment.

The Design-Builder shall submit to the Owner on or before the **fifth (5th)** day of each calendar month during the progress of the Work an itemized Application for Payment, for Work completed in accordance with the Schedule of Values and the payment provisions of the Agreement. Such Application shall be notarized, if required by Owner, and supported by data substantiating the Design-Builder's right to payment.

No payment requests will be processed unless Design-Builder has submitted a proper CPM schedule pursuant to Article 8 is submitted.

9.5.1.1 Requests for Payment on Account.

As provided in Article 7 herein, such Applications for Payment may include requests for payment on account of changes in the Work which have been properly authorized by Construction Work Directives but not yet included in Change Orders.

9.5.1.2 Authorization.

Such Applications for Payment shall not include requests for payment of amounts the Design-Builder does not intend to pay to a Design Consultant, Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

9.5.2 Documentation.

As a condition precedent to Owner's monthly progress payment to Design-Builder, Design-Builder shall submit with each Application for Payment the following documentation:

- (a) A current Sworn Statement from the Design-Builder setting forth all Subcontractors and material suppliers with whom Design-Builder has subcontracted, the amount of each subcontract, the amount request for each Subcontractor and supplier in the payment application, and the balance remaining on the subcontract;
- (b) Completed and executed form of "Conditional Waiver And Release of Rights Upon Progress Payment" in accordance with California Civil Code § 8132, from Design-Builder and its Subcontractors and suppliers covering the amount of the current Application for Payment;
- (c) Completed and executed forms of "Unconditional Waiver And Release of Rights Upon Progress Payment" in accordance with California Civil Code § 8134, from Design-Builder and all Subcontractors and other persons eligible to file stop notices in connection with the portion of the Work covering the amount of the previous Application for Payment, provided that Owner has made payment of said previous Application for Payment at least twenty (20) days prior to the submission of the current Application for Payment;
- (d) Updated Construction Schedule; and
- (e) Such other documentation as the Owner may reasonably request.

Any Payment made by Owner to Design-Builder in the absence of any of the preceding documents in no way relieves the Design-Builder from providing all these documents for the current and/or any future Payment.

9.5.3 Payment for Stored Materials.

Design-Builder understands and acknowledges that Owner shall not make disbursements to pay for materials which are stored on or off the Project Site unless approved in advance by the Owner and:

- (a) Such materials are in accordance with the Contract Documents;
- (b) Such materials are securely stored on the Project site or off-site, properly inventoried, physically separated from the materials for other projects, and clearly stenciled or otherwise marked to indicate that they are property of the Owner;
- (c) The bills of sale and contracts under which such materials are being provided are in a form and substance satisfactory to Owner;
- (d) Such materials are insured against casualty, loss, and theft in a manner satisfactory to Owner;
- (e) Design-Builder agrees to secure such materials, free and clear of all liens and encumbrances of any nature whatsoever, upon receipt of payment from Owner; and
- (f) The aggregate amount of such disbursements for such materials shall in no event at any time exceed the actual cost incurred by Design-Builder for such materials, as verified by Owner.

9.5.4 Payment to Design Consultants and Subcontractors.

Pursuant to California Business and Professions Code § 7108.5, no later **ten (10) calendar days** of Design-Builder's receipt of payment from Owner for Work performed by a Design Consultant or Subcontractor, the Design-Builder shall pay all Design Consultants and Subcontractors for and on account of Work of the Contract performed by each. The Design-Builder shall by appropriate agreement with each Design Consultant, Subcontractor and Supplier, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

9.5.5 Substantial Completion Payment Application.

Following issuance of the Certificate of Substantial Completion by the Owner, the Design-Builder shall submit an Application for Payment at Substantial Completion. In addition to submittals required for all applications for progress payments, the Design-Builder shall complete the following administrative actions and submittals, all of which shall precede or coincide with this application:

- (a) List all incomplete items of Work and the value of each item of incomplete Work;
- (b) Obtain and submit all documentation necessary to enable the Owner's full and unrestricted use of the Work, and access to services and utilities, and to supply any

change-over information necessary to the Owner's occupancy, use, operation, and maintenance;

- (c) Discontinue and remove temporary facilities and services from the Site, along with construction tools and facilities, forms, and similar items except for Design-Builder's field office;
- (d) Provide all documentation required from the Design-Builder for Owner to secure temporary occupancy permits and similar approvals for the use of the facilities;
- (e) Inspect, test, and adjust performance of every system of facility of the Work to ensure that overall performance is in compliance with terms of the Contract Documents;
- (f) Provide instruction for the Owner's operating personnel on systems and equipment operational requirements;
- (g) Report performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents; and
- (h) Submit any operating manual(s) for operating and maintaining any equipment provided.

9.5.6 Warranty of Title and No Liens.

The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information, and belief, be free and clear of liens, stop notices, claims, security interests, or encumbrances in favor of the Design-Builder, Design Consultants, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the Work. This provision shall not relieve the Design-Builder from the responsibility for materials and Work upon which payments have been made, the restoration of damaged Work, or waive the right of the Owner to require the fulfillment of the terms of the Contract.

9.6 Certificates for Payment.

9.6.1 Owner Action.

The Owner will, within 15 days after receipt of the Design-Builder's Application for Payment, either issue a Certificate for Payment, with a copy to the Design-Builder, for such amount as the Owner determines is properly due, or notify the Design-Builder reasons for withholding certification in whole or in part as provided in Subparagraph 9.9.1. Public Contract Code section 20104.50 shall apply to the procedures set forth in this Section 9, and in the event of a conflict, shall control.

9.6.2 Representation.

The issuance of a Certificate for Payment will constitute a representation by the Design-Builder to the Owner, based on the evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design-Builder's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Design-Builder entitled to payment in the amount requested.

9.7 Decisions to Withhold Certification for Payment.

9.7.1 Basis for Decision to Withhold.

The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Representative's reasonable opinion the representations to the Owner required by Subparagraph 9.6.2 cannot be made. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Subparagraph 9.6.1. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative may also withhold approval of a Certificate for Payment and the Owner may refuse to make payment or, because of subsequently discovered evidence, the Owner may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner opinion to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions because of:

- (a) Defective Work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- (c) Failure of the Design-Builder to make payments properly to Design Consultants, Subcontractors or suppliers for labor, materials, services or equipment;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to the Owner or Owner's Separate Contractors;
- (f) Reasonable evidence that the Work will not be completed within the Contract Time;
- (g) Persistent failure to carry out the Work in accordance with the Contract Documents and/or unauthorized deviations from the Contract Documents;

- (h) Liquidated damages, if any, which accrued as of the date of the Application for Payment;
- (i) Such other sums as the Owner is entitled to recover from the Design-Builder including liquidated damages assessed against the Design-Builder;
- (j) Failure to provide updated Project schedule; and
- (k) Failure to store and properly secure materials.

9.7.2 Withhold for Disputes.

In the event of a dispute between Owner and Design-Builder, the Owner may withhold from payments an amount not to exceed 150% of the disputed amount. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld and payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Design-Builder to perform in accordance with the terms and conditions of the Contract Documents.

9.7.3 Stop Payment Notice Claims.

9.7.3.1 Liability.

If at any time there shall be evidence of the existence, of any stop payment notice claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Design-Builder to perform this Contract, and if the Owner might become liable for the discharge of or satisfaction of such stop payment notice or claim, then the Owner, if not caused by the Owner's failure to make payments due under this Agreement, shall retain out of any payment then due or thereafter to become due, an amount equal to 125% of the stop payment notice claim. If the amounts retained are insufficient for the aforesaid purposes, or if such stop payment notice or claim remains undischarged or unsatisfied after all payments have been made to the Design-Builder, then the Design-Builder shall refund to the Owner all costs, expenses, and attorney's fees incurred by Owner in connection therewith, including those incurred as the result of having to appear in any litigation to enforce the stop payment notice.

9.7.3.2 Release of Payments Withheld.

The Owner shall release any payments withheld due to a stop notice claim if the stop notice is released, the Design-Builder satisfactorily completes any statutory procedures to release the stop notice, or Design-Builder obtains a release bond that is: (i) issued pursuant to Civil Code Section 9364 by a surety acceptable to Owner admitted to issue surety bonds by the California Department of Insurance; and (ii) is in an amount of not less than 125% of the amount of any stop payment notice claim.

9.8 Progress Payments.

9.8.1 Owner Payments to Design-Builder.

After the Owner has issued an approved Certificate for Payment, the Owner, subject to its rights under Paragraph 9.9.1 herein, shall make payment of the undisputed amount due to the Design-Builder within fifteen (15) days.

9.8.2 Payment Does Not Constitute Approval or Acceptance of Work.

An approved Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner, or issuance of a Certificate of Substantial Completion shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.9 Substantial Completion.

9.9.1 Design-Builder Request for Inspection and Punch List.

When the Design-Builder considers that the Work is substantially complete, with the reasonable concurrence of Owner's Project Manager, the Design-Builder shall prepare and submit to the Owner a request for inspection, a comprehensive list of items to be completed or corrected prior to Final Payment ("Punch List"), and a schedule. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.

9.9.2 Owner's Inspection.

Upon receipt of the Design-Builder's Punch List, the Owner will make an inspection to determine whether the Work is Substantially Complete. If the inspection discloses any item, whether or not included on the Design-Builder's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Owner. In such case, the Design-Builder shall then submit a request for another inspection by Owner to determine Substantial Completion.

9.9.3 Certificate.

When the Work thereof is Substantially Complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Design-Builder for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of all Work.

9.9.4 Owner's Acceptance.

The Certificate of Substantial Completion shall be submitted to the Design-Builder for its written acceptance of responsibilities assigned in such Certificate. Upon such acceptance, provided the requirements for Substantial Completion Payment set forth in the Agreement are met, the Owner shall make payment to the Design-Builder for the cost of undisputed Work in place. Owner, however, shall be entitled to withhold an amount equaling 150% of the estimated cost of the following items until Final Completion:

- (a) Punch List items;
- (b) All items necessary required by this Agreement to obtain the Final approvals by governmental agencies or entities having jurisdiction identified in the Contract Documents as the Work of Design-Builder;
- (c) Any Department of Labor Standards Enforcement withholds served upon Owner;
and
- (d) Any Claims the Owner may have against the Design-Builder.

If the Design-Builder has not completed all items enumerated above, within **thirty (30) calendar days** after the issuance of the Certificate of Substantial Completion, provided any such item is able to be corrected within thirty calendar days, the Owner shall have the right to demand completion or correction of the items within a **48-hour** period. During the punch list completion period, the Design-Builder's Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Design-Builder does not commence the requested Work within the **48-hour** period or provide Owner with written notice of a legitimate reason why Design-Builder cannot commence the Work within the 48-hour period, the Owner shall have the unilateral right to complete the Work with its forces and deduct the cost therefrom from any money held pending Final Completion.

9.10 Partial Occupancy or Use.

9.10.1 Owner's Rights and Allocation of Responsibility.

The Owner may occupy or use any completed or partially completed portion of the Work at any stage provided such occupancy or use is not prohibited by the applicable legal requirements. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have agreed in writing as to the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

9.10.2 Joint Inspection.

Immediately prior to such partial occupancy or use, the Owner and Design-Builder and Owner's Representative shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.10.3 No Acceptance.

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10.4 Conditions.

Owner's use and partial occupancy of a portion or segment of the Project before formal acceptance by the Owner shall be subject to the following conditions:

- (a) Occupancy by the Owner shall not be construed by the Design-Builder as being an acceptance by Owner of that part of the Project to be used or utilized;
- (b) Design-Builder shall not be held responsible for any damage to the occupied part of the Project resulting solely from the Owner's occupancy;
- (c) Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims on behalf of the Owner or Design-Builder against each other;
- (d) If the Project consists of a building or structure, and one of the buildings is to be utilized, the Owner, prior to utilization of the building, shall secure permanent property insurance on the building to be occupied and any necessary partial use permits from the governmental agencies in jurisdiction. Final approval and occupancy permits from agencies in jurisdiction are still the responsibility of the Design-Builder, which may be required for use;
- (e) The Owner shall pay for all utility costs and operational expenses which arise out of the occupancy by the Owner during construction;
- (f) Owner's use and partial occupancy prior to Project acceptance does not relieve the Design-Builder of his responsibility to maintain all insurance and bonds required of the Design-Builder under the Contract until the Project is complete; and
- (g) If time and/or costs are impacted by Owner's partial occupancy or use, Design-Builder may submit a Claim for such financial and/or Time Impact in accordance with Article 4.

9.11 Final Completion and Final Payment.

9.11.1 Inspection.

Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of the Owner knowledge, information and belief, and on the basis of the Owner's Representative's on site visits and inspections, the Work has been fully and satisfactorily completed in a good and workmanlike manner, and accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9.2 as precedent to the Design-Builder's being entitled to Final Payment have been fulfilled.

9.11.2 Documentation.

In addition to the requirements for Final Payment set forth in the Agreement, the Final Payment shall not become due until final City approval and Temporary Certificate of Occupancy has been secured and **thirty-five (35) calendar days** have elapsed since Owner's recordation of a Notice of Completion and Design-Builder has submitted to the Owner:

- (a) A current Sworn Statement from the Design-Builder setting forth all Subcontractors and material suppliers with whom Design-Builder has subcontracted, the amount of each subcontract, and the final amount requested for each Design Consultant, Subcontractor and supplier in the final payment application;
- (b) A current Sworn Statement from each Design Consultant and Subcontractor setting forth all Sub-subcontractors and material suppliers with whom Subcontractor has subcontracted, the amount of each sub-subcontract, the final amount requested for each Sub-subcontractor and supplier in the final payment application;
- (c) Completed and executed forms of "Conditional Waiver and Release of Rights Upon Final Payment" in accordance with California Civil Code § 8136 from Design-Builder and all persons eligible to assert stop notices in connection with the Work, covering the final payment period;
- (d) Completed and executed forms of "Unconditional Waiver and Release of Rights Upon Progress Payment" in accordance with California Civil Code § 8138 from Design-Builder, its Subcontractors and all persons eligible to assert stop notices in connection with the Work, covering the previous payment period;
- (e) Completed and executed affidavits from Design-Builder, Design Consultants and Subcontractors, attaching certificates and endorsements evidencing that insurance required by the Contract Documents to remain in force after Final Payment, if any, is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;

- (f) A written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (g) The required Record Documents and As-Built Construction Documents including, but not limited to, shop drawings and other submittals;
- (h) A certificate in form and substance acceptable to Owner signed by the Design-Builder's Design Consultants certifying that, to the best of their knowledge, that such Work has been completed in accordance with the Contract Documents, all applicable laws, and restrictions;
- (i) All warranties from vendors and Subcontractors, maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions;
- (j) Tools, spare parts and required extra materials (i.e., attic stock), and similar items;
- (k) Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the Owner's operating and maintenance personnel;
- (l) Written consent from Design-Builder's performance and payment bond surety(ies) to release Final Payment.

9.11.3 Release of Stop Payment Notices.

If a Design Consultant, Subcontractor or supplier refuses to furnish a release or waiver required by Owner and files a stop notice, the Design-Builder shall furnish a bond satisfactory to the Owner to release the stop notice and indemnify the Owner against such stop notice and Owner shall enforce its right under Subparagraph 9.9.3 herein.

9.11.4 Delay Not Caused by Design-Builder.

If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the amount withheld following such payment shall be equal to 150% of the estimated cost of completing the Work, excluding the value of the Work in the Change Orders then issued, as determined by the Owner. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment.

9.11.5 Design-Builder's Acceptance of Final Payment.

Acceptance of Final Payment by the Design-Builder, a Design Consultant, a Subcontractor, or material supplier shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.11.6 Owner's Final Payment.

The making of Final Payment shall not constitute a waiver of Claims by the Owner arising from:

- (a) Unsettled claims or stop notices;
- (b) Faulty or defective Work appearing after Substantial Completion of the Work;
- (c) Failure of the Work to comply with the requirements of the Contract Documents;
- (d) Terms of any special warranties required by the Contract Documents; or
- (e) Any other Claim unless specifically waived by the Owner in writing.

9.11.7 Liens After Final Payment.

Any stop payment notice or other claim, filed or asserted after the Design-Builder's acceptance of the Final Payment, by any Subcontractor, laborer, material supplier, or others, in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Design-Builder who further agrees to indemnify, defend and hold harmless the Owner and its officers, agents and employees from and against any claims, demands or judgment arising out of or associated therewith, including, without limitation, attorneys' fees incurred by the Owner in connection therewith.

9.12 Substitution of Securities.

In accordance with § 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Design-Builder, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Design-Builder. Upon satisfactory completion of the Contract, the securities shall be returned to the Design-Builder.

Securities eligible for investment under this section shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest-bearing, demand- deposit accounts, standby letters of credit, or any other security mutually agreed to by the Design-Builder and the Owner.

The Design-Builder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

The Design-Builder is responsible for establishing, maintaining, and supervising the necessary safety precautions needed to permit the performance of the Work without endangering employee and public safety and property including, but not limited to, a safety plan (IIPP), Code of Safe Work Practices and Shoring Plan stamped by a California licensed engineer. Design-Builder shall also comply with any safety requirements required by insurers providing coverage for the Project. Notwithstanding the foregoing, Design-Builder specifically assumes all risk of damages or injury to any persons or property, wherever located, resulting from any action or operation of the Design-Builder or Design-Builder's Subcontractors or Sub-subcontractors under the Contract Documents or in connection with the Work. Design-Builder shall require that its Subcontractors participate in, and enforce, the safety and loss prevention programs established by the Design-Builder for the Project.

10.2 Safety of Persons and Property.

10.2.1 Precautions and Protection.

The Design-Builder shall take necessary precautions for safety of, and shall provide necessary protection to prevent damage, injury or loss to:

- (a) Employees on the Work and other persons who may be affected thereby;
- (b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Design-Builder's Subcontractors or Sub subcontractors; and
- (c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 Notice and Compliance with Applicable Law.

The Design-Builder shall give notices and comply with applicable laws bearing on safety of persons or property or their protection from damage, injury or loss. Design-Builder shall comply with all laws and regulations, including the California Labor Code and with all California Occupational Safety and Health Act ("OSHA"), Environmental Protection Agency, and South Coast Air Quality Management Owner regulations, concerning safety requirements and protection of workers including, but not limited to, those regulations concerning scaffolding, bracing, shoring, trench excavating and removal, and handling and disposal of hazardous waste.

10.2.3 Safeguards.

The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting

danger signs and other warnings against hazards, promulgate safety regulations, and notify owners and users of adjacent sites and utilities. The Design-Builder shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to adjacent property or improvements shall be promptly repaired or replaced by Design-Builder at its sole cost and expense within the Contract Sum.

10.2.4 Notice of Hazards.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care, carry on such activities under supervision of properly qualified personnel, and shall provide Owner and Owner's Representative with reasonable advance notice of such activity.

10.2.5 Damage or Loss.

The Design-Builder shall promptly remedy all damage or loss to any property referred to in this Article caused in whole or in part by the Design-Builder or by any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which the Design-Builder is responsible, except damage or loss attributable to the acts or omission of the Owner, separate contractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under this Agreement.

10.2.6 Loading.

The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety. The Design-Builder shall be responsible for the protection of all existing structures and improvements, both above and underground, including both the exterior and interior finishes within the adjoining working areas, and shall provide adequate temporary removal as necessary. Any existing structures or improvements damaged during construction shall be repaired or replaced with materials, workmanship, fixtures, or equipment of the same kind, quality and size as the original, prior to damage. Any materials or equipment temporarily removed and damaged shall be re-erected or installed in a manner approved by the Owner.

10.2.6.1 Review.

The Design-Builder shall review the structural capability of the construction and site prior to allowing installation of temporary lifting devices or staging equipment or the temporary off-loading of materials. Design-Builder shall not exceed design loads without making modifications to the construction or site to support such loads.

10.2.6.2 Modifications.

All modifications to the construction or site to support temporary lifting devices, staging equipment, or loading shall be submitted to Owner for review and acceptance.

10.2.7 Accident Prevention.

The Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder's Superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

10.2.8 Accident Reporting.

The Design-Builder shall immediately report all accidents and injuries to Owner, and shall submit on a form approved by Owner within **two (2) days** of such accident or injury setting forth essential information for investigation of the accident or injury including, but not limited to, name, address, and phone number of all injured workers and witnesses, location on the jobsite, nature of injury, medical treatment, identity of ambulance company, and hospital.

10.2.9 Adjoining Property.

Design-Builder shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances, or other laws and the Contract Documents. Design-Builder shall be cognizant of and respect the rights of any adjoining property owner to the safe and quiet enjoyment of their property.

10.3 Hazardous Materials.

Except as it relates to "hazardous materials" brought on site by Design-Builder or its subcontractors or agents, in the event the Design-Builder encounters on the site materials which it reasonably believes to be "hazardous materials" as that term is defined by federal and state law, which have not been rendered harmless, the Design-Builder shall immediately stop work in the area affected and report the condition to the Owner in writing. The work in the affected area shall not thereafter be resumed until a suitable testing agency certifies the material as non-hazardous or the material is removed or rendered harmless as certified by a suitable testing agency. Owner shall be responsible for all costs incurred for the testing and removal of any and all hazardous materials. Design-Builder shall be entitled to a change order adjusting the Contract Sum and Contract Time pursuant to Section 8.3 should any delays to the project schedule be incurred as a result thereof.

10.4 Material Safety Data Sheets and Compliance with Proposition 65.

10.4.1 Material Safety Data Sheets.

Design-Builder is required to ensure that material safety data sheets are available in a readily accessible place at the Work site, for any material requiring a material safety data sheet per the federal "hazard communication" standard, or employees' right-to-know law. The Design-Builder is also required to insure proper labeling on any substance brought into the Project Site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

10.4.2 Health and Safety Code.

Design-Builder is required to comply with the provisions of California Health and Safety Code § 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Design-Builder agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

10.5 Design-Builder Materials.

The Owner shall not be responsible for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Contract Documents. No asbestos or asbestos-containing products shall be used in the construction of the Work.

10.6 Emergencies.

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7. Design-Builder shall supply an emergency contact list.

10.7 Protection of the Work.

Design-Builder shall protect all materials, equipment, supplies and Work from injury or damage due to heat, storms, rain or wind. If unusually severe weather makes it impossible to continue operations safely in spite of necessary weather precautions, Design-Builder shall cease Work and notify Owner of such cessation in accordance with the requirements of Article 4. Design-Builder shall not permit open fires on the Project. If Design-Builder fails to adequately protect the Work, Design-Builder is responsible for all damage incurred by Owner and is responsible for payment of the deductible on the Builder's Risk policy.

ARTICLE 11 INSURANCE AND BONDS

11.1 Design-Builder's Liability Insurance.

11.1.1 Design-Builder's Insurance Requirements.

Design-Builder shall procure and maintain for the duration of the contract, *and for 5 years thereafter*, insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Design-Builder, his agents, representatives, employees, or subcontractors.

Coverage - Coverage shall be at least as broad as the following:

1. **General Liability - Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including

products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least five million dollars (\$5,000,000) per occurrence or the full per occurrence limits (satisfied by a combination of GL and Excess/Umbrella policies) of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Owner) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability** - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** -. The Design-Builder shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation** (also known as Transfer of Rights of Recovery Against Others to Us): The Design-Builder hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Owner, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the Owner; this provision applies regardless of whether or not the Owner has received a waiver of subrogation from the insurer.
4. **Builder's Risk** – (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision. See **Responsibility of Work and Partial Occupancy**

5. Contractor's Pollution Liability and Professional Liability – combined policy with limits no less than \$10,000,000 per occurrence or claim, and \$10,000,000 policy aggregate. If issued on a Claims Made Policy, such policy shall include the following provisions:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and purchased annually ; evidence of insurance must be provided annually **for at least five (5) years after completion of the contract of work.**

If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Design-Builder must purchase “extended reporting” coverage for a minimum of **five (5) years** after completion of contract work.

If the Design-Builder maintains broader coverage and or/higher limits than the minimums shown above, the Owner requires and shall be entitled to the broader coverage and/or higher limits maintained by the Design-Builder. Any available insurance proceeds in excess of the specified minimum of insurance and coverage shall be available to the Owner)

Other Required Provisions – The Commercial General Liability policy and Contractors Pollution (if necessary) are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Owner, its directors, officers, and employees, as well as the City of Orange, are to be given insured status (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10 10 01 and CG 20 37 10 01, with respect to liability arising out of work or operations performed by or on behalf of the Design-Builder including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Design-Builder's insurance.
2. **Primary Coverage:** For any claims related to this project, the Design-Builder's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Owner, its directors, officers, employees, and authorized volunteers. Any insurance or self-insurance maintained by the Owner, its directors, officers, employees, and authorized volunteers shall be excess of the Design-Builder's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Owner.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or equivalent or as otherwise approved by Owner.

The Design-Builder agrees and he/she will comply with such provisions before commencing work. All of the insurance shall be provided on policy forms and through companies satisfactory to Owner. The Owner reserves the right to obtain complete, certified copies of all required insurance policies, including the policy declarations page with endorsement number. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Responsibility for Work - Until the completion and final acceptance by Owner of all the work under and implied by this agreement, the work shall be under the Design-Builder's responsible care and charge. The Design-Builder shall rebuild, repair, restore and make good all injuries, damages, re-erectations, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

The Design-Builder shall provide and maintain **builder's risk** (course of construction) or an installation floater (for materials and equipment) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by Owner. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The Policy shall be endorsed with Owner, its directors, officers, employees, and authorized volunteers named as loss payee, as their interest may appear. The making of progress payments to the Design-Builder shall not be construed as creating an insurable interest by or for Owner or be construed as relieving the Design-Builder or their subcontractors of responsibility for

loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by Owner.

Partial Occupancy - Partial occupancy or use in accordance with Article 9 shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

Deductibles and Self-Insured Retentions - Design-Builder has a self-insured retention of \$100,000 which is hereby approved by the Owner. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Owner.

Verification of Coverage - Evidences of Insurance Design-Builder shall furnish the Owner with copies of certificates and amendatory endorsements effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Design-Builder's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages, required by these specifications, at any time. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Continuation of Coverage - The Design-Builder shall, upon demand of Owner deliver evidence of coverage showing continuation of coverage renewed on an annual basis for at least (5) years after completion of the project. Design-Builder further waives all rights of subrogation under this agreement. When any of the required coverages expire during the term of this agreement, the Design-Builder shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against Owner to Owner at least five (5) days following the expiration date.

Sub-Contractors – In the event that the Design-Builder employs other Contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Design-Builder's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above (via as broad as ISO CG 20 38 04 13), except as modified below. The Design-Builder shall, upon demand of Owner, deliver to Owner copies such policy or policies of insurance and the receipts for payment of premiums thereon. For subcontractors performing work pursuant to a subcontract of less than \$500,000, such subcontractors shall only be required to provide General Liability coverage of \$1 million per occurrence, \$2 million aggregate, but otherwise consistent with the minimum insurance requirements specified above. For subcontractors performing work pursuant to a subcontract of \$500,000 to \$1,000,000, such subcontractors shall only be required to provide General Liability coverage of \$2 million per occurrence, \$4 million aggregate, but otherwise consistent with the minimum insurance requirements specified above. Pollution Liability coverage requirements shall be required of subcontractors only at the Design-Builder's discretion.

11.1.2 Owner's Insurance.

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Design-Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.2 Fire Insurance.

Before the commencement of the Work, the Design-Builder shall procure, maintain, and cause to be maintained at the Design-Builder's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner.

11.3 Other Insurance.

The Design-Builder shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations, or as required by Third Parties.

11.4 Proof of Carriage of Insurance.

The Design-Builder shall not commence Work nor shall it allow any Design Consultant or Subcontractor of any tier to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause: "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and others as required are named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner or any other additional insured.
- (d) The Design-Builder and its Subcontractors shall produce a certified copy of any insurance policy required under this article upon written request of the Owner.

11.5 Compliance.

Compliance by Design-Builder with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Design-Builder from liability assumed under any provision of the Contract Documents.

11.6 Waiver of Subrogation.

The Owner and the Design-Builder each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Design-Builder. The provisions of this Section 11.9 are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Design-Builder shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

11.7 Performance and Payment Bonds.

11.7.1 Bond Requirements

Prior to commencing any portion of the Construction Phase Work, the Design-Builder shall furnish separate Payment and Performance Bonds in the form provided for in Exhibits J and K attached hereto for the Construction Phase Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate Surety authorized and admitted to transact business in California as sureties. The cost of the bonds shall be included in the Contract Sum.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Design-Builder shall, upon request of the Owner, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Builder will release the Surety. If the Design-Builder fails to furnish the required bonds, the Owner may terminate the Contract for cause.

11.7.2 Surety Qualification

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted Surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 Uncovering of Work.

12.1.1 Specific Request.

If a portion of the Work is covered contrary to the Owner's or any designated Inspector's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner examination and be replaced at the Design-Builder's expense without adjustment of the Contract Sum or the Contract Time.

12.1.2 No Specific Request.

If a portion of the Work has been covered, which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Design-Builder's expense within the Contract Sum unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.

12.2 Correction of Work.

12.2.1 Before Or After Final Completion.

12.2.1.1 Warranty Obligation.

The Design-Builder shall promptly correct Work properly rejected by the Owner, as failing to conform to the requirements of the Contract Documents, whether discovered before Final Completion or within the warranty period specified in the Contract Documents, and whether or not fabricated, installed or completed. Costs of correcting such properly rejected Work, including additional testing, inspections, and compensation for the Owner's Project Manager's services and expenses made necessary thereby, shall be at the Design-Builder's expense within the Contract Sum.

12.2.2 After Final Completion.

12.2.2.1 Warranty Obligation.

In addition to the Design-Builder's warranty obligations under Paragraph 3.9, if, within one year after the date of Final Completion of the Work thereof or after the date for commencement of warranties established under Subparagraph 3.9.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly but shall commence said corrective work no more than seven (7) calendar days after receipt of written notice from the Owner to do so, unless the Owner has previously given the Design-Builder a written

acceptance of such condition. Such corrective work shall be performed without charge or cost to Owner after Final Completion of the Work. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner, the Owner may correct the nonconforming work in accordance with Subparagraph 3.9.5.

- (a) Emergencies. If immediate correction of Work is required for life, safety or the protection of property and is performed by the Owner, Design-Builder shall pay to the Owner all reasonable costs of correcting such Work.
- (b) Warranty Period Extended. The one year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Paragraph 12.2.
- (c) Removal. The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

12.2.3 Destruction or Damage.

The Design-Builder shall bear the cost within the Contract Sum of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.4 No Limitation.

Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the one year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

12.2.5 Acceptance of Nonconforming Work.

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction. In such case, the Contract Sum will be reduced by an amount which is equitable under the circumstances. Such adjustment shall be effected whether or not Final Payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Governing Law.

The Contract shall be governed by the laws of the State of California without regard to choice of law principles thereof. The exclusive venue of any legal action brought by the Owner, the Design-Builder, or any Consultant or Subcontractor, with regard to this Agreement or Project, shall be in Orange County, California. Design-Builder agrees to incorporate this provision into all Design Consultant and Subcontract agreements.

13.2 Successors and Assigns.

The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. The Design-Builder shall not sublet or assign the Work of this Contract or any portion thereof or any monies due thereunder, without the express prior written consent and approval of Owner. Owner may freely assign its rights hereunder, without limitation, to a separate entity and Design-Builder agrees, upon such entity's request, to continue and complete performance of the Work upon payment of any undisputed outstanding amounts due Design-Builder for services performed up to and including the effective date of the assignment, provided adequate proof of funding to completion is offered by assignee. Any entity which shall

succeed to the rights of Owner shall be entitled to enforce the rights of Owner hereunder. If requested by such entity, Design-Builder will execute a separate letter or other agreement with such entity further evidencing Design-Builder's commitment to continue performance of the Contract.

13.3 Written Notice.

Written notice shall be deemed to have been duly served if delivered in person, or by USPS Certified Mail (return receipt requested), courier service, or package delivery service (such as UPS and FedEx) to the individuals identified for receipt of notice in the Agreement.

13.4 Rights and Remedies.

13.4.1 Cumulative Rights.

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No Waiver.

No action or failure to act by the Owner or the Design-Builder shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in the Contract Documents or as may be otherwise agreed in writing.

13.5 Tests and Inspections.

13.5.1 Required Tests, Inspections, and Costs.

If the Contract Documents, Owner instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, Design-Builder shall give notice, in accordance with such authority, of its readiness for observation or inspection, **at least two (2) working days** prior to being tested or covered up. If inspection is by authority other than Owner, Design-Builder shall inform Owner of date fixed for such inspection. All required certificates of inspection shall be secured by Design-Builder. If any Work required to be tested should be covered up without approval or consent of Owner, Design-Builder must, if required by Owner, uncover the Work for examination and satisfactorily reconstruct at Design-Builder's expense within the Contract Sum in compliance with Contract. Cost of testing and any materials found not to be in compliance with the Contract shall be paid by Design-Builder within the Contract Sum. Other costs for tests and inspection of materials shall be paid by Owner. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or Owner's Representative, and not by Design-Builder. Design-Builder shall notify Owner a sufficient time in advance of manufacture of materials to be supplied by it under Contract, which must, by terms of contract, be tested, in order that Owner may arrange for testing of same at source of supply. Prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, the materials shall not be

incorporated into the Work without prior approval of Owner and subsequent testing and inspection. Re-examination of questioned work may be ordered by Owner and, if so ordered, Work must be uncovered by Design-Builder. If such uncovered Work be found in accordance with Contract Documents, Owner shall pay costs of re-examination and replacement. If such uncovered Work be found not in accordance with Contract Documents, Design-Builder shall pay such costs within the Contract Sum.

13.5.2 Additional Tests and Inspections.

If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Subparagraph 13.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs shall be at the Owner's expense. If such procedures for testing, inspection, or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for Owner's testing and inspection services and expenses, shall be at the Design-Builder's expense, within the Contract Sum. Cost of re-testing, re-inspection, and re-approvals as described herein, including compensation for the Owner's testing and inspection services and expenses, shall be paid for by the Owner and deducted from the Contract Sum by a Change Order or Construction Work Directive.

13.5.3 Documentation.

Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the Owner. Delivery of such documentation is a condition precedent to Owner's obligation to make payment to Design-Builder.

13.5.4 Observation of Tests.

If the Owner is to observe tests, inspections, or approvals required by the Contract Documents, Owner will do so promptly and, where practicable, at the normal place of testing.

13.5.5 Time.

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 Maintenance, Inspection, and Audit of Records.

All books, account, reports, files, correspondence, data, and other records relating to this Contract shall be maintained by the Design-Builder and shall be subject at all reasonable times to review, inspection, and audit by the State of California and/or Owner or its designated representatives for a period of **three (3) years** after Final Completion of the Work. Such records

shall be produced by the Design-Builder within a reasonable time at a place designated by the Owner, upon written notice to the Design-Builder.

13.7 Independent Contractor.

Design-Builder is retained hereunder to render a service within the scope of its training and experience, and Design-Builder shall be an independent contractor and not an employee of the Owner. As such, Owner shall not be called upon to assume any liability for the direct payment of any salary to any employee or Subcontractor of Design-Builder, nor to pay any benefit to any employee or Subcontractor or vendor under the Workers' Compensation laws. None of Design-Builder's officers, agents, employees, and Subcontractors, nor any of their agents, officers, and employees, shall be deemed officers, agents, employees, and Subcontractors of the Owner, and the Owner shall not be liable or responsible to them for anything whatsoever other than liability to Design-Builder set forth in this Contract.

13.8 Keys and Access.

If the Owner furnishes keys and/or access cards to the Design-Builder to provide access to Owner's property, the Design-Builder shall assure that such access instruments are not duplicated and shall return all such instruments in good condition upon request of the Owner or prior to receipt of final payment, whichever is earlier. If the Design-Builder fails to return all access instruments furnished to it, the Design-Builder shall be responsible, within the Contract Sum, for all Work, materials, and costs associated with reestablishing secured access.

13.9 Survival of Terms.

Any indemnity, warranty or guarantee given by the Design-Builder to Owner under the Contract Documents shall survive the expiration or termination of the Contract Documents and shall be binding upon Design-Builder until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

13.10 Cooperation With Labor.

13.10.1 General.

The parties agree and declare that Design-Builder and Owner are separate and independent entities and that Design-Builder has full responsibility for performance of the Work and direction of the work force, subject to and under the duty of Design-Builder to cooperate with Owner and its Separate Contractors. Design-Builder recognizes that in the performance of its Work it may be required to work with and near Separate Contractors and representatives of Owner on the jobsite. The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

13.10.2 Picketing.

13.10.2.1 Reserve Gate System.

Design-Builder agrees that should there be picketing or a threat of picketing by any labor organization at or near the site, Design-Builder, in cooperation with Owner, shall establish a reserve gate system and require employees of Design-Builder, Subcontractors, and suppliers to use one or more designated gates. In that event, it shall be the affirmative obligation of Design-Builder, as a material consideration of this Contract to ensure that employees of Design-Builder, Subcontractors, and suppliers use only the gates or other entryways designated by Owner from time to time on the Project.

13.10.2.2 Sympathy Strike.

Notwithstanding the establishment or non-establishment of a reserve gate, in the event employees of Design-Builder, Subcontractors or suppliers refuse to work because of any labor disputes or grievances (including any “secondary” or “sympathy” strike or boycott directed against the Project) not caused by Owner or its Separate Contractors and not the result of an area-wide strike not specifically related to this Project and that actually prevent performance of the Work, Design-Builder shall not be relieved of its obligation to supply enough properly skilled workers to perform the Work without interruption or further delay.

13.10.3 Labor Disputes.

Design-Builder and Owner agree to cooperate fully with each other and their representatives and attorneys with respect to any labor dispute that should arise on the site.

13.11 Compliance With Restrictions.

Design-Builder shall comply with all conditions, restrictions and reservations of record, statutes, regulations, and ordinances, including, without limitation, all pollution control, environmental protection, zoning, planning, land use requirements, all restrictions and requirements affecting the Project and adjoining properties, and disabled access imposed by the City, the County and all other governmental entities including, without limitation, the requirements of any general plan and environmental requirements in connection with use, occupancy and building permits, and requirements of public utilities which affect construction of the Work in effect at the time of execution of this Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the Design-Builder.

14.1.1 Work Stoppage Not Caused by Owner.

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or a Subcontractor, Sub subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the

Design-Builder, for any of the following reasons: issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped or an act of government, such as a declaration of national emergency which requires all Work to be stopped; and Design-Builder has given Owner written notice within **ten (10) calendar days of the occurrence** of such ground for termination, then the Design-Builder may, upon **thirty (30) additional calendar days** written notice to Owner and, unless the reason has theretofore been cured, terminate its performance and recover from the Owner payment for Work executed to date and reasonable demobilization costs.

14.1.2 Work Stoppage Caused by Owner.

If the Work is stopped for a period of one hundred and twenty (120) consecutive days or cumulative within a six (6) month period through no act or fault of the Design-Builder or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Design-Builder because the Owner has chosen to suspend work or has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Design-Builder may give Owner **ten (10) calendar days** written notice to cure and recommence the Work. If the Owner fails to cure and recommence the Work, the Design-Builder may, upon **ten (10) additional calendar days'** written notice to the Owner, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.1 above.

14.2 Termination by the Owner for Cause.

14.2.1 Grounds.

The Owner may terminate the Design-Builder's performance of the Contract if:

- (a) Design-Builder fails promptly to begin the Work under the Contract Documents;
or
- (b) Design-Builder persistently refuses or fails to supply enough properly skilled workers or proper materials; or
- (c) Design-Builder persistently fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or
- (d) Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Owner to do so or (if applicable) after cessation of the event preventing performance; or
- (e) Any material representation or warranty made by Design-Builder in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made; or

- (f) Design-Builder fails to make payment when due, absent a valid dispute and without substantial justification to Subcontractors or for equipment, materials, or labor in accordance with the respective Contract Documents and applicable law; or
- (g) Design-Builder disregards material laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (h) Design-Builder otherwise is guilty of a material breach of any agreement, representation or warranty contained in the Contract Documents; or
- (i) Design-Builder becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide Owner with adequate assurances of Design-Builder's ability to satisfy its contractual obligations.

14.2.2 Owner's Rights.

When any of the reasons specified in Subparagraph 14.2.1 exist, the Owner may, in addition to and without prejudice to any other rights or remedies of the Owner, and after giving the Design-Builder and its surety **fifteen (15) calendar days** written notice and opportunity to cure a breach (other than a breach described in (f), (g) and (i) above, or any breach that cannot be cured, may declare an "event of default" to the design-builder and its surety, terminate this Agreement with the Design-Builder.

After providing the Notice of Event of Default, the surety shall have **20 days** from the date of receipt of such notification to notify the Owner whether it intends to assume the responsibility for the work. If the surety does not agree, the Owner may:

- (a) Take possession of the site and of all materials, equipment, tools and construction equipment, and machinery thereon owned by the Design-Builder;
- (b) Suspend any further payments to Design-Builder;
- (c) Accept assignment of subcontracts pursuant to Paragraph 5.4; and
- (d) Finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 Costs.

If Owner's costs to complete and damages incurred due to Design-Builder's default exceed the unpaid Contract balance, the Design-Builder and its surety shall pay the difference to the Owner. In addition to any other damages under the Contract Documents for all costs reasonably incurred by the Owner or any other party acting on the Owner's behalf in completing the Work or having the Work completed by others.

14.2.4 Erroneous Termination.

If it has been adjudicated or otherwise determined that Owner has erroneously or negligently terminated the Design-Builder for cause, then said termination shall automatically convert to a termination by the Owner for convenience as set forth in Paragraph 14.4.

14.3 Suspension by the Owner.

14.3.1 Suspension For Convenience.

14.3.1.1 Owner's Discretion.

The Owner may, without cause, order the Design-Builder in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.2 Recommencement Upon Notice.

Design-Builder shall promptly recommence the Work upon written notice from Owner directing Design-Builder to resume the Work. The Contract Sum and Contract Time shall be adjusted for any increases in the cost and time caused by suspension, delay, or interruption provided Design-Builder complies with the Change Order and Claims proceedings set forth the Articles 4 and 7 of this Agreement. No adjustment shall be made to the extent:

- (a) That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible; or
- (b) That an equitable adjustment is made or denied under another provision of the Contract.

14.3.2 Suspension For Cause.

Owner has the authority by written order to suspend the Work without liability to Owner wholly or in part for Design-Builder's failure to:

- (a) Correct conditions unsafe for the Project personnel or general public; or
- (b) Carry out the material terms of the Contract; or
- (c) Carry out orders of Owner.

14.3.3 Responsibilities of Design-Builder During Suspension Periods.

During periods that Work is suspended, Design-Builder shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project and continue to perform according the Article 10 of this Agreement. Design-Builder shall be entitled to reimbursement of its reasonable costs to protect the Project Site incurred during any such suspension period.

14.4 Termination by the Owner for Convenience.

14.4.1 Grounds.

Without limiting any rights which Owner may have by reason of any default by Design-Builder hereunder, Owner may terminate Design-Builder's performance of the Contract in whole or in part, at any time, for convenience or any other reason upon written notice to Design-Builder. Such termination shall be effective as of the date stated in the written notice, which shall be no less than **fifteen (15) calendar days** from the date of the notice.

14.4.2 Design-Builder Actions.

Immediately upon receipt of such notice, Design-Builder shall: (i) cease performance of the Work of this Agreement to the extent specified in the notice; (ii) take actions necessary or that the Owner may direct, for the protection and preservation of the Work; (iii) settle outstanding liabilities, as directed by Owner; (iv) transfer title and deliver to Owner Work in progress, specialized equipment necessary to perform the Work, and Record Documents; and, (v) except for Work directed by Owner to be performed and to facilitate wind down of the Project, incur no further costs or expenses. At the option of the Owner, all or any of the subcontracts entered into by Design-Builder prior to the date of termination shall be terminated or shall be assigned to Owner.

14.4.3 Compensation.

If the parties are unable to agree on the amount of a termination settlement, the Owner shall pay the Design-Builder the following amounts:

- (a) For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - (1) The amounts of all previously and properly submitted and unpaid Applications for Payment;
 - (2) The Cost of the Work performed subsequent to the date covered by last Application for Payment submitted; and
 - (3) 15% for overhead and profit on (a)(2) , above.

- (b) The reasonable costs of settlement of the Work terminated, including:
 - (1) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and
 - (2) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
 - (3) Costs reasonably incurred to wind down the Project.

In no event shall Design-Builder be entitled to recover overhead or profit on Work not performed.

ARTICLE 15 LABOR PROVISIONS

15.1 Normal Hours of Work.

Normal hours of work (7:00 a.m. to 5:00 p.m. Monday through Friday) for Design-Builder's operations, which are located within city limits, must comply with city ordinances or other requirements of the city if they differ than as stated above. Design-Builder's operations in the unincorporated areas or areas which border a city, town or other county must comply with requirements of Orange County or requirements adopted by other jurisdictions, whichever are more stringent. In case of conflict between the requirements of the City of Orange, the County of Orange, and the requirements of the Contract Documents, the most restrictive requirements will govern.

15.2 Saturday, Sunday, Holiday and Overtime Work.

- (a) No construction Work shall be done on Sundays or legal holidays recognized by the Owner and no Work shall be performed outside of normal hours of work (7:00 a.m. to 5:00 p.m.) without the prior consent of the Owner, unless required in the Contract Documents.
- (b) Whenever the Design-Builder intends to perform overtime work or work on Sunday or a legal holiday recognized by the Owner the Design-Builder must request permission by giving written notice to the Engineer at least **two (2) working days** prior to performing work.
- (c) Unless specifically provided or required by the Contract Documents, Design-Builder shall receive no additional compensation for any overtime work (i.e., work in excess of: eight (8) hours in any one day; forty (40) hours in any one calendar week; or evening, night, legal holidays observed by the Owner, or weekend work).
- (d) Prior to the start of such Work, when necessary, the Design-Builder must arrange with the Owner for the continuous or periodic inspection of the Work and tests of materials.
- (e) Should the Design-Builder find it necessary in order to complete the Work according to the Project Schedule to perform certain of Design-Builder's operations on Saturdays, Sundays, holidays or during the overtime hours, these operations will be performed as part of the Work included in the Contract Sum and do not constitute a basis for additional compensation.
- (f) The Owner has the right to order Design-Builder to perform Work outside the normal hours of work. Owner will issue such Order in writing. If the Owner orders the Design-Builder to perform Work outside the normal hours of work, the Design-Builder must make all arrangements to supply an adequate Work force for

the task to be accomplished and will be compensated for the premium portion of the wages paid, plus labor burdens applicable to the premium portion only of the wages paid. Design-Builder must submit copies of Design-Builder's payrolls indicating the premium wages actually paid, and the Owner will issue a Change Order to reimburse the Design-Builder for Design-Builder's actual costs only. The Owner will pay all extra expense of the Owner's inspection.

15.3 DIR Registration.

Strict compliance with all DIR registration requirements in accordance with Labor Code §§ 1725.5 and 1771.1 is a material obligation of the Design-Builder and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Design-Builder and all of its subcontractors of any tier. The failure of the Design-Builder and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract and subject to termination for cause.

An affirmative and ongoing obligation of the Design-Builder under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work in full and strict compliance with the DIR registration requirements and Design-Builder shall immediately notify Owner of the name and registration number of anyone subject to the DIR registration requirements before allowed to work on the Project. Design-Builder shall provide a Certification of Contractor and Subcontractor Department of Industrial Relations Registration form for each subcontractor subject to the DIR Registration. The Design-Builder shall not permit or allow any subcontractor of any tier to perform any Work without the Design-Builder's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code § 1771.1. Design-Builder or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

15.4 Wage Rates – Prevailing Wage Requirement.

Wages shall be subject to the following:

- (a) Design-Builder acknowledges that this Project constitutes a public works project and is subject to the requirements of (1) Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, and (2) Subchapter 3 (commencing at § 16000) of Title 8, Division 1, Chapter 8 of the California Code of Regulations, which are hereby incorporated herein as if set forth in full. The Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations. These rates are on file at the administrative office of the Owner and are also available from the Director of the Department of Industrial Relations at dir.ca.gov/Public-Works/Prevailing-Wage.html. Copies will be made available to any interested party on request. The

Design-Builder shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

- (b) The Design-Builder shall pay and shall cause to be paid to each worker employed by the Design-Builder or any Subcontractor, of any tier, to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code § 1773.1.
- (c) Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- (d) The Design-Builder shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design-Builder or any Subcontractor and such workers.

15.5 Hours of Labor.

Eight (8) hours labor constitutes a legal day's work. Design-Builder shall forfeit as a penalty to the Owner \$50.00 for each worker employed in the execution of the Contract by Design-Builder or any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the California Labor Code, and in particular, § 1810 through § 1815 thereof, except that work performed by employees of Contractor or any Subcontractor in excess of eight (8) hours per day or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours per week, at not less than one and one-half (1.50) times the basic rate of pay as provided in § 1815. If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code § 1815, then that higher rate of pay for overtime rate must be paid.

15.6 Records of Wages Paid.

- (a) Pursuant to §1776 of the Labor Code, the Design-Builder and each Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
- (b) All payroll records as specified in Labor Code §1776 of the Design-Builder and all Subcontractors shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(3) on a monthly basis (or more frequently if required by the Owner or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code §1776 shall be certified and submitted to the Owner with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - 1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - 2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of Owner, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Design-Builder, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Design-Builder.
- (c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.
- (d) The Design-Builder or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within ten (10) calendar days after receipt of a written request.
- (e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Owner, the Division of

Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (§ 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of the social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- (f) The Design-Builder shall inform the Owner of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (g) The Design-Builder (or Subcontractors) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the Owner, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

Responsibility for compliance with this Article shall rest upon the Design-Builder.

15.7 Monitoring and Enforcement by Labor Commissioner.

- (a) Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Design-Builder and all subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code § 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Design-Builder and all subcontractors must register for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The Owner will have direct and immediate access to all certified payroll reports for the Project that are submitted through the Labor Commissioner's system. The Owner can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act.
- (b) The Labor Commissioner/DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring

submission of itemized statements prepared in accordance with Labor Code § 226, and conducting random in-person inspections of the Project Site (On-Site Visits). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

- (c) Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the Owner by the Design-Builder. Design-Builder and all subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- (d) Prior to commencing any Work on the Project, the Design-Builder shall post the required notice/posters required under the California Code of Regulations and Labor Code § 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project Site. The required notice/poster is available on the Labor Commissioner's website.

15.8 Apprentices.

15.8.1 Employment of Apprentices.

Design-Builder agrees to comply with the requirements of Labor Code § 1777.5. The Design-Builder awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Design-Builder and Subcontractor shall employ apprentices in the ratio set forth in Labor Code § 1777.5. The Design-Builder or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project Site for a certificate approving the Design-Builder or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Design-Builder or Subcontractor, shall arrange for the dispatch of apprentices to the Design-Builder or Subcontractor upon the Design-Builder's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code § 1777.5.

15.8.2 Apprentice Wages and Definitions.

All apprentices employed by the Design-Builder to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

15.8.3 Submission of Contract Information.

Prior to commencing work on the Project, the Design-Builder and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the Owner if requested. Within **sixty (60) calendar days** after concluding work on the Project, the Design-Builder and Subcontractors shall submit to the Owner, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

15.8.4 Apprentice Fund.

The Design-Builder or any Subcontractor, of any tier, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Design-Builder and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Design-Builder or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Design-Builder and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

15.8.5 Design-Builder Compliance.

The responsibility of compliance with this Article and § 1777.5 of the Labor Code for all apprenticeable occupations is with the Design-Builder. Any Design-Builder or Subcontractor that knowingly violates the provisions of this Article or Labor Code § 1777.5 shall be subject to the penalties set forth in Labor Code § 1777.7.

15.9 Prohibition against use of Debarred Contractors.

Pursuant to Public Contract Code § 6109, the Design-Builder shall not perform Work on this Project with any Subcontractor who is ineligible to perform Work on a public works project pursuant to § 1777.1 or § 1777.7 of the Labor Code. Any contract on a public works project entered into between the Design-Builder and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing Work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Design-Builder on this Project shall be returned to the Owner. The Design-Builder shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.

15.10 Character of Workers.

The Design-Builder shall not allow his/her agents or employees, Subcontractors, or any agent or employee thereof, to trespass on premises or lands in the vicinity of the Work. Only skilled foimen and workers shall be employed on Work requiring special qualifications, and when required by the Owner, the Design-Builder shall discharge any person who commits trespass, or in the opinion of the Owner, acts in a disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable manner. Any employee under the influence, being intoxicated or bringing or having intoxicating liquors or controlled substances (including marijuana) on the Work shall be discharged. Such discharge shall not be the basis of any claim for compensation of damages against the Owner or any of its officers, agents, and employees.

15.11 Worker's Compensation.

In accordance with the provisions of § 3700 of the Labor Code, the Contractor and each Subcontractor is required to secure the payment of Workers' Compensation to its employees.

ARTICLE 16 ADDITIONAL PROVISIONS

16.1 References to Other Documents.

Where reference is made in this Agreement to a provision of any exhibit or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

16.2 Owner's Representative.

The Owner shall designate, in writing, a representative authorized to act on the Owner's behalf with respect to the Project who will serve as the Owner's Project Manager. The only representatives of Owner with whom (i) Design-Builder shall correspond and take direction from, and (ii) who will have the authority to authorize Change Orders and Construction Change Directives shall be the General Manager or Engineering Manager of Owner. At Owner's election, Design-Builder shall also take direction from such other person(s) designated from time to time, in writing, signed by Owner.

16.3 Design-Builder's Project Representative.

Design-Builder's Project Representative shall be designed in writing prior to commencement of the Work. Design-Builder's representative shall communicate regularly with the Owner and shall have the authority to act on behalf of Design-Builder. The Design-Builder's representative may be replaced only with the approval of the Owner, which will not be unreasonably withheld.

16.4 Equal Employment Opportunity and Affirmative Action.

Design-Builder shall comply with applicable laws, regulations on subcontracting with Disadvantaged Business Enterprises, Affirmative Action in Hiring and Sexual Harassment.

16.5 Interest.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at seven (7%) per annum, simple interest.

ARTICLE 17
ENUMERATION OF CONTRACT DOCUMENTS

17.1 Contract Documents.

The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows, all of which are attached hereto and/or are incorporated herein by this reference with the same force and effect as if the same were set forth in full herein.

17.1.1 Agreement.

The Agreement (also referred to as the “Contract”) as executed between Owner and Design-Builder.

17.1.2 Supplementary Conditions.

The Supplementary Conditions, if any, are attached hereto as Attachment No. 1.

17.1.3 Preliminary Design Documents/Project Information.

The Preliminary Design Documents and/or Project Information an index of which is attached hereto as Exhibit “B.”

17.1.4 Addenda.

Addenda, if any, as follows:

<u>Number</u>	<u>Date</u>	<u>Pages</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

17.1.5 Construction Documents.

Construction Documents prepared by Design-Builder and approved by the Owner as provided in the Contract Documents (index to be attached by Amendment).

17.1.6 Other Documents.

Other Documents, if any, forming part of the Contract Documents are as follows and are attached hereto and incorporated herein by this reference.

Exhibit A – Project Description/Overview.

Exhibit B – Index of Owner Supplied Information.

Exhibit C – Schedule of Values.

- 1) Design Phase Fee
- 2) Construction Phase Stipulated (Lump) Sum Price (to be added by Amendment once finalized)

Exhibit D – Alternates and Unit Prices.

Exhibit E – Change Order Form.

Exhibit F – Payment Forms.

- 1) Application for and Certification of Payment.
- 2) Conditional Waiver and Release Upon Progress Payment.
- 3) Unconditional Waiver and Release Upon Progress Payment.
- 4) Conditional Waiver and Release Upon Final Payment
- 5) Unconditional Waiver and Release Upon Final Payment

Exhibit G – RFP Responses / Design-Build RFP Proposal

Exhibit H – RFP Responses

Exhibit I – Bridging Documents

Exhibit J - Payment Bond

Exhibit K – Performance Bond

**ARTICLE 18
SIGNATURES**

18.1 Representations.

Each Party represents and warrants that it has full power and authority to enter into and perform the Agreement, and that the person executing the Agreement on behalf of that party has been properly authorized and empowered to enter into the Agreement.

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument, and when signed by each of the parties shall be deemed to be in full force and effect. In the event the parties hereto execute and deliver this Agreement by signing and delivery using facsimile transmission, such signing and delivery of facsimile signatures shall be effective and shall have the same effect as if original signatures were delivered. Each such party signing and delivering by facsimile transmission shall immediately thereafter by U.S. First Class Mail, original signed documents to the other party.

This Agreement is entered into as of the day and year first written above and is executed by the parties' duly authorized officers in at least three (3) original copies, of which one is to be delivered to the Design-Builder, the remainder to the Owner.

OWNER

DESIGN-BUILDER

East Orange County Water Owner

(Name of Firm)

David Youngblood, General Manager

(Signature)

By: _____
(Type of Print Name)

Its: _____
(type or Print Title)

License # _____

Tax I.D. # _____

