

Task 3.6.4.9 - Discipline Engineering Design Criteria

DM's will be developed to include the general design criteria for the technical disciplines, including HVAC, plumbing, electrical, structural, mechanical, architectural, instrumentation, and civil. In addition to the design criteria to be used for the Project, the applicable codes and standards will be listed that apply to the Project.

Task 3.6.4.10 - Pre-purchased Equipment and Materials

This DM will include recommendations for any pre-purchased equipment and materials recommended for advancing the Project schedule. The DM will identify vendor-imposed lead times for the recommended purchases and show Project Schedule impacts as well as critical purchase deadlines. The list of equipment and materials recommended for pre-purchase will be coordinated with the County to ensure that the equipment and materials meet County standards and any County preferences for type or manufacturer. Following County approval, Design-Builder will work with County to facilitate timely purchase of the recommended equipment and materials.

Task 3.7 - Preliminary Design Report

The Design-Builder will compile the DMs developed under this task into a comprehensive Preliminary Design Report. A Final Design Report will be completed under other tasks.

Task 3 - Deliverables

1. Draft Preliminary Design Report
2. Final Preliminary Design Report
3. Workshop Summary
4. Draft preparation of required permits and accompanying documentation
5. 30% Schematic Design Report (Draft and Final)
6. Presentation workshop materials and summary
7. 30% Construction Cost Estimate
8. 60% Design Development Documents
9. 60% Construction Cost Estimate
10. Final preparation of required permits and accompanying documentation
11. Constructability Review Workshop Materials and Summary
12. Presentation workshop materials
13. 95% Construction Cost Estimate
14. 95% Contract Documents
15. 100% Contract Documents
16. Preliminary Design
17. Planimetric mapping, DTM, and 1.0-foot contour interval contour mapping at 1"=20' scale containing utilities located by field survey methods for the 150 acre site.
18. Digital orthophoto imagery at 1"=20' scale with 0.2-foot ground distance pixel resolution for the 150 acre site.
19. A copy of field notes and electronically collected notes of horizontal and vertical traverses as well as closure information on these traverses.

20. A coordinate printout of surveyed information with X, Y, and Z coordinates listed to the nearest 0.01 foot. The collected field information shall contain the station ID, the horizontal and vertical coordinate information, and feature codes. Information shall be tied to the Arizona State Plane Coordinate System. A Project adjustment factor shall be provided and the final coordinate system shall be converted to ground.
21. ASCII file containing topographic points and survey control points
22. Hard copy plots of the surveyed Project area showing the derived data with the 1.0-foot contours
23. As-built drawings
24. Design memoranda and preliminary drawings
25. Draft and Final Preliminary Design Report

Task 4 - Field Investigations

Task 4.1 - Geotechnical

Based upon available information, the scope of work for geotechnical investigations is assumed to consist of the following:

Task 4.1.1 - Site Reconnaissance and Field Exploration

- Using the facility site layout validated in Task 3, the location of soil borings will be determined, identified by their coordinates, and staked on the site.
- Clearance by a Subsurface Utility Engineering (SUE) firm will be obtained by Design-Builder for utilities at the proposed boring locations. A site reconnaissance will be made to evaluate site and access conditions by the SUE and soil boring driller. Cultural Resource (CR) clearances will be provided by County. One week minimum notification to CR prior to any drilling.
- For purposes of estimating cost, it is assumed that there will be 2 borings for a total footage of approximately 20 lineal feet each.
- The subsurface conditions encountered will be logged by a geologist or geotechnical engineer, and the soils encountered will be identified in accordance with ASTM D 248800, *Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)*. Standard Penetration Tests will be performed in accordance with ASTM D 1586-99, *Standard Test Method for Penetration Tests and Split-Barrel Sampling of Soils* at approximately 5 feet intervals. For soft fine grained soils, relatively undisturbed Shelby tube samples will be obtained for laboratory testing, in general accordance with ASTM D 1587-00, *Standard Practice for Thin-Walled Tube Sampling of Soils for Geotechnical Purposes*. Where the soils is too stiff to use Shelby tube samples, ring samples will be taken in general accordance with ASTM D 3550-84, *Standard Practice for Ring-Lined Barrel Sampling of Soils*.
- Piezometers will be installed at 4 to 5 selected locations to determine the groundwater levels in the soil profile. Knowledge of groundwater conditions is important for design as well as for construction planning purposes.
- To aid in corrosion analysis, field resistivity soundings will be performed at various locations at the proposed plant site. The field resistivity soundings will be performed using the Wenner array in accordance with ASTM G57.

Task 4.1.2 - Laboratory Testing

Laboratory tests will be performed on samples obtained from the borings to evaluate certain physical and engineering parameters, including the following:

- One-Dimensional Consolidation (ASTM D 4546)
- Grain Size Distribution (ASTM C 136)
- Percent Passing the No. 200 Sieve (ASTM C 117)
- Atterberg Limits (ASTM D 4318)
- Consolidated Undrained Triaxial Compression Test (ASTM D 4767-02)
- R-Value (ASTM D 2844)
- Swell Potential
- In-Place Moisture and Dry Density
- Chemical Corrosivity Tests including pH, resistivity, and soluble salts.

Task 4.1.3 - Engineering Analysis and Geotechnical Report Preparation

An engineering analysis will be performed to provide the following design parameters, as applicable:

- Allowable bearing pressures for all structures
- Estimated total and differential settlements
- Modulus of subgrade reaction for the design of mat-type foundations
- Coefficient of friction for the design of mat-type foundations or conventional spread footings
- Static lateral earth pressures for unrestrained and restrained subsurface walls such as vault structures including sloping backfill conditions
- Seismically induced lateral earth pressures for unrestrained and restrained subsurface walls such as vault structures including sloping backfill conditions
- Apparent earth pressures for the design of temporary excavation shoring
- Modulus of lateral earth reaction (E') for the design of flexible pipe
- Pipe/soil coefficient of friction
- Lateral earth support and coefficient of friction for pipe thrust blocks
- Seismically induced peak horizontal ground accelerations
- Non-dedicated asphalt concrete and Portland cement concrete pavements
- Dedicated off-site half street asphalt concrete pavements

A geotechnical report will be prepared to include summaries of the above, and of the boring logs.

Task 4.2 - Corrosion

Design-Builder will perform a soils analysis and corrosion control evaluation of the Project site. Investigations will include soil resistivity tests, soil box resistivity test, pH measurements, sulfur reducing bacteria tests, and a stray current potential evaluation. The analysis will be presented in a Design Memorandum with recommendations for corrosion protection design.

The Design-Builder's corrosion engineer will evaluate the corrosion protection requirements in potentially corrosive environments and provide recommendations in the DM on general materials and coatings to use in the Project.

Task 4.3 - Subsurface Utility Engineering

Design-Builder will map all underground utilities within all potential excavation areas at the Project site. This utility mapping will include developing base maps using existing record drawings and other existing information. Vacuum potholing and other locating methods will be used as needed to determine more exact utility locations for existing underground utilities. For purposes of estimating cost, it is assumed that up to three (3) crew days will be required for potholing. Once identified, the location of utilities will be surveyed and shown on the Project mapping. A Subsurface Utility Engineering firm may be used as needed for locating existing subsurface utilities.

Assumptions:

- This task includes three (3) crew days of a subsurface utility company at the Project site for potholing and surveying subsurface utilities.

Task 4.4 - Legal Survey

If required, County will furnish, or direct the Design-Builder to obtain at County's expense, surveys describing physical characteristics, legal limitations, and utility locations for the Project site, and a written legal description of the Project site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

Task 4.5 - Endangered Species Survey

The Design-Builder will hold informal consultations (2 meetings) with the USFWS regarding adverse impacts to any known species within the Project area.

Design-Builder's biologist will survey the Project area, document the results of the field survey, and submit the report to USFWS. The report will document the existence or absence of listed species in the Project area. It is anticipated that comments on the draft report will be received from USFWS. Upon receipt of the comments, a final report will be prepared and submitted to USFWS and County.

Task 4.6 - Arizona Native Plant Survey

Design-Builder will investigate, as applicable, U.S. Bureau of Reclamation (BOR), State of Arizona, and Pima County native plant mitigation requirements for areas that will be disturbed by construction.

Task 4.6.1 - Prepare Native Plant Mitigation Plan

The Design-Builder will map the Project area. The mapping will be prepared at a horizontal scale of T-40 and will use aerial photography prepared in Task 3.

The Design-Builder will consult with the State of Arizona to review the Project area and determine if refinements are required.

The Design-Builder will perform a full plant inventory of lands encompassing the Project. The Design-Builder will calculate plant mitigation fees for the Project area using the State Land Native Plant Value Methodology. The draft plant inventory and mitigation fee calculations will be submitted to County for review

and comment. A final plant inventory and mitigation fee calculation will be prepared that addresses County comments. Final documents will be submitted to County for submission to the State of Arizona.

The Design-Builder will attend one pre-submittal conference with the State of Arizona and will provide technical assistance during the State's review period to answer questions or provide additional information, if required by the State. It is assumed that the Design-Builder will respond to two information requests.

Task 4 - Deliverables

1. Draft and Final Geotechnical Report
2. Draft and Final Corrosion Report
3. Draft and Final ANP Survey Results

Task 5 - Schematic Design (30%)

The purpose of this task is to use the data and guidelines developed in Task 3, Preliminary Design, to develop and evaluate alternative design concepts, and agree upon a single design concept for the Project. The primary products from this task will be design memorandums, a 30% level Plan and Profile Drawings, Schematic Design Report, and an initial 30% level construction cost estimate for the Project.

During the Schematic Design phase, the Design-Builder will develop sketches, preliminary drawings, process and instrument diagrams (P&IDs), and narratives. At the conclusion of this phase of design, a 30% Design Briefing will be held with County. At this briefing, the Design will be used to convey concepts and to solicit input. Meeting minutes will be prepared to capture comments and to document the decisions reached. Specific activities and deliverables from this task are as identified in the subtasks below. During the Schematic Design phase, the Design-Builder will focus on constructability aspects of Project, including facility layouts and construction sequencing.

Task 5.1 - Civil and Site Development

Schematic design work for civil and site development will include the following activities:

- Develop site layouts of improvements for the facility developed to 30% level.
- Identify the locations of underground utilities and incorporate this information into site utility drawings.
- Prepare preliminary storm water calculations and develop preliminary storm water control concepts.
- Review concepts with Design-Builder quality control reviewers.
- Contractor entrance, offices, parking, and staging areas will be defined.

Task 5.2 - Landscape Architecture (Reserved)

Task 5.3 – Architecture (Reserved)

Task 5.4 – Structural (Reserved)

Task 5.5 - Foundations/Excavation

Schematic design for geotechnical will include the following activities:

- Based on the geotechnical investigation described in Task 4, evaluate foundation options.
- Perform an engineering analysis to develop design parameters for the foundation options.

- Review concepts with Design-Builder quality control reviewer.
- Coordinate with civil and structural design leads in making a decision on the preferred foundation option and finalizing design criteria.

Task 5.6 - Process/Hydraulics (Reserved)

Task 5.7 - Process Mechanical (Reserved)

Task 5.8 - Building HVAC/Plumbing (Reserved)

Task 5.9 - Electrical (Reserved)

Task 5.10 (Reserved)

Task 5.11 - Ancillary Systems (Reserved)

Task 5.12 - Updated MOPO Design Memorandum (Reserved)

Task 5.13 - Schematic Design Report (Reserved)

Task 5.14 - Schematic Design Construction Cost Estimate (Reserved)

Task 5.15 - Schematic Design Model Review and Workshop (Reserved)

Task 5 – Deliverables (Reserved)

PHASE 2 – FINAL DESIGN SERVICES

Task 6 - Design Development (60%)

The purpose of this task is to utilize the decisions that were made in the 30% schematic design task to finalize design development and to achieve a true "design freeze" at the conclusion of this task. Structures, equipment and the site plan will be finalized during this task to allow for subsequent final detailing in the Construction Document Preparation phase. Specific activities and work products from this task are described in the following subtasks.

Task 6.1 - Civil and Site Development

- Finalize horizontal locations of major site elements.
- Finalize structure, and finish grade elevations.
- Define demolition requirements and limits.
- Define contractor staging, storage, access, parking, and off-site access corridors.
- Prepare preliminary site grading drawings.
- Show storm water control concepts (retention basins, swales, curb, and gutter) on the drawings.
- Prepare first draft of technical specifications.
- Review design development with Design-Builder quality control reviewer.

Task 6.2 - Landscape Architecture

- Develop construction details for planting and irrigation.
- Provide schedule of plant materials. Schedules will include plant type, plant botanical name, size, quantity, and any special planting considerations.
- Provide schedules of irrigation components. Schedules will include information on the type of piping, controller, backflow preventers, heads, quick couplers, sleeves, gate valves, v-strainers, and enclosures.
- Review design development with Design-Builder quality control reviewer.
- General ground cover - soil stabilization for 85% of disturbed ground areas.

Task 6.3 - Architecture (Reserved)

Task 6.4 - Structural (as applicable)

- Establish foundation design.
- Document structural design concepts for buildings and structures.
- Prepare preliminary floor and foundation plans for major structures.
- Prepare first draft of technical specifications.
- Review design development work products with Design-Builder quality control reviewer.

Task 6.5 - Process/Hydraulics (Reserved)

Task 6.6 - Process Mechanical (Reserved)

Task 6.7 - Building HVAC/Plumbing (Reserved)

Task 6.8 - Electrical (Reserved)

Task 6.9 - Instrumentation and Control Systems (Reserved)

Task 6.10 - Ancillary Systems (Reserved)

Task 6.11 - Project Delivery/Construction Package Analysis

Design-Builder will conduct a Project delivery analysis, which will include consideration of the following:

- Finalize the list of any equipment to be pre-negotiated and/or County selected.
- Coordinate with vendors the equipment to be pre-procured and develop contract interface details.
- Receive County's review comments on 60% documents before development of 95% construction documents begins.
- Update and provide more detail on procurement and construction schedule and milestones. The results of this analysis will be discussed with the PCRWRD at the 60% Design Development Workshop.

Task 6.12 - Updated MOPO Design Memorandum (Reserved)

Task 6.13 - Design Development Construction Cost Estimate

This task includes Design-Builder review of the cost estimate with the County. Construction cost estimating procedures are defined in Task 1.9.

In the event that the cost estimate exceeds the County budget, Design-Builder and County will meet as necessary to review and refine the cost estimate with the goal of reaching consensus on a workable Project cost.

Task 6.14 - Design Development Review with County

Design-Builder will assemble the work products from the tasks above and submit the 60% Design Development document to the County for review and comment. A workshop will be held with the County's personnel to review the 60% deliverable, to receive and discuss comments, and to reach closure on design issues. A 1-day workshop is included in this task to provide time to meet with all appropriate County staff. Following the workshop, meeting minutes and responses to comments will be prepared and submitted by Design-Builder. The responses to comments will be incorporated in the 95% Construction Documents.

Task 6 - Deliverables

1. Design Development Documents
2. Project Delivery/Construction Package Memoranda and Meeting Minutes
3. DD Construction Cost Estimate
4. DD Workshop Summary

Task 7 - Construction Document Preparation (95%)

The purpose of this task is to develop the final construction drawings, specifications, and schedules for the Construction Phase. The construction documents will be finalized in Task 9, by incorporating the 95% review comments.

Task 7.1 - Develop 95% Construction Documents

Specific activities performed by the Design-Builder during this phase will include the following:

- Incorporate responses to comments on the 60% Design Development Document.
- Complete the design around the equipment that has been pre-purchased.
- Prepare final construction drawings.
- Prepare final technical specifications.
- Prepare final calculations.
- Complete final checking and coordination review by design leads.
- Provide independent review by the Design-Builder quality control review team.

Task 7.2 - Construction Documents Construction Cost Estimate

A 95% definitive construction cost estimate will be prepared from 95% percent complete plans and elevations, piping and instrument diagrams, one-line electrical diagrams, equipment data sheets, vendor quotations, structural details, soil data, drawings of major foundations and buildings, and a complete set of specifications.

Task 7.3 - Construction Document Review with County

The Design-Builder will submit 95% Construction Documents to the County for review and comment. The County will prepare one set of collated and adjudicated review comments and provide to the Design-Builder prior to the 95% Review Workshop. The workshop will be held to discuss and resolve this final set of review

comments. Following the workshop, meeting minutes and responses to comments will be submitted to the County to document decisions.

Task 7.4 - Construction Cost Estimate Reconciliation

This task includes Design-Builder review of the cost estimate with County. Construction cost estimating procedures are defined in Task 1.9.

In the event that the cost estimate exceeds the County budget, Design-Builder and County will meet as necessary to review and refine the cost estimate with the goal of reaching consensus on a workable Project cost.

Task 7.5 - Updated MOPO Design Memorandum (Reserved)

Task 7 - Deliverables

1. 95% Contract Documents
2. CD Construction Cost Estimate
3. Adjudicated Review Comments and Workshop Minutes

Task 8 - Construction GMP

Design-Builder will prepare and, by the date specified in the Contract, deliver to County a proposed GMP for the construction phase of the Project. At a minimum, the following component will be included in the proposed GMP:

- A recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal.
- The five (5) elements of the Guaranteed Maximum Price:
 - a. Guaranteed Maximum Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
 - b. the Design-Builder's Contingency for the Work;
 - c. Guaranteed Maximum Design-Builder's Staffing Cost (hereinafter defined), detailed by expense category;
 - d. Guaranteed Maximum General Conditions Cost (includes bond & insurance costs) (hereinafter defined), detailed by expense category; and
 - e. Guaranteed Maximum for Design-Builder's Overhead and Profit.
- A draft schedule of values;
- A description of all other inclusions to, or exclusions from, the GMP;
- All assumptions and clarifications; and
- The final construction Project Schedule.

Task 9 - 100% Construction Document Completion

The purpose of this task is to prepare final Construction Documents to be used for construction and building permit review. The Design-Builder will perform the following subtasks as part of this task.

Task 9.1 - Final Design Construction Documents

The Design-Builder will modify the Construction Documents to incorporate agreed upon review comments from the County, applicable regulatory agencies, and the Design-Builder's quality control review team. The final documents will then be submitted to the County for final back-check and approval. The final back checking will consist of verifying the 95% responses to comments were adequately incorporated.

The final Construction Document production is based on a maximum of 3 construction packages.

The final Construction Documents will include 22-inch x 34-inch mylars sealed and signed, and contract specifications.

Task 9.2 - Final Design Report

The final design report will include the final updates of the predesign report technical memoranda, documenting design criteria for the engineering disciplines. This report will be in compliance with ADEQ requirements. The Design-Builder will submit the Final Design Report to County for County submission to ADEQ.

Task 9 - Deliverables

1. Final Contract Documents
2. Final Design Report

PHASE 3 - CONSTRUCTION

General Intent. Design-Builder will perform all Work and construction administration services necessary to construct the Project in accordance with the Contract for Design-Build Construction and to render the Project and all of its components operational and functionally and legally usable. This includes, but is not limited to, completion of the following tasks.

Task 10 - Trade Contractor Selection Bidding and Negotiation

Task 10.1 - Bid Packages

Design-Builder will prepare and assemble document packets for use in bidding the subcontracts. Such packaging of the Work will be broken down to maximize both competition and the involvement of small businesses.

Task 10.2. - Prequalification

The Design-Builder will develop subcontractor and supplier interest for each division of the Work. A design professional on the Project Team will attend all pre-bid meetings with potential subcontractors and be available to respond to questions regarding the Construction Documents.

Task 10.3 - Bidding

The Design-Builder will competitively bid each trade category or, if approved by County, negotiate for the performance of a particular trade category.

Task 10.4 - Budget Control

The Design-Builder will use its best efforts to obtain bids which are less than the final GMP estimates.

Task 10.5 - Bid Opening

The Design-Builder will conduct bid openings in the presence of the County's Representative. The Design-Builder will provide the County with a copy of its preliminary bid tabulation and a copy of all bids.

Task 10.6 - Bid Evaluation and Award

The Design-Builder will, for each subcontract, trade, or bid division:

- determine the final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items;
- prepare and furnish to the County a final bid tabulation summary which includes by subcontract, trade, and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for County's review and approval;
- if requested by County, provide a list of all potential Direct Purchase Materials (hereinafter defined);
- identify to the County in writing the subcontractors to which the Design-Builder recommends award of subcontracts; and
- award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Scope unless otherwise notified by the County.

Task 10.7 - County Approval Required to Proceed

No portion of the Work may be performed by the Design-Builder or its affiliates except with County's approval.

Task 11 - Design Professional's Role During and After Construction

Although the design and construction of the Project are being provided through a Design-Build delivery method, because no additional design professionals have been retained by County to provide oversight during construction and warranty phase services, the lead design professionals on the Design-Builder's Project Team will be responsible for providing the services described herein. Such services will be provided by the lead design professionals without regard to the conflict of interests associated with the Design-Build delivery method. These services include:

Task 11.1 - Construction Administration

The design professionals will carry out the Construction Administration services set forth herein.

Task 11.2 - Advice and Consultation

The design professionals will be a representative of, and will advise and consult with, the County during construction until final payment is made. The Design-Builder will have authority to act on behalf of the County only to the extent provided in the Contract.

Task 11.3 - Presence at Work Site

The design professionals on the Project Team will attend regularly scheduled construction meetings at the Site and will provide such representation as may be required to fulfill the intent and interpretation of the plans and specifications for the Project. In any event, the design professionals will visit the site as is reasonable and necessary to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Construction Documents. On the basis of on-site observations as an architect or as

an engineer, the design professional will keep the County informed of the progress and quality of the Work and will guard the County against defects and deficiencies in the Work.

Task 11.4 - Certification of Pay Requests

Based on the design professionals' observations and evaluations of the Design-Builder's Applications for Payment, the design professional will review and certify the amounts due the Design-Builder. The design professional's certification for payment will constitute a representation to the County, based on the design professional's observations at the Project site and on the data comprising the Design-Builder's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the design professional's knowledge, information, and belief, the quality of the Work is in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable prior to completion and to specific qualifications expressed by the design professional. The issuance of a Certificate for Payment will further constitute a representation that the Design-Builder is entitled to payment in the amount certified.

Task 11.5 - Duty to Inspect

The design professional will reject Work which does not conform to the Construction Documents. Whenever the design professional considers it necessary or advisable for implementation of the intent of the Construction Documents, the design professional will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Design-Build Contract for Construction, whether or not such Work is fabricated, installed, or completed.

Task 11.6 - Submittals

The design professional will review, approve, reject, or take other appropriate action on construction-related inquiries and submittals, such as shop drawings, product data, and samples. The design professional will not approve any such submittals unless such submittals conform with: (i) the design concept; (ii) the Construction Documents; (iii) the County's total budgeted Construction Cost; (iv) the County's Design and Construction Standards; and (v) governing codes and authorities having jurisdiction. In the event the County's Design and Construction Standards exceed applicable legal requirements, those County standards will govern. The design professional's review will be completed so that all Work can be performed without delay and all products or materials may be ordered or fabricated with sufficient time to meet the Project Schedule.

Task 11.7 - Preparation of Change Orders

The design professional will prepare Change Orders, with supporting documentation and data, if the design professional determines the same is necessary for the County's approval and execution in accordance with the Design-Build Contract for Construction.

Task 11.8 - Interpretation

Interpretations and decisions of the design professionals will be consistent with the intent of, and reasonably inferable from, the Construction Documents and will be in writing or in the form of drawings.

Task 11.9 - Aesthetic Review

The design professionals' decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Construction Documents, and if concurred with by the County.

Task 11.10 - Substantial and Final Completion

The design professionals will, in conjunction with County personnel, conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the County for the County's review and records, written warranties, and related documents required by the Design-Build Contract for Construction and assembled by Design-Builder, and will issue a final Certificate for Payment upon compliance by the Design-Builder with the requirements of the Design-Build Contract for Construction. The design professionals will perform all services relating to Substantial Completion and Final Completion in accordance with County policies and procedures.

Task 11.11 - As-Built Drawings

The Design-Builder will prepare "As-Built" or record drawings at Project completion in accordance with the requirements set forth in the County Specifications. These drawings will include changes made to the Project by Change Orders, Addenda to the Construction Documents, Architect's Supplemental Information, field orders, field reports, Requests for Information, shop drawings, other directives and submittals, and information provided by the Design-Builder.

Task 11.12 - Warranty Support

The design professionals will respond to: County's requests to review design and construction issues during the construction warranty period; coordinate and participate in the end of the warranty period inspection in accordance with the County Specifications; and produce a summary report documenting deficiencies, problems, or other outstanding items.

Task 12 - Construction Supervision

Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Design-Builder will provide the services described herein. The Design-Builder will, as the County's construction representative during construction, advise and consult with the County, and provide administration of the Construction Documents. The Design-Builder will supervise and direct the Work at the Site. The Design-Builder will, at a minimum, staff the Project Site with personnel who will:

- supervise and coordinate the Design-Builder's personnel and act as its primary liaison with the County;
- coordinate trade contractors and suppliers, and supervise Site construction management services;
- be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Design-Build Construction;
- check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement, confer with the appropriate County consultant(s) as necessary to assure acceptable levels of quality;
- prepare and maintain Project records;
- schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to County;
- schedule and conduct weekly progress meetings with the County to review such matters as construction progress, schedule, shop drawing status, and other information as necessary; and

- make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire, and accidents as required by the General Terms and Conditions.

Task 13 - Reporting

The Design-Builder will provide a monthly report in searchable PDF format summarizing the progress of the Project to the County including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions, and meeting minutes.

Task 14 - Miscellaneous Construction Phase Duties

Task 14.1 - GMP and Savings

During the Construction Phase, Design-Builder will complete the Construction Work in accordance with the Construction Documents and the Contract in return for payment by County of the Costs of Construction, provided that in no event will the aggregate payments by County to Design-Builder for Construction Work exceed the Guaranteed Maximum Price.

Task 14.2 - Services Provided

Design-Builder's Construction Phase services include, without limitation: team management and coordination, scheduling, cost control and change order management, submittal process management, subcontracting, field management, safety program, close-out process, and warranty period services. This will include providing through itself or its Subcontractors all necessary supervision, labor, inspection, testing, material, equipment, machinery, temporary utilities, and other temporary facilities to permit Design-Builder to complete all Construction Work in accordance with the Construction Documents and the Contract.

Task 14.3 - Performance of Work

Design-Builder will perform all construction activities efficiently and with the requisite expertise, skill, quality, and competence to satisfy the requirements of the Construction Documents and the Contract.

Task 14.4 - Reporting

Design-Builder will provide County, on a monthly basis, a written status report detailing the progress of the Construction Work during the Construction Phase, including whether the Work is proceeding according to the Project Schedule. Each monthly report during the Construction Phase will include: an updated Project Schedule; an updated Construction Work cash flow projection for the duration of the Project; copies of the Design-Builder's Superintendent's daily site reports made during the preceding month; identification of discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution; identification of any health and safety issues that have arisen in connection with the Construction Work; and identification of other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Construction Work for the GMP and within the Contract Time(s),

Task 14.5 - Schedule

During the Construction Phase, Design-Builder will maintain the Project Schedule and will promptly prepare a proposed updated Project Schedule and submit it to County for its review and approval whenever events occur or are likely to occur that require changes in the Project Schedule. The Project Schedule for the Construction Phase is the same and a continuation of the Project Schedule used for the Design Phases

and will indicate the dates for the start and completion of the various stages of the Construction Work, including the dates when County information and approvals are required and all necessary shutdowns or suspensions of County or separate vendor activities on the Site (if any).

Task 14.6 - Work Management

The Design-Builder will provide leadership to Design-Builder's employees and Subcontractors during the Construction Phase for all matters relating to the Construction Work. The Design-Builder agrees to furnish efficient business administration and superintendence and to complete the Construction Work in an expeditious and economical manner.

Task 14.7 - Management Presence at Work Site/Approval of Replacement

Design-Builder's Representative and the Design-Builder Superintendent will be at the Site at all times when Construction Work is being performed and will have the necessary expertise and experience required to supervise the Construction Work. Design-Builder's Representative will communicate regularly with County and will be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative and Design-Builder's Superintendent may only be replaced with the mutual written agreement of County and Design-Builder. Notwithstanding the foregoing, the Design-Builder's Representative and Design-Builder's Superintendent will be replaced upon reasonable request of the County.

Task 14.8 - Subcontractor Coordination

Design-Builder is responsible for coordinating the activities of its own Subcontractors.

Task 14.9 - Work Site Cooperation

If County is performing other work with separate contractors under its control as part of the Project or as a separate project, Design-Builder agrees to cooperate and coordinate its Construction Work with the work of County's separate contractors so that the Project and any separate project(s) on which the separate contractors are working can be completed in an orderly and coordinated manner reasonably free of significant disruption to any party. In this regard:

Task 14.9.1 - County Use of Work Site

County reserves the right to award other contracts related to the Project, or to perform certain work. The County also reserves the right to award other contracts unrelated to the Project but involving work in the vicinity of the Project or to perform unrelated work itself. Such other work may or may not be known to the County or disclosed to the Design-Builder prior to the date of the Contract. The Design-Builder will afford the County and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and will properly coordinate its Construction Work with theirs in such manner as County may direct. The Design-Builder will also permit reasonable access of other contractors to the Site and their work.

Task 14.9.2 - Right to Comment on County Work Site Activity

The County will timely provide the Design-Builder with a copy of all plans, specifications, schedules, and other data relating to other contracts or work. The Design-Builder will thoroughly examine these documents and will within three (3) days of completing such examination notify the County in writing of any conflicts with the Construction Work to be performed by the Design-Builder. In no event will such notice be given so late as to interfere with or delay Construction Work to be performed by the Design-Builder. Failure of Design-Builder to review, or provide written notice as provided above will constitute a waiver of any objections or claims Design-Builder may have as a result of the necessity to coordinate Design-Builder's Construction Work with other activities.

Task 14.9.3 - Waiver of Claim against County

Should Design-Builder sustain any property damage through any act or omission of any other contractor, Design-Builder will have no claim or cause of action against County for such damage and hereby waives any such claim. The Design-Builder does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section will include, but not be limited to, any unreasonable delay by any such other contractors, whether due to negligence, gross negligence, inadvertence or any other cause.

Task 14.9.4 - Duty to Remedy/Indemnification

Should the Design-Builder cause damage to the work or property of any other contractor or of the County, the Design-Builder will upon receiving due notice promptly attempt to settle with such other contractor or the County by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the County on account of any damage caused by the Design-Builder, the County will notify the Design-Builder who will defend and indemnify County against such proceedings to the extent required by Article 8 of the Contract.

Task 14.10 - Work Site Appearance

Design-Builder will keep the Site free from debris, trash and construction wastes to permit Design-Builder to perform its Construction Work efficiently, safely, and so as not to interfere with the use of any adjacent land areas, and will maintain the reasonable appearance of the jobsite and all storage/staging areas. Upon Substantial Completion of the entire Construction Work or a portion of the Construction Work to be accepted separately by County, Design-Builder will remove all debris, materials, wastes, equipment, machinery and tools from the Construction Work to permit County to occupy the entire Construction Work or portion of the Construction Work for the use for which it is intended.

Task 14.11 - Changes to Approved Work

Any changes affecting previously approved Construction Work will require prior written approval of County.

Task 15 - Control of Construction Work

Task 15.1 - Means and Methods

Design-Builder will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction. Design-Builder will perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract and Construction Documents.

Task 15.2 - Supervision and Coordination of Work

The Design-Builder will supervise and direct the work of its employees and Subcontractors and coordinate the Construction Work with the activities and responsibilities of the County to complete the Construction Work in accordance with the Construction Documents and the Contract and within the Contract Time(s).

Task 15.3 - Lines of Authority

The Design-Builder will establish an on-site organization and lines of authority in order to carry out the overall plans for completion of the Construction Work.

Task 15.4 - Direct Supervision of Work

All elements of the Work will be under the direct supervision of a foreman or his designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.

Task 15.5 - Superintendent

The Superintendent will represent the Design-Builder in its absence and all directions given to the Superintendent will be as binding as if given to the Design-Builder. Important directions will be confirmed by written request in each case. The Superintendent will give efficient supervision to the Work, using its best skill and attention. In the event of noncompliance with this Task, County may require the Design-Builder to stop or suspend the Work in whole or in part.

Task 15.6 - Measurements

Before ordering materials or doing work, the Design-Builder and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of such measurements.

Task 15.7 - Field Measurements

Design-Builder will take field measurements and verify field conditions and will carefully compare such field measurements and conditions and other information known to the Design-Builder with the Construction Documents before commencing activities. Errors, inconsistencies, or omissions discovered will be reported to County at once.

Task 15.8 - Survey

Design-Builder will establish and maintain all building and construction grades, lines, levels, and bench marks, and will be responsible for accuracy and protection of same. This Work will be performed or supervised by a civil engineer or surveyor licensed in the State of Arizona.

Task 15.9 - Dust Control

Design-Builder will take whatever steps, procedures, or means necessary to prevent any dust nuisance due to construction operations. The dust control measures will be maintained at all times to the reasonable satisfaction of County and in accordance with the requirements of the Pima County Department of Environmental Quality.

Task 15.10 - Sanitary Provisions

Design-Builder will provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or other authorities having jurisdiction.

Task 15.11 - On-Site Storage

Only materials and equipment which are to be used directly in the Work will be brought to and stored on the Site by the Design-Builder. Equipment no longer required for the Work will be removed from the Site within a reasonable time.

Task 15.12 - Responsibility for Materials and Equipment

Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is the responsibility of the Design-Builder. No part of damage or loss arising from Design-Builder's failure to provide such protection will be compensable from the Design-Builder's contingency.

Task 16 - Daily Log

Task 16.1 - Log Content

The Design-Builder will maintain a daily log of construction activities for each calendar day during the Construction Phase, using a form approved by Design-Builder and County. The Design-Builder will document all activities at the Site, including:

- Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Site, and any other weather conditions which adversely affect Construction Work at the Site;
- Soil conditions which adversely affect Construction Work at the Site;
- The hours of operation by Design-Builder and individual Subcontractor personnel;
- The number of Design-Builder and Subcontractor personnel present and working at the Site, by subcontract and trade, and updated schedule activity number;
- The equipment active or idle at the Site;
- A description of the Construction Work being performed at the Site by updated schedule activity number;
- Any delays, disruptions or unusual or special occurrences at the Site;
- Materials received at the Site; and
- A list of all visitors at the Site.

Task 16.2 - Copies to County

The Design-Builder will provide copies of the daily logs to County on a weekly basis. Providing copies of the daily log to County does not satisfy any requirement in the Design-Builder Contract for written notice to the County.

Task 17 - Supervision and Construction Procedures

Task 17.1 - Duty to Supervise and Direct

The Design-Builder will supervise and direct the Construction Work, using the Design-Builder's best skill and attention. The Design-Builder will be solely responsible for coordination and accomplishment of all portions of the Construction Work in accordance with the Construction Documents and the Contract.

Task 17.2 - Responsibility for Actions

The Design-Builder will be responsible to the County for the acts and omissions of all entities or persons employed by or operating under the direction of Design-Builder including, but not limited to, Subcontractors, material and equipment suppliers, vendors, and service providers.

Task 17.3 - Responsibility for Inspection Delays

Delays in or results from inspections, tests, or approvals required or performed by persons other than the Design-Builder will not relieve Design-Builder from its obligation to perform the Construction Work in accordance with the Construction Documents and the Contract. Nothing contained in this Task 17.3 precludes the Design-Builder from asserting any rights it may have under the Contract in the event County is responsible for unreasonable delays in the making of any inspections, tests, or approvals.

Task 17.4 - Superintendent Authority

The superintendent and representatives will represent the Design-Builder and all communications given to either representative will be binding on the Design-Builder. All oral communications will be confirmed in writing.

Task 17.5 - Skilled Employees

The Design-Builder will at all times enforce strict discipline and good order among its employees and its Subcontractors' employees and will not allow employment on the Construction Work of any unfit person or anyone not skilled in the task or trade assigned to him or her.

Task 17.6 - County Access to Work

The Design-Builder will at all times allow the County or any other representative designated by County access to the Construction Work to observe progress and inspect the quality of work and conformance to the Construction Documents and the Contract.

Task 17.7 - Uncovering Work

Any Construction Work required to be observed or inspected, as applicable, by the County prior to being covered, which is covered without prior observation or inspection, as applicable, or without prior consent of the County, must be uncovered and recovered by the Design-Builder, if requested by the County, at no cost to County, except where Design-Builder has complied with the notice requirement of Task 17.8 and County or any other representative designated by County fails to inspect the Construction Work to be covered up.

Task 17.8 - Inspection Notice to County

Design-Builder will notify the County in writing at least twenty-four (24) hours prior to the time at which the County must be present to perform an inspection or observation, as applicable. Failure to provide such notice will make the Design-Builder responsible for uncovering the affected Construction Work including any costs to provide reasonable and required access to the Construction Work.

Task 17.9 - County Authority to Keep Work Uncovered

Notwithstanding the foregoing, if after inspection by County, the quality of the Construction Work is in question or an error in measurement is suspected, County may require that Design-Builder leave the work uncovered pending final resolution of the discrepancy.

Task 18 - Construction Documents

Task 18.1 - Reporting of Errors

Design-Builder will study and compare the Construction Documents in advance of beginning each portion of the Construction Work and immediately report to the County any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

Task 18.2 - Shop Drawings Required

The drawings included in the Construction Documents are intended to show general arrangements, design, and extent of Construction Work and are not intended to serve as shop drawings. When specified by County, Design-Builder will not perform any portion of the Construction Work without approved shop drawings, product data, or samples. Any Construction Work performed in violation of this requirement will be solely at the Design-Builder's risk regardless of County's knowledge of such Construction Work.

Task 18.3 - Interpretation of Construction Document Conflicts

In the event of any conflict or ambiguity, the Construction Documents will be interpreted as being complementary, requiring a complete Project or designated portion thereof to be accepted separately by the County. Any requirement occurring in any one of the Construction Documents is as binding as though occurring in all Construction Documents. Generally, the specifications address quality, types of materials and contractual conditions while the drawings show placement, sizes, and fabrication details of materials. In the event of any conflict in the Construction Documents, the order of precedence stated below will govern:

- Contract addenda (subsequent addenda will govern over prior addenda only to the extent modified).
- The Contract document.
- Design-Builder Special Conditions.
- Technical Specifications.
- Standard Specifications & Details for Public Improvement, 2015 Edition.
- General Conditions.
- Glossary of Terms.
- In case of conflict between drawings and specifications, the specifications will govern.
- Conflicts within the drawings:
 - 1) Schedules, when identified as such, will govern over all other portions of the drawings.
 - 2) Specific notes will govern over all other notes and all other portions of the drawings, except the schedules described in Item (c)(1) above.
 - 3) Larger scale drawings will govern over smaller scale drawings.
 - 4) Figured or numerical dimensions will govern over dimensions obtained by scaling.
- If provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications, or industry standards are in conflict, the more restrictive or higher quality will govern.
- In the event of any conflict or ambiguity, Design-Builder will request an interpretation by the Design-Builder before performing the Construction Work.

Task 18.4 - Implied Minor Details

If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail will be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "Minor detail" will include the concept of substantially identical components, where the price of each such component is small even through the aggregate cost or importance is substantial and will also include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of parts or material so supplied will conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

Task 19 - Submittals, Drawings, and Shop Drawings

Task 19.1 - Records Maintained at Work Site

The Design-Builder will maintain at the Site, for the use of County, one copy of all drawings, specifications, bulletins, addenda, Change Orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees, and other Contract related documents and their modifications, if any, in good order and marked daily by the Design-Builder to record all approved changes made during construction. These will be turned over to the County by Design-Builder at Substantial Completion.

Task 19.2 - Submittals to County

The Design-Builder will submit to County, with such promptness as to cause no delay in the Construction Work or in the work of any other contractor, all submittals and shop drawings as required by the Construction Documents and the Contract or as necessary to illustrate details of the Construction Work.

Task 19.3 - Submittal Content Standards

Each submittal and shop drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the shop drawings. Each series will be numbered consecutively for ready reference and each submittal and shop drawing will be marked with the following information:

- Date of submission
- Name of Project
- Location of Project
- Branch of Construction Work (specification section)
- Project number
- Name of submitting Design-Builder
- Name of Subcontractors
- Revision number

Task 19.4 - Design-Builder Review of Subcontractor Submittals

All Subcontractor submittals and shop drawings will be reviewed by Design-Builder prior to being submitted to County and will bear a written statement by the Design-Builder that the submittals and shop drawings are consistent with the Construction Documents or, if not totally consistent, will bear a written statement indicating all deviations from the Construction Documents. By approving, verifying and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Construction Documents. Any submittals or shop drawings submitted without the statement will be returned for resubmission; the submittals or shop drawings will be considered as not having been submitted, and any delay caused thereby will be the Design-Builder's sole responsibility. This review by Design-Builder of Subcontractor submittals and shop drawings will not be construed as Design-Builder approval of the design therein except that it will be a representation that the letter accompanying the submittal or shop drawings does indicate all deviations from the Construction Documents as required by Task 19.5,

Task 19.5 - Deviations from Contract Documents

Design-Builder will include with submittals and shop drawings, a written statement indicating all deviations from the Construction Documents and Contract. Failure to so notify County of such deviations may be grounds for subsequent rejection of the related Construction Work or materials. If, in the opinion of County, the deviations are not acceptable, the Design-Builder must furnish the item as specified or as indicated on the drawings included in the Construction Documents and in accordance with the Contract, Design-Builder will not be relieved of responsibility for deviations from requirements of the Contract Documents by County's approval of Shop Drawings, Product Data, Samples, or similar submittals unless Design-Builder has specifically informed County in writing of such deviation at the time of submittal and County has given written approval to the specific deviation. The Design-Builder will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by approval thereof.

Task 19.6 - Responsibility for Submittals

It is the Design-Builder's obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Construction Work. Submittals and shop drawings will indicate in detail all parts of an item of Construction Work, including, without limitation, erection and setting instructions, and engagements with work of other trades or other separate contractors.

Task 19.7 - Design-Builder Representations Concerning Correctness of Submittals

By reviewing or submitting submittals and/or shop drawings, the Design-Builder represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that it has checked and coordinated each submittal and/or shop drawing with the requirements of the Construction Documents and Contract. If any specified material item or part is not available, the Design-Builder will so indicate to County.

Task 19.8 - County Review

The County will review and approve submittals and shop drawings and return them to Design-Builder within five (5) days of receipt unless otherwise previously agreed in writing. For scheduling purposes, Design-Builder must assume a five (5) day review period for each submittal or set of shop drawings. For complex submittals, Design-Builder must assume two five (5) day review cycles. If review and approval are delayed beyond five (5) days, County will notify Design-Builder in writing stating the reason for the delay. Approval will not relieve the Design-Builder from responsibility for deviations from the Construction Documents or Contract, unless it has been called to County's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of County to effect an improvement in the Construction Work and does not increase the GMP or Contract Time(s). Any such modification is subject to all other provisions of the Construction Documents and Contract and is without prejudice to any and all rights of County under any surety bond.

Task 19.9 - Response to County Rejection or Comments

If the County returns a submittal or shop drawing to Design-Builder with the notation "rejected", "revise and resubmit", or "approved as noted", Design-Builder, so as not to delay the Construction Work, will promptly submit a submittal or shop drawing conforming to the requirements of the Construction Documents and Contract and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the County. Any other differences between the resubmittal and the prior submittal will be indicated on the shop drawing and on the resubmittal as a special note.

Task 19.10 - Untimely Submittal

No extension of time will be granted to Design-Builder because of its failure to submit submittals or shop drawings in ample time to allow for review, possible resubmittal, and approval. Construction Work will not commence until the Design-Builder has received written approval.

Task 19.11 - Transmittal of Approved Submittals to Subcontractors

The Design-Builder will furnish prints of its approved submittals and shop drawings to all Subcontractors whose work is in any way related to the Construction Work covered by the Submittal or shop drawings.

Task 20 - Product Samples, Tests, and Certificates

Task 20.1 - Requirement to Furnish Product Samples

Design-Builder will furnish product samples of all items requested or required by the specifications. Product samples will be properly identified and submitted with such promptness as to cause no delay in Construction Work or in the work of any other contractor and to allow time for consideration by County. Design-Builder will submit product samples to County for review and approval in accordance with Task 19, above, and this Task 20.

Task 20.2 - Submittal of Product Samples

Each product sample must be accompanied by a letter of transmittal containing the following information:

- Date of submission
- Name of Project
- Location of Project
- Branch of Construction Work (specification section number) Project number
- Name of submitting Design-Builder
- Name of Subcontractor

Task 20.3 - Certification of Compliance

Design-Builder will furnish to County a certificate stating that material or equipment submitted complies with the Construction Documents and the other Contract Documents. If a certificate originates with the manufacturer, the Design-Builder will endorse it and submit it to County together with a statement of compliance in its own name.

Task 20.4 - Duty to Perform

No tests, inspections, observations or approvals performed or given by County or others acting for County, or any agency of Federal, State, or local government, nor any acts or omissions by County in administering the Contract will relieve Design-Builder from its duty to perform the Construction Work in accordance with the Construction Documents, the Contract, and applicable law.

Task 20.5 - Destruction of Samples

Unless the County is requested at the time of submittal to return samples at Design-Builder's expense, rejected samples will be destroyed.

Task 20.6 - County Testing Not Acceptance

After delivery of materials, County may make such tests as it deems necessary, with samples required for such tests being furnished by and at the cost of Design-Builder. Any such test is for the benefit of County and will not relieve Design-Builder of the responsibility for providing quality control measures to assure that Construction Work strictly complies with the Construction Documents and the Contract. No test will be construed as implying acceptance of materials, work, workmanship, equipment, accessories, or any other item or thing. Any material not meeting the requirements of the specifications may be rejected by County and will be removed immediately and replaced in an acceptable manner.

Task 20.7 - Removal of Rejected Work

On the basis of the test results, materials, workmanship, equipment, or accessories may be rejected even though general approval has been given, if items have been incorporated into the Construction Work, County will each have the right to cause their removal and replacement by items meeting Construction Document requirements or to demand and secure appropriate reparation to County from the Design-Builder.

Task 20.8 - Cooperation with Testing Efforts

Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and will provide them access to the Work at all times. The County and/or selected testing laboratory will make every effort as to not delay the work.

Task 20.8.1 - Compliance with Work Site Rules

Any person employed by any testing laboratory who, in the opinion of the Design-Builder, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly will, at the written request of the Design-Builder, be removed from the Work by County or testing laboratory employing such person, and will not be employed again in any portion of Work without the written approval of the Design-Builder.

Task 20.8.2 - Testing Prior to Delivery

At the option of County, materials may be tested at the source of supply before delivery is started. County will make every effort necessary to not delay the work if materials are to be tested at the source of supply.

Task 20.9 - Trade Name Substitutions

Unless the Contract Documents indicate that no substitutions are permitted, Design-Builder may, subject to the following conditions, substitute or supply alternate items when equipment, materials, or patented processes are referenced in the Contract Documents by manufacturer, trade name, make, or catalog number:

- The substitution will be submitted to County in writing by Design-Builder.
- Design-Builder will certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- The submittal will state any required changes in the Construction Documents to adapt the design to the proposed substitution.
- The submittal will contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal will include any adjustment in the Contract Time created by the substitution.

- Design-Builder, if requested by the County, will submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution

County will make the final decision and will notify Design-Builder in writing as to whether the substitution has been accepted or rejected. If County does not respond in a timely manner, Design-Builder will continue to perform the Work in accordance with the Contract and the substitution will be considered rejected.

Task 20.10 - Field Inspection

County may utilize field inspectors during construction to assist County in observing Design-Builder's performance. Such inspectors are solely for the purpose of assisting County and should not be confused with an inspector with a regulatory agency or with an inspector from an County-selected laboratory. In conjunction with these activities, the inspector may perform the following activities:

- Thorough onsite observation of the Work in progress and field checks of materials and equipment, the inspector will endeavor to provide protection against defects and deficiencies in the Work.
- The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication, or manufacture of the materials to be used.
- The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the Design-Builder.
- The inspector will have the authority to reject work or materials until any questions at issue can be decided by County.

The use of such services by County will not make County responsible for or give the County control over construction means, methods, techniques, sequence, or procedures, or for safety precautions or programs, or responsibility for the Design-Builder's failure to perform the work in accordance with Contract Documents.

County and its representatives will at all reasonable times have access to the work wherever it is in preparation or progress. Design-Builder will provide proper facilities for such access and for inspection.

During the course of construction, as identified in the scheduled, initial construction inspections, if work fails to comply with the Project plans and specifications, Design-Builder will be responsible for all additional engineering consultant costs associated with re-inspections, meetings and reports.

Task 21 Redline Drawings

Task 21.1 - Monthly Review

On a monthly basis, the Design-Builder will complete and turn over to County redlined drawings for review. The redlined drawings will clearly indicate all field changes that were made to adapt to field conditions, field changes resulting from Change Orders, and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items will be accurately located on the redlined drawings as to depth and in relationship to not less than two permanent features such as manholes or corners. The redlined drawings will be clean and all changes, corrections, and dimensions will be given in a neat and legible manner in a contrasting color.

Task 21.2 - Changes Shown

Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings

- Depths of foundations or footings
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing, if any.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

Task 21.3 - Basis Documents

Design-Builder will completely and accurately mark Project Red Line Record Drawing prints of Construction Documents or Shop Drawings, whichever is most capable of indicating the actual physical condition. Where Shop Drawings are marked, they must display a cross-reference to their location in the Construction Documents.

Task 21.4 - Changes after Substantial Completion

Changes or corrections in the Construction Work made subsequent to Substantial Completion will be submitted to County as part of the red line record drawings.

End of Appendix "B" – Design-Builder General Scope of Work

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APPENDIX "C" (6 pages)

TECHNICAL SPECIFICATIONS

CONTENTS

TS 1.0 PROJECT OVERVIEW

TS 2.0 SYSTEM DESCRIPTION AND COMPONENTS

TS 3.0 SYSTEM PERFORMANCE REQUIREMENTS

TS 4.0 CONSTRUCTION REQUIREMENTS

TS 5.0 REFERENCE STANDARDS

TS 6.0 EXCAVATION, FILLING, AND BACKFILLING

TS 7.0 LANDSCAPING

TS 8.0 SITE MANAGEMENT DURING CONSTRUCTION

TS 9.0 STRUCTURAL DESIGN

TS 10.0 CORROSION CONTROL

TS 1.0 – Project Overview

The mission of the County is to protect public health, safety, and environment by providing quality services, environmental stewardship, and renewable resources. This requires providing high quality wastewater services at a reasonable cost, while balancing social, economic, and environmental impacts of wastewater collection and treatment.

Development within the Twin Peaks Road corridor in Marana is intensifying. Several developments currently in the planning stages lack suitable connections to the existing gravity sewer system. Without installation of a gravity conveyance line each development would need to install and operate their own pump station. A project is needed to construct a gravity line near the Twin Peaks Road/Blue Bonnet Road alignment to provide a gravity sewer connection for multiple developments in the area.

The presence of the Marana Premium Outlet Mall and the widening of Tangerine Road from I-10 to La Canada in Oro Valley will drive continued development within this area. This project will provide a gravity connection for the future development and will also take the Regional Wastewater Reclamation Department (RWRD) Tangerine Pump Station offline.

This project is a Design-Build project to provide a fully functional gravity wastewater conveyance system (SS). The Design-Builder team is responsible for designing the Project; procuring all Project components except those specifically identified in the Agreement as being County-supplied; securing all necessary permits and permissions except those specifically identified in the Agreement as being County-supplied; and constructing the project.

The project is located in Pima County, Arizona. Pima County (County) has identified a preliminary alignment (the project site) along Twin Peaks Road, Blue Bonnet Road, and Hartman Lane for the installation of the project. The project site, depicted and described in "**Attachment 2 - Site Location**," consists of private property, Town of Marana right of way, and Pima County right of way.

The County's objectives for delivery of the project are as follows:

- Quality: Provide SS that will be sustainable and will reliably convey the specified wastewater flows with a minimum of odor issues in accordance with the contractual standards set forth in these Technical Specifications.
- Cost: Minimize life-cycle cost.
- Schedule: Achieve the schedule completion date for construction of the project.
- Risk: Achieve an optimal balance of risk allocation between the County and the Design-Builder.
- Safety: Implement an effective safety program incorporating best industry practices.

TS 2.0 – System Description and Components

The SS will be a fully functioning wastewater collection system including pipes, manholes, and associated appurtenances. The SS will convey wastewater by gravity while minimizing potential odor issues and operation and maintenance costs. The SS will be located along the Tangerine Road, Twin Peaks Road, Blue Bonnet Road, and Harman Lane alignments, in general accordance with the Sewer Route Due Diligence Report (see "**Attachment 3 – Background Information**").

Main components of the SS are described with more detail below.

TS 2.1 – Collection System

The wastewater collection system will be sized based on the flows specified in Appendix A and design progress meetings with County during Phase I of the project. Flow from north of Tangerine Road will flow completely by gravity to the project termination south of Cortaro Farms Road. The collection system from Linda Vista Boulevard south to Cortaro Farms Road will consist of new pipes, manholes, and

appurtenances that will replace existing wastewater infrastructure in this area. Existing wastewater infrastructure in this area will be removed as part of this project.

TS 2.2 – Pump Station Demolition

One existing County pump station will be demolished as part of this project. The active Tangerine Road Pump Station will be removed from service. Demolition shall include removal of all electrical equipment, mechanical equipment, piping, tankage, and structures. Below ground concrete structures shall be removed to four feet below ground surface, bottoms pierced, and filled with clean fill.

TS 3.0 – System Performance Requirements

The SS will reliably convey wastewater from north of Twin Peaks Road to south of Cortaro Farms Road with a minimum of odors on a continuous, 24-hour, 365 day per year basis.

TS 4.0 – Construction Requirements

An Arizona licensed contractor will perform all the work necessary to provide a complete and operational SS. All work will be done only within locations approved by County and in compliance with all current local, state, and federal codes. All permits for construction will be the responsibility of the Design-Builder. All personnel will enter the project site through approved access points and must comply with all Design-Builder security and safety processes and procedures while on the project site.

The Design-Builder will review as-built plans and field verify the current County wastewater collection system layout to select the SS connection points most advantageous to the County.

Design and construction activities will be scheduled in such a way as to allow for delivery of time-sensitive Project Segment 2 by December 31, 2018.

TS 5.0 - Reference Standards

TS 5.1 - Design Documents

All wastewater conveyance facilities constructed in Arizona must comply with the applicable recommendations and requirements of Arizona Administrative Code. Wastewater conveyance facilities constructed for Pima County use must comply with the latest adopted version of the County *Public Sewer Formatting Standards, Engineering Design Standards, and Standard Specifications and Details for Construction*.

TS 5.2 - Codes and Standards

The list below provides project designers with guidance to applicable codes and standards. The Design-Builder will perform the Design-Build Work in accordance with the Contract Standards, which include, among other things, all applicable permits, ordinances, codes, standards, and regulations. The Design-Builder will use the latest requirements of the Governmental Body having jurisdiction if different from those indicated below. The lists of codes and standards provided in this Section are not intended to be all-inclusive. The Design-Builder will be responsible for identifying and complying with all codes and standards that are applicable to the performance of the Design-Build work in accordance with Applicable Law and Good Engineering and Construction Practice.

The Contract Standards applicable to the performance of all design and construction work for the Project including, but are not limited to, the following:

- Pima County Regional Wastewater Reclamation Department Public Sewer Formatting Standards
- Pima County Regional Wastewater Reclamation Department Engineering Design Standards
- Pima County Regional Wastewater Reclamation Department Standard Specifications and Details for Construction

- Pima Association of Governments Standard Specifications for Public Improvement, 2015
- Pima County Regional Flood Control District, Pima County Drainage Standards for Local Drainage and the Pima County Floodplain and Erosion Hazard Management Ordinance, as amended to date.
- ADEQ Best Management Practices
- Arizona Department of Transportation (ADOT) Standard Specifications (where applicable).
- American Association of State Highway and Transportation Officials (AASHTO), Policy on the Geometric Design of Highways and Streets.
- U.S. Department of Transportation Federal Highway Administration (FHWA), Manual on Uniform Traffic Control Devices [MUTCD 2009 MUTCD with Revisions 1 and 2, May 2012.
- Americans with Disabilities Act (ADA), Accessibility Guidelines for Buildings and Facilities, 2006 revisions.
- 2015 International Building Code and Local Amendments
- 2015 International Energy Conservation Code and Local Amendments
- 2015 International Fire Code and Local Amendments
- 2017 National Electrical Code and local Amendments
- 2015 Uniform Plumbing Code and local Amendments
- 2015 International Mechanical Code and local Amendments
- American Institute of Steel Construction (AISC), Manual of Steel Construction, 14th Edition
- American Welding Society (AWS) Welding Code
- American Society for Testing and Materials (ASTM)

TS 6.0 - Excavation, Filling, and Backfilling

TS 6.1 - Responsibility for Fill

The Design-Builder will be responsible for furnishing all supervision, labor, tools, materials, and equipment; performing all operations in connection with excavation of materials regardless of the character of that material; obtaining fill and backfill material approved by a licensed professional engineer specializing in soil mechanics to achieve final grade lines; and all activities necessary for disposal of excess excavated material. All necessary arrangements for obtaining fill material and topsoil from off-site borrow areas will be the responsibility of the Design-Builder.

TS 6.2 - Professional Engineer

The Design-Builder will employ a professional engineer specializing in soil mechanics to provide recommendations for the work, including excavation, fill, backfilling, compaction, dewatering, subgrade preparation and stabilization, shoring, and drainage from protection of excavated areas.

TS 6.3 - Excavation

The Design-Builder will perform all necessary excavation for construction of the project. Excavations for footings will be made sufficiently wide for the installation of form work and to the depths required. The Design-Builder will prevent the foundation area from becoming destabilized due to the flow of water into the excavation or from cave-ins. Where soils are not suitable for sustaining design loads, the Design-Builder will take appropriate action in accordance with the requirements of appropriate established codes and good Engineering and Construction Practices.

TS 6.4 - Excess Fill

The Design-Builder will be responsible for all activities necessary to dispose of the excess material at an approved off-site location. It will be the Design-Builder's responsibility to obtain the disposal site for the disposal of excess material.

TS 7.0 - Landscaping

TS 7.1 - County Standard

Landscaping will be in compliance with the Pima County Landscape Design Manual.

TS 7.2 - Appropriate Materials

Landscaping and irrigation will use environmentally appropriate materials that are tolerant of the climate of the Service Area and compliant with all applicable Contract Standards. The proper use of plant materials and other design elements must demonstrate environmental responsibility.

TS 7.3 - Design Considerations

All landscape will be designed to achieve minimum maintenance and maximum water conservation. During plant establishment period, landscape irrigation needs will be met with reclaimed water (if available), including maximum use of captured stormwater runoff.

TS 8.0 - Site Management During Construction

TS 8.1 – Fencing

The Design Builder will provide a temporary perimeter fence during construction to ensure the security of the Project Site and safeguard operations within the Construction Work Limits. The temporary fence shall be removed after construction is complete.

TS 8.2 - Erosion Control

Erosion control measures will be applied before and while construction activities are taking place. To reduce the amount of sediment being transported from the project sites, sediment fences will be installed at the toe of new slopes, around stockpiles, and downhill of disturbed areas. There will also be a gravel construction entrance at the limits of construction to help mitigate construction debris from being transported away from the project sites. Loss of material from erodible stockpiles and other disturbed areas will be mitigated. All erosion control measures will be shown and implemented in accordance with Pima County Department of Environmental Quality *Best Management Practices* and the Pima County Regional Flood Control District's *Hydrology Manual for Engineering Design and Flood Plain Management within Pima County, Arizona*, Pima County Drainage Standards for Local Drainage and the Pima County Floodplain and Erosion Hazard Management Ordinance.

TS 8.3 – Security

The Design-Builder is solely responsible for providing security within the project site.

TS 9.0 - Structural Design

TS 9.1 - Professional Engineer

All structural design work will be prepared under the direct supervision of a structural engineer licensed in the State of Arizona. The Design-Builder will design all structures for a service life of not less than 50 years, in accordance with the most current applicable codes and standards.

TS 10.0 - CORROSION CONTROL

TS 10.1 - Site Soil Corrosivity

The Design-Builder will evaluate corrosion potential of project site soils, based on its analysis of geotechnical information gathered by the Design-Builder B.

Appropriate methods will be used to protect material from damage due to corrosive conditions.

End of Technical Specifications

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APPENDIX "D" (18 pages)

DESIGN-BUILDER SPECIAL CONDITIONS

Contents

SC 1 COUNTY OBLIGATIONS	
SC 1.1 Project Information	
SC 1.2 County's Budget	
SC 1.3 Time for Performance.....	
SC 1.4 Purpose of County's Review.....	
SC 1.5 Status of County	
SC 2 DESIGN SERVICE REQUIREMENTS AND STANDARDS	
SC 2.1 Quality of Design Services	
SC 2.2 Errors and Omissions	
SC 2.3 Notice of Non-Compliance with Law.....	
SC 3 SCHEDULE AND COORDINATION	
SC 3.1 Design-Builder Responsible	
SC 3.2 Schedule Requirements	
SC 3.3 Submittal Schedule.....	
SC 3.4 Monthly Schedule Revisions.....	
SC 3.5 Other Schedule Updates	
SC 3.6 Adherence to Schedule	
SC 3.7 Ownership of Float	
SC 3.8 Time Extensions	
SC 3.9 Demonstration of Extension Need.....	
SC 4 DESIGN-BUILDER'S RESPONSIBILITY FOR PROJECT SAFETY	
SC 4.1 Division of Safety Responsibility	
SC 4.2 Scope of Responsibility; Safety Manager	
SC 4.3 Legal Requirements	
SC 4.4 Discontinuance of Work	
SC 4.5 Subcontractor Responsibility.	
SC 4.6 Applicability of Other Contract Requirements.	
SC 4.7 Pass-Through to Subcontractors.	
SC 4.8 County-Designated Limited Work Areas.	
SC 5 SITE CONDITIONS	
SC 5.1 General.	

SC 5.2 Notification

SC 5.3 Investigation and Remedy

SC 5.4 Timeliness of Notice

SC 6 PAYMENT OF DESIGN-BUILDER - FINANCIAL CONTROLS - OPEN BOOK COSTS AND AUDIT

SC 6.1 County Payments

SC 6.2 Savings

SC 6.3 Financial Records

SC 6.4 Schedule of Values

SC 6.5 Applications for Payment

SC 6.6 Amount of Progress Payments

SC 6.7 Retainage

 SC 6.7.1 Design Payments

 SC 6.7.2 Construction Payments

SC 6.8 Payment for On-Site and Off-Site Materials

SC 6.9 Title to Construction Work

SC 6.10 Withholding Payment

SC 6.11 Substantial Completion

SC 6.12 Final Completion and Final Payment

 SC 6.12.1 Work and Submittal Requirements

 SC 6.12.2 Documentation

 SC 6.12.3 Amount of Final Payment

 SC 6.12.4 Partial Payment In Event of Final Completion Delay

 SC 6.12.5 Waiver of Claims

 SC 6.12.6 Audit Scheduling

SC 6.13 Time

 SC 6.13.1 Time is of the Essence

 SC 6.13.2 Delay Liquidated Damages

 SC 6.13.3 Time Extensions

 SC 6.13.4 GMP Adjustment

SC 6.13.5 Notice of Delay

SC 6.14 Changes to GMP and Time

 SC 6.14.1 Change Order

 SC 6.14.2 Contract Administration Waiver

 SC 6.14.3 Minor Changes in the Construction Work

 SC 6.14.4 Price, Time, or Scope of Work Adjustment

SC 6.15 Emergencies

SC 7 WARRANTY AND CORRECTION OF NON-CONFORMING WORK

 SC 7.1 Warranty.

 SC 7.2 Correction of Defects and Nonconforming Work

 SC 7.2.1 Agreement to Correct.....

 SC 7.2.2 County Right to Correct.

 SC 7.2.3 County's Additional Rights Preserved.

SC 8 STARTUP AND ACCEPTANCE TESTING

 SC 8.1 Startup

 SC 8.1.1 Submittal of Startup Plan.

 SC 8.1.2 Notice.

 SC 8.1.3 Commissioning and Startup

 SC 8.2 Performance Testing

 SC 8.2.1 Submittal of Performance Test Plan.

 SC 8.2.2 Notice of Commencement of Performance Test.....

 SC 8.2.3 Conditions to Commencement of the Performance Tests.....

 SC 8.2.4 Conduct of Performance Test.....

 SC 8.2.5 Performance Test Report.....

 SC 8.3 Concurrence or Disagreement with Test Results.....

 SC 8.3.1 Achievement Concurrence.....

 SC 8.3.2 Achievement Disagreement.....

SC 1 – County Obligations

SC 1.1 - Project Information

Design-Builder acknowledges that County has provided Design-Builder with all necessary information regarding County's requirements for the Project as set forth in the Request.

SC 1.2 - County's Budget

County established an overall budget for the Project of \$3.5 million to \$4.5 million, including amounts allocated for design and construction, the County's other costs, and reasonable contingencies related to these costs as appropriate.

SC 1.3 - Time for Performance

County will review and approve or take other appropriate action on all design submittals of the Design-Builder within the timeframes set forth in the Scope of Work.

SC 1.4 - Purpose of County's Review

County's review, inspection, or approval of any Work, Design Documents, Applications for Payment, or other submittals will be solely for the purpose of determining whether the same are generally consistent

with County's Request, the Contract, and with County standards, policies, and requirements. No review, inspection, or approval by County of such Work or documents will relieve Design-Builder of its responsibility for the performance of its obligations under the Contract for Design-Build Construction or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or the Construction Documents will not relieve Design-Builder of responsibility for the performance of its obligations under this Contract. Payment by County pursuant to the Contract for Design-Build Construction will not constitute a waiver of any of County's rights under the Contract for Design-Build Construction or at law, and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by County. Notwithstanding the foregoing, prompt written notice will be given by the County to the Design-Builder if the County becomes aware of any fault or defect in the Project or non-conformance with the Contract for Design-Build Construction.

SC 1.5 - Status of County

The County will not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor will the Design-Builder, for any of the foregoing purposes, be deemed the agent of the County.

SC 2 – Design Service Requirements and Standards

SC 2.1 - Quality of Design Services

Design-Builder will be responsible for the quality, completeness, accuracy, and coordination of Design and Construction Documents. Design-Builder will provide Design Services that meet all environmental and regulatory requirements. Design-Builder will provide for all testing and inspections required by sound architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

SC 2.2 - Errors and Omissions

The Design-Builder will, at no additional cost to the County, immediately make additions, changes, and corrections to any documents prepared by Design-Builder necessitated by errors and omissions in the Design-Builder's performance of its services. In addition, Design-Builder will not be entitled to any compensation or adjustment in the Guaranteed Maximum Price ("GMP") for additional work required as a result thereof, provided, upon County's written approval, Design-Builder may use contingency funds to pay for Work not included in the Construction Documents which add value to the Project (but expressly excluding any demolition or other costs related to the substitution of such Work for previously installed Work and associated design fees). The foregoing will not relieve Design-Builder for liability to County for any damages, including costs incurred by County after termination in whole or in part of the Contract, resulting from any error or omissions by Design-Builder in the course of its duties under the Contract.

SC 2.3 - Notice of Non-Compliance with Law

If Design-Builder believes or is advised by another design professional retained to provide services on the Project that implementation of any instruction received from County would cause a violation of any applicable law, Design-Builder will promptly so notify County in writing.

SC 3 - Schedule and Coordination

SC 3.1 - Design-Builder Responsible

Design-Builder will schedule and coordinate the work of its own Subcontractors on the Project, including their use of the Site. Design-Builder will keep its Subcontractors informed of the Project Schedule to enable the Subcontractors to plan and perform the Construction Work properly. Design-Builder will cooperate and coordinate with other separate contractors performing work for County on the Project. However, Design-

Builder's obligation of cooperation and coordination will not operate to make Design-Builder responsible for any aspect of work performed by any separate contractors except Design-Builder's own Subcontractors.

SC 3.2 - Schedule Requirements

The Project Schedule for performance of the Construction Work will be a CPM schedule with reasonable detail, including a time-scaled network and computer printout in accordance with the following requirements:

- no activity will be longer than twenty-one (21) calendar days in length without the approval of County except fabrication and delivery activities.
- each activity must be logically tied to another activity to show its interdependency with other activities.
- installation activities must be logically tied to submittal/approval, fabrication, and delivery.
- only a single critical path will be designated.

The Design-Builder will use scheduling software acceptable to County to develop the Project Schedule. The Project Schedule will be presented in graphical and/or tabular reports as agreed upon by the Project Team. If Project phasing, as described below, is required, the Project Schedule will indicate milestone dates for the phases, once determined.

The Project Schedule will provide one (1) week for County to review Design Submission Documents at each sub-phase of the Design Phases and provide adequate time for government agency reviews and all other necessary approvals and permits. The Project Schedule will indicate the dates for the start and completion of the various stages of the Project, including, among others, the dates when County information and approvals are required and all necessary shutdowns or suspensions of County or separate vendor activities on the Site (if any). Design-Builder will update and reissue the Project Schedule throughout the Design Phases and the Construction Phase, as necessary and appropriate to reflect adjustments in the schedule. Updates will be subject to approval by County.

The Project Schedule will be in Days (calendar days, unless otherwise directed by County) and will indicate task duration (earliest start/latest completion) for all activities. Float times for all activities will be shown. The CPM diagram will be presented in a time scaled graphical format for the Project as a whole.

The Project Schedule will indicate all relationships between activities.

The activities making up the Project Schedule will be of sufficient detail to assure that adequate planning has been done for proper execution of the Work so that it provides an appropriate basis for monitoring and evaluating progress of the Work.

The activities upon which the Project Schedule is based will coincide with the Schedule of Values.

The Project Schedule will show all submittals associated with each work activity and the review time for each submittal.

The Project Schedule will show milestones, including milestones for all Team members.

The Project Schedule will include anticipated rain delay during the performance of the construction contract. The duration will reflect the average climatic range and conditions prevailing in the locality of the site. Weather data, provided by the Design-Builder, will be based on information from the National Weather Services or other County-approved sources.

The Project Schedule will consider the Substantial Completion date requirements showing portions of the Project having priority.

Float time will be prescribed as follows: The total Float within the overall schedule is not for the exclusive use of either County or Design-Builder, but is jointly owned by both and is a resource available to, and shared by, both parties as needed to meet contract milestones and the Project completion date.

The Design-Builder will not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted, nor delay damages paid, until a delay occurs which extends the Work beyond the Substantial Completion date.

Throughout the Design Phases, Design-Builder will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than monthly. The Design-Builder will add detail to the previous version of the Project Schedule to keep it current throughout the Design Phases, so that the Project Schedule is ready for implementation at the start of the Construction Phase. The update/revisions will include, but not be limited to:

- A narrative analyzing the progress achieved to-date vs. planned.
- Any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- Revisions in Drawings and Specifications.
- The results of any additional investigative reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities, and documents depicting underground utilities placement and physical condition, whether obtained by County or Design-Builder.
- Unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way.
- The fast-tracking of any of the construction, or other chosen construction delivery methods.
- The requisite number of separate bidding documents to be advertised.
- The status of the procurement of long-lead time equipment and materials.
- Funding issues (i.e., delays) identified by the County.

If phased construction is deemed appropriate and County approves, Design-Builder will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of shortening the Construction Time and/or reducing the Cost of the Work. The Design-Builder will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, effect on traffic or public access, and any other factors pertinent to saving time and cost. The Project Schedule will be adjusted to allow for phased construction or for portions of the Construction Work to be accepted separately by the County, if required by County.

SC 3.3 - Submittal Schedule

Design-Builder will prepare and keep current, for County's approval, a time schedule of submittals which is coordinated with Design-Builder's construction schedule and allows County the specified time to review submittals.

SC 3.4 - Monthly Schedule Revisions

Design-Builder's schedules will be revised monthly to reflect ACTUAL conditions in the field. A copy of the revised Project Schedule and narrative report including a description of current and anticipated problem areas, delaying factors and their anticipated impact, and corrective action taken or proposed to be taken will be submitted with each Application for Payment. Submission of an updated Project Schedule meeting

these criteria will be a condition to the processing of any application for payment made by Design-Builder. County's review of the Project Schedule update will not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques of construction and payment by County will not be deemed a determination that the updated schedule is acceptable. The Design-Builder understands that the updated Project Schedule will be the basis for the analysis and granting of time extensions in accordance with SC 6.13.

SC 3.5 - Other Schedule Updates

In addition to the monthly update, the Design-Builder's schedules will also be revised at appropriate intervals as required by the conditions of the Construction Work or as directed by the County with a printed and electronic copy submitted to the County in a format acceptable to the County.

SC 3.6 - Adherence to Schedule

Design-Builder will perform the Construction Work within the identified times of the most recent schedule and consistent with the established Contract Time(s).

SC 3.7 - Ownership of Float

The parties agree that if Design-Builder submits an original or updated schedule which shows the Project and/or individual milestone(s) completing earlier than required by the Contract Documents (the then adjusted Contract Time(s)), the differences between the forecasted early completion and the required completion will be considered Project-owned float available for use by both the County and the Design-Builder.

SC 3.8 - Time Extensions

Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Construction Work beyond the adjusted Contract Time(s).

SC 3.9 - Demonstration of Extension Need

No time extensions will be granted nor delay damages paid unless the delay is clearly demonstrated by the updated construction schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other reasonable means.

SC 4 – Design-Builder's Responsibility for Project Safety

SC 4.1 - Division of Safety Responsibility

As among Design-Builder and County, Design-Builder will have sole responsibility for safety at the Construction Work Site, except that County will have responsibility for the acts and omissions of its officers and employees.

SC 4.2 - Scope of Responsibility; Safety Manager

Design-Builder recognizes the importance of performing the Construction Work in a safe manner so as to prevent damage, injury, death or loss to (i) all individuals at or in the vicinity of the Construction Work, whether working or visiting the Project; (ii) any Construction Work, including, without limitation, materials and equipment incorporated or stored on or off Site; and (iii) all other or adjacent property, whether owned by County or other persons. As among Design-Builder and County, Design-Builder assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Construction Work. Design-Builder will, prior to commencing construction, designate a

safety manager with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Construction Work. The safety manager will make routine daily inspections of the Site and will hold at least weekly safety meetings with Design-Builder's personnel and its Subcontractors.

SC 4.3 - Legal Requirements

Design-Builder and its Subcontractors will comply with all Legal Requirements relating to safety, as well as any County specific safety requirements set forth in the Contract which do not violate any applicable Legal Requirements. Design-Builder will immediately report, in writing, to County and, if required by applicable Legal Requirements, all government or quasi-government authorities having jurisdiction over matters involving the Construction Work, any injury, death, loss, damage or accident occurring at the Site, Without limiting the foregoing, Design-Builder will, and will cause each Subcontractor to, comply with worker health and safety requirements in Environmental Law and OSHA. In addition, Design-Builder will take all reasonable necessary and appropriate steps to ensure the health and safety of persons occupying any part of the facility in which the Construction Work Site is located or in the vicinity of or passing by the Construction Work Site and will also take all reasonable necessary and appropriate steps to protect from damage or destruction the property of County and other persons in any part of the facility in which the Construction Work Site is located or in the vicinity of or passing by the Construction Work Site. Among other actions in this regard, Design-Builder will comply with the requirements of any applicable fire code.

SC 4.4 - Discontinuance of Work

If in the course of the Construction Work, any environmental, health, or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA, or otherwise, then the Construction Work activities related to the concern must be discontinued until the concern is resolved. Prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard, the County must be notified immediately of the concern. Construction Work will not resume until approval has been provided by County. Close coordination will be maintained between County and Design-Builder so the Project schedule is impacted the least amount possible.

SC 4.5 - Subcontractor Responsibility

Design-Builder's responsibility for safety under this SC 4 is not intended in any way to relieve Subcontractors from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, death, loss, damage or accident resulting from their performance of the Construction Work.

SC 4.6 - Applicability of Other Contract Requirements

The requirements in this SC 4 supplement and are in addition to the other requirements in the Contract Documents.

SC 4.7 - Pass-Through to Subcontractors

Design-Builder will provide the requirements and make the assignments of responsibilities for safety precautions and programs for the Construction Work, for temporary Project facilities, and for equipment, materials and services for common use of Subcontractors. Design-Builder will assure that this SC 4 and the applicable assignments are included in the contract between Design-Builder and each Subcontractor.

SC 4.8 - County-Designated Limited Work Areas

County may elect to designate to Design-Builder specific limitations to the area in which Design-Builder and its Subcontractors are to perform the Construction Work in order to prevent a Release of an existing

Hazardous Substance on or in the vicinity of the construction site, provided that in such event County must make Design-Builder aware of the existence of the Hazardous Substance and must provide an area free from the Hazardous Substance sufficient for Design-Builder and its Subcontractors to perform the Construction Work. Whenever County does this, Design-Builder and its Subcontractors will carry out their actions in performing the Construction Work within the specified limited area. In addition, in performing the Construction Work, Design-Builder and its Subcontractors will not, intentionally or accidentally, or otherwise, traverse, scrape, or otherwise disturb soils or constructed surfaces adjacent to or outside the designated Construction Work area unless Design-Builder has requested and obtained written approval from the County. Any question about the scope of the permitted Construction Work area must be resolved by the County.

SC 5 - Site Conditions

SC 5.1 - General

DB may only claim Uncontrollable Circumstances relief due to any surface or subsurface conditioned encountered in the performance of the Contract if the condition meets the definition of either Differing Site Conditions or Regulated Site Conditions.

SC 5.2 - Notification

Design-Builder will immediately, and before such conditions are disturbed, notify County in writing of Differing Site Conditions or Regulated Site Conditions encountered at the Site that could adversely affect the cost of the Construction Work or the timely performance thereof.

SC 5.3 - Investigation and Remedy

The County will within ten (10) days after receipt of notice from Design-Builder, or such other reasonable time as necessary, investigate the conditions reported by Design-Builder under SC 5.2. If the County finds that conditions are so materially different as to support an equitable adjustment in the GMP or the Contract Time(s), an equitable adjustment will be accomplished by written change order to the Contract Time(s) or the GMP. Adjustment of the GMP will be for the actual, demonstrated direct and indirect cost impact to address the unforeseen condition. Extensions of Contract Time(s) will be considered only when based upon submission of an updated CPM master schedule showing an actual unavoidable delay to the Project critical path resulting from the unforeseen condition. If the County determines that no Change Order will be issued, the Contract Time(s) will not be changed and there will be no change in the GMP. Regardless of the outcome, the Design-Builder will continue with the Construction Work.

SC 5.4 - Timeliness of Notice

No claim by the Design-Builder for an increase in the GMP or in the Contract Time(s) will be allowed without proper advance notice and an adequate opportunity for the County to investigate.

SC 6 – Payment of Design-Builder - Finance Controls - Open Book Costs and Audit

SC 6.1 - County Payments

The County will make payments as provided in the Contract for Design-Builder's performance of the Construction Work up to, but not exceeding, the Guaranteed Maximum Price, as such GMP may be modified as provided in the Contract.

SC 6.2 – Section Reserved

SC 6.3 - Financial Records

With respect to all Construction Work performed by the Design-Builder and its Subcontractors, Design-Builder and each Subcontractor will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using generally accepted accounting principles and control systems approved by County. During the performance of the Construction Work and for five (5) years after Final Payment, the Design-Builder will retain and will also require all Subcontractors to retain for review, audit, or both, by the County all correspondence; meeting minutes; memoranda; electronic media; books; accounts; reports; files; time cards; material invoices; payrolls; evidence of all communications (in native format); evidence of direct, and indirect costs; and all other matters relating to the Construction Work. Upon request by County, a legible copy or the original of any or all such records will be produced by the Design-Builder at any reasonable time during or after the Construction Work as the County may request. The Design-Builder will submit to the County upon request all payrolls, reports, estimates, records, and any other data concerning the Construction Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor payment applications or invoices and such Subcontractor's progress payment checks. The requirements of this SC 6.3 will be included in all contracts between the Design-Builder and its Subcontractors. The County may exercise its rights under this SC 6.3 as often as reasonably necessary in the County's sole judgment to assure the County has a complete and accurate understanding of all Project costs.

SC 6.4 - Schedule of Values

The Schedule of Values will be used as a basis for payment as provided in SC 6.5 and SC 6.6. If there are any changes in the Guaranteed Maximum Price, the Schedule of Values will be adjusted accordingly. Design-Builder will provide written approval from its surety for the approved Schedule of Values to be used as a basis for monthly progress payments.

SC 6.5 - Applications for Payment

Design-Builder will deliver to County each month a certified application for payment in the format specified by County. Each application for payment: (i) will be for an amount based on the Schedule of Values and determined by the percentage of completion of the Construction Work; (ii) will show the percentage of completion of each category of the Construction Work; (iii) will be accompanied by an updated CPM schedule and a narrative report per SC 3; and will include the following, signed certification by Design-Builder:

The undersigned, as Design-Builder's duly authorized representative, certifies that to the best of the Design-Builder's knowledge, information, and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Design-Builder for Work for which previous Certificates for Payment were issued and payments received from the Design-Builder, and that current payment shown herein is now due.

In addition, with each application for payment, Design-Builder will submit such supporting documentation as is necessary or appropriate in the reasonable judgment of County to justify all amounts paid to Design-Builder under prior applications for payment. Payment will be made in accordance with A.R.S. § 34-609.

SC 6.6 - Amount of Progress Payments

The County will pay the amount in each Design-Builder request for payment to the extent approved for payment in the certificate for payment, less retainage as set forth in SC 6.7, provided that the cumulative payment amount before retainage (i) will not exceed the aggregate amount certified in all certificates for payment and, (ii) also will not exceed the percentage of completion of the Construction Work multiplied by the Guaranteed Maximum Price (excluding items of the Guaranteed Maximum Price not subject to

retainage), all as set forth in the Schedule of Values. The Design-Builder Construction Phase will be paid in accordance with the percentage of completion of the Construction Work.

SC 6.7 - Retainage

SC 6.7.1 - Design Payments

With respect to the Design-Builder's Design Phase Fees, no retainage will be withheld.

SC 6.7.2 - Construction Payments

With respect to all payments for the Construction Work, ten percent (10%) retainage will be withheld until the Construction Work is fifty percent (50%) complete. At that point in time, the County will pay one-half (1/2) of the accumulated retainage to Design-Builder provided that County has determined that the Design-Builder is making satisfactory progress on the entire Construction Work and there is no specific cause or claim relating to the Construction Work requiring a greater amount to be withheld. After that point in time, County will retain five percent (5%) of each payment until Final Completion of the Project, or a designated portion thereof. However, if at any time, County determines that satisfactory progress is not being made, ten percent (10%) retention will be reinstated for all future progress payments under the Contract pursuant to County's determination. This is in addition to the County's right to withhold payment as defined under SC 6.10. County's decision concerning satisfactory progress and the existence of specific causes or claims requiring greater retention will be final. Retainage will be released upon Final Completion of a designated portion of the Construction Work that County has agreed to accept separately. Release of retainage upon Final Completion of the Project will be as required under A.R.S. § 34-609.

SC 6.8 - Payment for On-Site and Off-Site Materials

Payment will be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Construction Work. Payment may similarly be made for materials and equipment suitably stored offsite, conditioned upon Design-Builder furnishing evidence to County that (a) title to the materials and equipment will pass to County upon payment therefor and there are no claims of third parties; (b) the materials and equipment are adequately insured for full replacement value plus delivery with the County named as an additional insured on the insurance policy; and (c) such other matters as the County may reasonably request in order to protect its interests.

SC 6.9 - Title to Construction Work

Design-Builder warrants that title to all Construction Work covered by an application for payment will pass to County no later than the time of payment. The Design-Builder further warrants that upon submittal of an application for payment, all Construction Work for which applications for payment have been previously issued and payments received from the County will be free and clear of liens, claims, security interests, or encumbrances in favor of Design-Builder, Subcontractors, or other persons or legal entities making a claim by reason of being a creditor of Design-Builder or any Subcontractor. Design-Builder will provide conditional waivers of lien through the date of the application for payment from each Subcontractor of any tier with each application for payment and when requested by County. Design-Builder will also provide with each application for payment unconditional waivers of lien through the date of the prior application for payment from each Subcontractor of any tier. As a condition precedent to Final Completion of the entire Construction Work or a portion of the Construction Work that County has agreed to accept separately, Design-Builder will provide unconditional waivers of lien from all Subcontractors.

SC 6.10 - Withholding Payment

The County may withhold payment from any application for payment to the extent necessary to protect County from loss because of:

- Unsatisfactory job progress as determined by the County.
- Disputed Construction Work or materials.
- Defective Construction Work not remedied.
- Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors.
- Failure of the Design-Builder to make payment to any Subcontractors within seven (7) days after receipt of each progress payment.
- The Design-Builder's failure to perform any of its contractual obligations under the Contract Documents or any other agreement with the County.
- Deficiencies or claims asserted by County against Design-Builder arising from any other project.
- Damage to the County or a separate contractor caused by the fault or neglect of the Design-Builder or any of its Subcontractor to the extent not covered by insurance.
- Reasonable evidence that the entire Construction Work or portion of the Construction Work that the County has agreed to accept separately will not be Substantially Complete within the Contract Time(s) due to delay for which the Design-Builder is responsible, or that the unpaid balance of the Guaranteed Maximum Price will not be adequate to cover completion of the entire Construction Work and liquidated damages for any anticipated unexcused delay for which the Design-Builder is responsible.

If the above basis for withholding payment is remedied, payment will be made for amounts previously withheld. Prior to any withholding pursuant to this SC 6.10, the County will meet with Design-Builder to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

SC 6.11 - Substantial Completion

When Design-Builder believes the entire Construction Work or a portion thereof which County has agreed to accept separately is Substantially Complete, Design-Builder will notify County and submit to County a comprehensive list of items to be completed or corrected relating to the entire Construction Work or the portion thereof, as applicable. Within five (5) working days of receipt of Design-Builder's notice and list, County or its representatives and Design-Builder will jointly make an observation or inspection, as applicable, to determine whether Substantial Completion has occurred. If it is determined by County that the entire Construction Work or a portion thereof, as applicable, is Substantially Complete, County will issue the Punch List and the certificate of Substantial Completion stating the date of Substantial Completion which will be executed by County or its representatives and Design-Builder. The Design-Builder will proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to complete all Construction Work in accordance with the Construction Documents and the other Design-Builder Contract.

SC 6.12 - Final Completion and Final Payment

SC 6.12.1 - Work and Submittal Requirements

Completion of all outstanding Construction Work items noted in the Punch List and all other Design-Builder requirements is required for County to certify Final Completion of the entire Construction Work or a portion thereof that the County has agreed to accept separately. Requirements also include, but are not limited to:

equipment operations training for County; satisfaction of the conditions precedent in SC 6.12.2; the Design-Builder being in compliance with the Construction Documents and the Contract as to all matters relating to the Construction Work; and submission to and approval by County of all drawings and all record and close out documents as specified in County's Project specifications, including but not limited to, all operating manuals, warranties, assignments of warranties from Design-Builder and its Subcontractors, and all other deliverables required by the Construction Documents and the Contract.

SC 6.12.2 - Documentation

Neither final payment nor any final release of retainage as to the entire Construction Work or as to a portion of the Construction Work that County has agreed to accept separately will become due until the Design-Builder submits to the County each of the following as to the entire Construction Work or the portion of the Construction Work that County has agreed to accept separately:

- An affidavit that payrolls, bills for materials and equipment, and other indebtedness Incurred in connection with the Construction Work or portion thereof, as applicable, for which County or the County 's property might be responsible or encumbered (less amounts withheld by the County) have been paid or otherwise satisfied.
- A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the County.
- Consent of surety to the final payment and final release of retainage.
- If required by County, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract.
- Unconditional waivers of lien from all Subcontractors.
- Evidence that all third-party warranties and guarantees have been transferred to County.
- Approval by County of the redlined drawings submitted by Design-Builder.
- A written accounting, in a form agreed by Design-Builder and County, of the Actual Cost of the Construction Work for the entire Construction Work or portion thereof, as applicable, including all supporting documentation justifying Actual Costs of the Work paid or to be paid by County required to be delivered by Design-Builder to County under the Contract.

SC 6.12.3 - Amount of Final Payment

Final payment by County to Design-Builder will be based on the Actual Costs of Construction Work for the Project, which amount will equal the aggregate amount of actual costs for the Construction Work, provided that:

- the Actual Costs of the Construction Work for the Project to be paid by County to the Design-Builder will not exceed the Guaranteed Maximum Price for the Project set forth in the Contract Documents, as such GMP may be modified in accordance with the Contract.
- the Actual Costs of the Construction Work to be paid by County for Construction Work will not exceed the Open Book Cost, including Fee.

Final payment to Design-Builder will equal the difference between the Actual Cost of the Construction Work and the aggregate sum of the progress payments (including retainage) made to Design-Builder based on the Schedule of Values, adjusted as above and subject to the terms of SC 6.12.

SC 6.12.4 - Partial Payment In Event of Final Completion Delay

If, after Substantial Completion of the Construction Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by the issuance of additional Change Orders by County, the County may upon request of the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Construction Work fully and properly completed. If the remaining balance for Construction Work not fully and properly completed is less than the applicable retainage, and if bonds have been furnished, the written consent of Surety to payment of the balance for that portion of the Construction Work fully and properly completed will be submitted by Design-Builder to the County, and such payment will be made under the terms and conditions governing final payment, except that it will not constitute a waiver of claims by either the Design-Builder or the County.

SC 6.12.5 - Waiver of Claims

Except for claims previously made by Design-Builder to County in writing, acceptance of final payment by the Design-Builder will constitute a waiver of affirmative claims by Design-Builder. The making of the final payment by the County will constitute a waiver of claims by the County, except those arising from (a) liens, claims, security interests, and encumbrances arising out of the Construction Work after final payment; (b) latent defects arising after final payment; or (c) the terms of warranties, guarantees, or indemnifications set forth in or required by the Contract or other rights provided under Arizona law.

SC 6.12.6 Audit Scheduling

County and Design-Builder agree to cooperate fully in the establishment of a schedule for early audit of the actual costs of construction so as not to unduly delay final payment. Audits may be conducted annually, semi-annually, on individual phases, or on any other such basis as may be agreed by County and Design-Builder.

SC 6.13 - Time

SC 6.13.1 - Time is of the Essence

Design-Builder and County recognize that any time limits set forth in the Contract Documents, as amended, are of the essence of this Contract. Design-Builder agrees that it will timely commence performance of the Construction Work, achieve Substantial Completion and Final Completion of the entire Construction Work, and achieve any interim milestones for Substantial Completion and Final Completion as required by the Contract. In addition, if County has agreed to accept separately a portion of the Construction Work, Design-Builder agrees to achieve Substantial Completion and Final Completion of each portion by the dates agreed in writing by County and Design-Builder. Failure to achieve any date or time for achievement of Substantial Completion of the entire Construction Work or any portion of the Construction Work that the County has agreed to accept separately will result in the assessment of Liquidated Damages.

SC 6.13.2 - Delay Liquidated Damages

Subject to relief in accordance with the terms and conditions of the Contract in the event of Uncontrollable Circumstances, if Substantial Completion occurs subsequent to the scheduled Substantial Completion date, then, in addition to the amounts payable to County under the Contract, the DB will pay to the County delay liquidated damages in the amount of \$1,290.00 per day for each day that the Substantial Completion date falls after the scheduled Substantial Completion date until any termination of the Contract for an Event of Default.

SC 6.13.3 - Time Extensions

If Design-Builder is delayed in the performance of the Construction Work (based upon a critical path analysis of the current Project Schedule) due to non-concurrent acts, omissions, conditions, events, or

circumstances beyond its reasonable control or prevention and due to no legal fault of its own or those for whom Design-Builder is responsible under the terms of the Contract, the time for Substantial Completion or Final Completion, as applicable, of the entire Construction Work or of any portion of the Construction Work the County has agreed to accept separately and, to the extent applicable, any interim milestones, will be extended by written Change Order for the amount of time such acts, omissions, conditions, events, or circumstances added to the time to complete the entire Construction Work, portion thereof or interim milestone, as applicable. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle Design-Builder to an extension of the Contract Time(s), include, but are not limited to: acts or omissions of County or anyone under County's control, including separate contractors; changes ordered in the Project by County through a written Change Order; unforeseeable Project Site conditions (to the extent provided in the Contract Documents); wars; floods; labor disputes; unusual delays in transportation; and unusually adverse weather conditions.

SC 6.13.4 - GMP Adjustment

Design-Builder will be entitled to an appropriate adjustment of its Guaranteed Maximum Price for extended construction general conditions resulting from non-concurrent delays due to acts, omissions, conditions, events, or circumstances beyond Design-Builder's reasonable control or prevention and due to no legal fault of its own or those for whom Design-Builder is responsible under the terms of the Contract.

SC 6.13.5 - Notice of Delay

Notice of any delay in the Construction Work will be made in writing by Design-Builder to the County as soon as possible, but in no event later than three (3) days after discovery of the event giving rise to the delay. Upon discovery of the delay, Design-Builder will immediately begin to keep and maintain complete and specific records regarding the time and costs associated with the delay. The Design-Builder will provide additional details concerning the delay in writing to the County within fourteen (14) calendar days from the beginning of the delay. Failure to meet these time requirements will constitute a waiver of and absolutely bar any and all later claims. The detailed notice will indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Construction Work, and potential mitigation plans. If the cause of the delay is continuing, the Design-Builder must give written notice every month at the same time it submits the updated progress narrative report to the County. Within a reasonable period of time, but in no event later than the end of the next month, the Design-Builder will submit further documentation concerning the delay and, if applicable, a formal written request covering an extension of the Contract Time(s) for such delay. The written request for time extension will state the cause of the delay, the number of days extension requested, and provide a fully documented analysis of the delay's impact on the Project Schedule, including any other data demonstrating a delay in the critical path of the entire Construction Work or the portion of the Construction Work the County has agreed to accept separately or individual milestone.

SC 6.14 - Changes to GMP and Time

SC 6.14.1 Change Order

Modifications to Contract may only be made by a written Contract amendment or Change Order executed by the Pima County Board of Supervisors or the Procurement Director, pursuant to the Pima County Procurement Code, and the Design-Builder.

- a. County may, at any time, make unilateral changes to the general Scope of Work, including the addition, deletion, or modification of Work. The Design-Builder will not proceed with any change involving an increase or decrease in cost or time without an approved Change Order executed by County and will proceed in accordance with the procedures set forth in this SC 6.14. The County's right to make changes will not invalidate the Design-Builder Contract or relieve the Design-Builder of any liability. Any requirement of notice to the Surety will be the responsibility of Design-Builder.

- b. "Change Order" means a written instrument issued after acceptance and incorporation into the Contract of Design-Builder's GMP, signed by County and Design-Builder, stating their agreement upon all of the following:
- An addition, deletion, or modification to the work within the general scope of the work.
 - The amount of the adjustment, if any, to the GMP (including, without limitation, an Allowance within the GMP) incorporated into the Contract, as applicable.
 - The extent of the adjustment, if any, to the Contract Time(s) of performance set forth in the Contract.
- c. All such changes in the Work authorized by applicable Change Order will be performed under the applicable conditions of the Contract and the County and Design-Builder will negotiate in good faith and as expeditiously as possible on the appropriate adjustments, as applicable. No GMP adjustment on account of a Change Order will include the Design-Builder's or any Subcontractor's profit, fee, home office overhead, or a formula allocation of indirect costs unless otherwise specifically allowed hereunder, except as allowed in SC 6.14.4.

SC 6.14.2 - Contract Administration Waiver

SC 6.14.2.1 - Administrative Communications

The Parties recognize that a variety of contract administrative matters will routinely arise during the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Condition is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of the Contract.

SC 6.14.2.2 - Contract Administration Memoranda

The principal formal tool for the administration of routine matters arising under the Contract between the Parties which do not require a Contract Amendment shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the Design-Builder as to matters of interpretation and application arising during the course of the performance of their obligations under the Contract. Such matters may include, for example: (1) issues as to the meaning, interpretation, application, or calculation to be made under any provision of the Contract Documents; (2) notices, waivers, releases, satisfactions, confirmations, further assurances, and approvals given under any provision of the Contract Documents; and (3) other similar contract administration matters.

SC 6.14.2.3 - Procedures

Either Party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by the Contract Representative of each Party, and, at the request of the County, co-signed by a Senior Supervisor for the Design-Builder. The County and the Design-Builder each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Contract.

SC 6.14.2.4 - Effect

The executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of the Contract. Any material change, alteration, revision, or modification of the Contract,

however, shall be effectuated only through a formal Contract Amendment authorized, approved or ratified by resolution of the County Board of Supervisors (or, as authorized, the County's Procurement Director) and properly authorized by the Design-Builder.

SC 6.14.3 - Minor Changes in the Construction Work

County may direct minor changes in the Construction Work consistent with the intent of the Construction Documents providing such changes do not involve an adjustment in the Guaranteed Maximum Price or Contract Time(s) and do not materially affect the design, quality, or performance of the Project. The County will promptly inform Design-Builder, in writing, of any such changes, and verify that Design-Builder has recorded such changes on the as-built documents.

SC 6.14.4 - Price, Time, or Scope of Work Adjustment

SC 6.14.4.1

The cost or credit to the County in a Change Order resulting from a change in the Construction Work, the Construction Documents or the other Design-Builder Construction Contract Documents or resulting from the cost of items covered by an Allowance exceeding the amount of the Allowance will be determined in one or more of the following ways:

- By unit prices stated in the Contract Documents.
- By the Cost of Work, properly itemized and supported by sufficient, substantiating data to permit evaluation.
- Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluation; provided, that such lump sum will not exceed that amount calculated under the Cost of Work method.

SC 6.14.1.2.

Any dispute regarding the pricing methodology or cost of a change will not relieve the Design-Builder from proceeding with the change as directed by the County. The cost or credit to the County will be determined by the County or its representatives on the basis of SC 6.14.4.1.

SC 6.14.1.3

An County-approved written Change Order executed by County and Design-Builder will be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency, and any other consequential costs related to items covered or affected, as well as time extensions. Any claimed cost, whether direct, indirect or consequential, and time extension not presented by Design-Builder for inclusion in the Change Order is irrevocably waived.

SC 6.14.1.4

If County and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by County, or in the event of any other disagreements over the scope of the Construction Work, the Construction Documents, or the other Contract Documents or proposed changes to the Construction Work, the Construction Documents or the other Construction Contract Documents or Contract Time(s), County and Design-Builder agree to try to resolve the disagreement consistent with this SC 6.14.

SC 6.15 - Emergencies

In any emergency affecting the safety of persons or property, Design-Builder will act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Guaranteed Maximum Price or Contract Time(s) or both on account of emergency work will be determined as provided in SC 6.14.

SC 7 – Warranty and Correction of Non-Conforming Work

SC 7.1 - Warranty

Design-Builder warrants to County that the construction, including all materials and equipment furnished as part of the construction, will be new unless otherwise specified in the Construction Documents or Contract, of good quality, in conformance with the Construction Documents and Contract, and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations or unreasonable failure to maintain the construction by persons other than Design-Builder, Design-Builder's subcontractors, or others under Design-Builder's control. Nothing in this warranty will limit any manufacturer's warranty which provides County with greater warranty rights than set forth herein. Design-Builder will provide County with all manufacturer's warranties and operation and maintenance manuals upon Substantial Completion of the work. Design-Builder's warranty will be for a period of two (2) years and will commence for all portions of the Construction Work upon Substantial Completion of the entire Construction Work as determined by County under this Contract unless the Parties mutually agree otherwise in writing. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

SC 7.2 - Correction of Defects and Nonconforming Work

SC 7.2.1 - Agreement to Correct

Design-Builder agrees to promptly correct any work that is found not to be in conformance with the Construction Documents, whether or not previously inspected or observed by County's Representative unless a specific written waiver of nonconformance has been provided to Design-Builder by County. This obligation will continue for the term of the warranty. Nothing in this SC 7.2.1 will waive any other rights that County has under Arizona law.

SC 7.2.2 - County Right to Correct

Upon receipt of written notice from County that the Construction Work is not in conformance with the Construction Documents, Design-Builder will, within seven (7) days (except in the case of a nonconformity that affects the safety or security of life or property or which involves an item of work on the critical path of the Project Schedule, in which case response will be immediate), commence correction of such nonconformity including, without limitation, correction, removal, or replacement of the nonconforming work and repair of any damage caused to any other part of the work attributable to the nonconforming work. If Design-Builder fails to commence correction within seven (7) days, County, in addition to any other remedies provided in the Contract, may provide notice to Design-Builder that County will commence correction with its own or other forces. In such event, Design-Builder will be responsible for all costs and expenses that County may incur in remedying the nonconformity, including, without limitation and at County's sole discretion, the cost of County's staff time and all other costs and fees incurred by County, which amount County may recover from Design-Builder by setoff or otherwise, as permitted under Arizona law. County will notify Design-Builder of its intent to make corrections at or before the commencement of corrective work.

SC 7.2.3 - County's Additional Rights Preserved

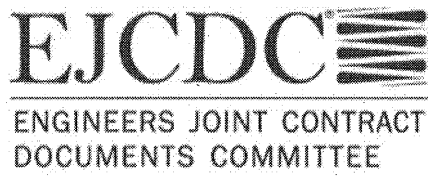
The warranty period applies only to Design-Builder's obligation to correct construction work or replace materials or equipment not in conformance with the Construction Documents and will not constitute a period of limitation with respect to any other rights or remedies County may have with respect to Design-Builder's other obligations under the Contract or Arizona law.

END OF APPENDIX "D" - DESIGN-BUILDER SPECIAL CONDITIONS

APPENDIX "E" (58 pages)
DESIGN-BUILDER GENERAL CONDITIONS

**STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

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**STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

- 1.01 Defined Terms
- 1.02 Terminology

ARTICLE 2 – PRELIMINARY MATTERS

- 2.01 Delivery of Bonds and Evidence of Insurance
- 2.02 Copies of Documents
- 2.03 Conceptual Documents
- 2.04 Before Starting the Work
- 2.05 Authorized Representatives
- 2.06 Initial Conference
- 2.07 Review of Schedules
- 2.08 Electronic Transmittals

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

- 3.01 Contract Documents
- 3.02 Reference Standards
- 3.03 Resolving Discrepancies
- 3.04 Ownership and Reuse of Documents

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

- 4.01 Commencement of Contract Times
- 4.02 Starting the Work
- 4.03 Progress Schedule
- 4.04 Delays in Design-Builder's Progress

**ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL
CONDITIONS**

- 5.01 Availability of Lands
- 5.02 Use of Site and Other Areas
- 5.03 Reference Points
- 5.04 Differing Site Conditions
- 5.05 Underground Facilities
- 5.06 Hazardous Environmental Conditions at Site

ARTICLE 6 – BONDS AND INSURANCE

- 6.01 Performance, Payment, and Other Bonds
- 6.02 Insurance—General Provisions
- 6.03 Design-Builder’s Insurance
- 6.04 Owner’s Liability Insurance
- 6.05 Property Insurance
- 6.06 Waiver of Rights
- 6.07 Receipt and Application of Property Insurance Proceeds

ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES

- 7.01 Design Professional Services
- 7.02 Construction
- 7.03 Supervision and Superintendence of Construction
- 7.04 Labor; Working Hours
- 7.05 Services, Materials, and Equipment
- 7.06 “Or Equals” and Substitutions
- 7.07 Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others
- 7.08 Patent Fees and Royalties
- 7.09 Permits and Utility Charges
- 7.10 Taxes
- 7.11 Laws and Regulations
- 7.12 Record Documents
- 7.13 Safety and Protection
- 7.14 Safety Representative
- 7.15 Hazard Communication Programs
- 7.16 Emergencies
- 7.17 Post-Construction Phase
- 7.18 Design-Builder’s General Warranty and Guarantee
- 7.19 Indemnification

ARTICLE 8 – SUBMITTALS

- 8.01 Design-Builder’s Preparation of Submittals
- 8.02 Owner’s Review of Submittals

ARTICLE 9 – OTHER CONSTRUCTION

- 9.01 Other Work
- 9.02 Coordination

9.03 Legal Relationships

ARTICLE 10 – OWNER’S RESPONSIBILITIES

- 10.01 General
- 10.02 Insurance
- 10.03 Limitations on Owner’s Responsibilities
- 10.04 Undisclosed Hazardous Environmental Condition
- 10.05 Owner’s Site Representative
- 10.06 Owner’s Consultants and Managers
- 10.07 Safety Programs
- 10.08 Permits and Approvals

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

- 11.01 Amending and Supplementing Contract Documents
- 11.02 Authorized Changes in the Work
- 11.03 Unauthorized Changes in the Work
- 11.04 Changes Involving the Design
- 11.05 Change of Contract Price
- 11.06 Change of Contract Times
- 11.07 Execution of Change Orders
- 11.08 Notice to Sureties

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

- 12.01 Cost of the Work
- 12.02 Unit Price Work

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

- 13.01 Access to Construction
- 13.02 Tests, Inspections, and Approvals
- 13.03 Uncovering Construction
- 13.04 Defective Construction
- 13.05 Owner May Correct Defective Construction
- 13.06 Costs
- 13.07 Owner’s Acceptance of Defective Construction
- 13.08 Owner May Stop Construction

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

- 14.01 Progress Payments
- 14.02 Design-Builder’s Warranty of Title

- 14.03 Substantial Completion
- 14.04 Partial Use or Occupancy
- 14.05 Final Inspection
- 14.06 Final Payment
- 14.07 Waiver of Claims
- 14.08 Correction Period

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

- 15.01 Owner May Suspend Work
- 15.02 Owner May Terminate for Cause
- 15.03 Owner May Terminate for Convenience
- 15.04 Design-Builder May Stop Work or Terminate

ARTICLE 16 – DISPUTES

- 16.01 Methods and Procedures

ARTICLE 17 – MISCELLANEOUS

- 17.01 Giving Notice
- 17.02 Computation of Times
- 17.03 Cumulative Remedies
- 17.04 Limitation of Damages
- 17.05 No Waiver
- 17.06 Survival of Obligations
- 17.07 Controlling Law
- 17.08 Headings

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
 2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
 3. *Application for Payment*: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
 5. *Change Order*: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
 7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.
 8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design

Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.

10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.
19. *Design Professional Services*: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.
20. *Design Agreement*: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal*: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design

professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).

22. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition*: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.
29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.
31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the

Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.

36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
39. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
40. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
41. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. *Schedule of Values*: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.
43. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
44. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
45. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
46. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.

47. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.
49. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.
51. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
52. *Unit Price Work*: Work to be paid for on the basis of unit prices.
53. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
54. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives*:
 1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
 2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, "provide" is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance*: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

2.03 *Conceptual Documents*

- A. *Design-Builder's Review of Conceptual Documents*:
 1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
 2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
 3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
 4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.
- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
 1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
 3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.
- C. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 *Reference Standards*

- A. *Standards, Specifications, Codes, Laws or Regulations:*
 1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Resolving Discrepancies*

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.
- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
 1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
 2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
 3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
 4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.
 5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times*

- A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

4.03 *Progress Schedule*

- A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.
- B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
 2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.
- C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

4.04 *Delays in Design-Builder's Progress*

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
 4. Acts of war or terrorism.

- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.
- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.

- B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from

the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

- C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.
- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.

1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.
- B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
 2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
 3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
 4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and
 5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work,

whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.

E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.

B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

- F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner's termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability (as applicable), and umbrella or excess liability insurance; and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.
- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and

endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.
- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability:* Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Design-Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
 - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
 - 2. Claims for damages insured by reasonably available personal injury liability coverage.
 - 3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- C. *Commercial General Liability—Form and Content:* Design-Builder's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder's contractual indemnity obligations in Paragraph 7.19.
 3. Broad form property damage coverage.
 4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs.
 4. Any exclusion of coverage relating to earth movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
 6. Any limitation or exclusion based on the nature of Design-Builder's work.
 7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's

liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

- G. *Contractor's pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.
- I. *Professional liability insurance:*
1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
 2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
 3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
 4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.
- J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. Include at least the specific coverages provided in this Article.
 2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days' prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.

4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. Include the Owner and Design-Builder as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.
 3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended

to provide working access to the Site, or to the Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.

4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. Extend to cover damage or loss to insured property while in transit.
 7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
 9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. Not include a co-insurance clause.
 11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. Include performance/hot testing and start-up.
 13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days' prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual

owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

- G. *Loss of Use and Delay in Start-up:* Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Construction caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.
- C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.
- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy.

Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES

7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
- B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

- A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.
- B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 *Labor, Working Hours*

- A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction on legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder's sole discretion.

7.05 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 *"Or Equals" and Substitutions*

- A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:
 - 1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3. Has a proven record of performance and availability of responsive service; and
 - 4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.

- E. *Construction Drawings and Construction Specifications*: "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:

1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.
- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

7.10 *Taxes*

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
- B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.
- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Safety Representative*

- A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

- A. Design-Builder shall:
 1. Provide assistance in connection with the start-up and testing of any equipment or system.
 2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

- A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.

- B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
 - 2. Normal wear and tear under normal usage.
- C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
 - 1. Observations by Owner;
 - 2. The making of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Submittal;
 - 6. Any inspection, test, or approval by others; or
 - 7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 8 – SUBMITTALS

8.01 *Design-Builder's Preparation of Submittals*

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
 - 1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
 - 2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
 - 1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
 - 2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
 - 3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and
 - 4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review

and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.
- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

ARTICLE 9 – OTHER CONSTRUCTION

9.01 *Other Work*

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.
- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

9.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-

Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.
- D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 10 – OWNER'S RESPONSIBILITIES

10.01 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
 - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
 - 2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;

3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
 4. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Utility and topographic mapping and surveys;
 - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
 - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
 - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
 - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
 - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
 5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
 - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder

(including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 *Insurance*

- A. Owner's responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

10.03 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant, if any, is identified in the Agreement.
- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant, Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 *Permits and Approvals*

- A. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
 - 1. *Change Orders*: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - 2. *Work Change Directives*: The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.
- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the

applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.
- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D).
- D. *Design-Builder's Fee:* The Design-Builder's fee for overhead and profit on Change Orders shall be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
 - b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
 - c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
 - d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice

from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

- e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount equal to 5 percent of such net decrease; and
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and
 - 4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
 - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
 - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder. For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.
 2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.
 3. Cost of permits obtained by Design-Builder.
 4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
 5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
 6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.

7. Supplemental costs including the following items:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
- c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
- e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
- h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.

3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.
- D. *Design-Builder's Fee*: When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.
- E. *Documentation*: Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.
- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

13.01 *Access to Construction*

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
 - 3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;
 - 4. By manufacturers of equipment furnished under the Contract Documents;
 - 5. To meet the requirements of the Construction Drawings and Construction Specifications;
 - 6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
 - 7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
- C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.
- D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
- E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
- F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
- H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
- I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may

require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.
2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.
- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.

- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- C. *Payment of Obligations:*
 - 1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.

2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.
- D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- E. *Review of Applications:*
1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.
- F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.
1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
 2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
 3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.
- G. *Reduction in or Refusal to Make Payment:*
1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
 - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Design-Builder has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Construction is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;

- h. The Contract Price has been reduced by Change Orders;
 - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
 - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
 - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
 - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

14.02 *Design-Builder's Warranty of Title*

- A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.
- B. If Owner considers the Work substantially complete:
 - 1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
 - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
 2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

14.05 *Final Inspection*

- A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 *Final Payment*

A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
 - a. All documentation called for in the Contract Documents;
 - b. Consent of the surety, if any, to final payment;
 - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
 - d. A list of all disputes that Design-Builder believes are unsettled; and
 - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. *Final Payment and Acceptance*: If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.
- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due*: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

14.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events justifies termination for cause:
 - 1. Design-Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
 - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
 - 3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
 4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

ARTICLE 16 – DISPUTES

16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

- B. *Response*: Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations*: Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation*: If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.
 - 1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
 - 2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
 - 3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
 - 4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.
- E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:
 - 1. In person, by a commercial courier service or otherwise; or
 - 2. By registered or certified mail, postage prepaid; or
 - 3. By e-mail, with the words "Formal Notice" or similar in the e-mail's subject line.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
 - 1. Laws or Regulations; or
 - 2. Any special warranty or guarantee; or

3. Other provisions of the Contract.

- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

EJCDC® D-700, Standard General Conditions of the Contract Between Owner and Design-Builder.

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END OF APPENDIX "E" – DESIGN-BUILDER GENERAL CONDITIONS

APPENDIX "F" (5 pages)

SUPPLEMENTAL PROVISIONS – CONSTRUCTION COSTING

ARTICLE 1 – GENERAL

The Guaranteed Maximum Price (GMP) will be developed as provided for in this Appendix. The GMP Proposal for the entire Work (or portions thereof) will be presented in a format acceptable to COUNTY, and will include the clarifications or assumptions upon which the GMP Proposal is based.

- A. Unless otherwise directed by COUNTY, each GMP proposal will include all of the following components:
1. Summary of the GMP: A summary of the GMP with a total for each of the components of the GMP defined in the Construction Provisions (i.e. "Cost of the Work", "Design-Builder Contingency", "Fee") as described and as shown in **Attachment 1 to this GMP Appendix**. If there will be multiple GMPs, then the GMP Summary will be presented in a spreadsheet format with each successive GMP in a separate column with the total GMP in the rightmost column.
 2. Scope of Work: a brief description of the Work to be performed for the Project or phase(s) to which the GMP proposal applies. Exclusions must be clearly stated.
 3. Schedule of Values – summary spreadsheet and backup documents: Spreadsheet with the estimated cost organized by subcontract categories, systems, etc., and used to review the Design-Builder's applications for progress payments. The supporting document(s) for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information will consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
 4. List of Plans and Specifications used for GMP Proposal: A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. (Date stamped and signed by Design-Builder).
 5. List of clarifications, assumptions and exclusions: A list of the clarifications, assumptions, and exclusions by Design-Builder with regard to the Scope of Work in the GMP proposal, to supplement the information contained in the documents.
 6. Project Schedule in CPM format: A Critical Path Method (CPM) diagram construction schedule. An updated Project Management Plan will also be submitted with each GMP proposal.
 7. A cash-flow forecast based on the proposed construction schedule, schedule of values and GMP. If the construction covered by the GMP overlaps construction performed under a prior GMP, their cash flows will be consolidated into a single cash-flow statement.
 8. Subcontractor Selections / SBE Requirements / Utilization Form / Letters of Intent: A summary of the Subcontractor Selections, including an SBE requirements section addressing the goals set for the Project and the current status on meeting the Project goals. The Utilization form and Letters of Intent must be attached when subcontractor selection has been made prior to final GMP submittal. Subcontractor selections must conform to the approved Subcontractor Selection Plan.
- B. The submittal package must be kept as simple as possible and be submitted on 8 ½ x 11 inch sheets. Color or shading must be kept to a minimum. If used, the color or shading must not affect the reproduction of the submittal in black and white.

- C. The Parties may, by agreement, use a simplified GMP format for smaller projects or phases, so long as the documents supporting the GMP clearly delineate the Work—or that portion of the Work—to which the GMP applies and provide a schedule for completion of the Work.

ARTICLE 2 – COST OF THE WORK

The term “Cost of the Work” means costs necessarily incurred by Design-Builder in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the place of the Project except with prior consent of the COUNTY. The Cost of the Work includes only the items set forth in this **Article**.

1. Wages of direct employees of Design-Builder performing the Work at the Site or, with County's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.
2. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the coordination, production or transportation of material and equipment necessary for the Work.
3. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing the following functions: Payment of the salaries of Design-Builder's project management, estimating, administrative, scheduling, safety and other personnel when working on items of Work specifically related to the Project at Design-Builder's principal office, Design Consultant(s)' office, job site, field office or any other location for that portion of their time spent in the performance of the Work for the Project shall be included in the Cost of the Work. The cost of Vice Presidents and the President of Design-Builder is included in the Design-Builder's Fee and is not part of the Cost of the Work. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a fifty percent (50%) markup to compensate Design-Builder for the Project related overhead associated with such personnel.
4. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, excluding bonuses, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under paragraphs (a) through (c) of this definition.
5. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.
6. Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
7. Costs incurred by Design-Builder in repairing or correcting defective, damaged, or nonconforming Work, provided that such defective, damaged, or nonconforming Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder will exercise best efforts to obtain recovery from the appropriate source and credit County if recovery is obtained.
8. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
9. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
10. Costs of removal of debris and waste from the Project Site.

11. The reasonable costs and expenses incurred in establishing, operating, and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.
12. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment, and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Project Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
13. Premiums for insurance and bonds required by the Contract or the performance of the Work.
14. All fuel and utility costs incurred in the performance of the Work.
15. Sales, use, privilege, or similar taxes, tariffs, or duties incurred in the performance of the Work.
16. Costs for permits, royalties, licenses, tests, and inspections incurred by Design-Builder as a requirement of the Contract Documents provided, however, that costs for re-tests and re-inspections are not included in the Cost of Work to the extent the re-tests and re-inspections result from re-work or re-testing due to Design-Builder's failure to meet County requirements under this Contract.
17. Deposits which are lost, except to the extent caused by Design-Builder's negligence or delay.
18. Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property except to the extent the emergency was caused by Design-Builder's negligence.
19. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by County.

ARTICLE 3 - COSTS NOT TO BE REIMBURSED

The following are excluded from the Cost of the Work:

1. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in paragraphs (a) through (c) of this definition.
2. Overhead and general expenses, except as provided for elsewhere in this definition, or which may be recoverable for changes to the Work.
3. The cost of Design-Builder's capital used in the performance of the Work.
4. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

ARTICLE 4 - DISCOUNTS, REBATES AND REFUNDS

- A. Cash discounts obtained on payments made by Design-Builder will accrue to COUNTY if (1) before making the payment, Design-Builder included them in an Application for Payment and received payment therefor from COUNTY, or (2) COUNTY has deposited funds with Design-Builder with which to make payments; otherwise, cash discounts will accrue to Design-Builder. Trade discounts, rebates, refunds, and amounts received from sales or surplus materials and equipment will accrue to COUNTY, and Design-Builder will make provisions so that they can be secured.
 1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any Design-Builder controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

2. "Cash" discounts which may accrue to Design-Builder will be limited to a maximum of one and one-half percent (1.5%) of invoice cost. Any portion of "Cash" discounts greater than one and one-half percent (1.5%) will automatically accrue to COUNTY if Design-Builder is eligible to take advantage of the discounts.
- B. Amounts that accrue to COUNTY in accordance with the provisions of Paragraph 4.A.1 will be credited to COUNTY as a deduction from the Cost of the Work.

ARTICLE 5 - CONTINGENCY FUND

Generally:

- A. The GMP may include a Design-Builder Contingency in the amount stated in the GMP Summary. Each line item of the GMP Summary for which risk remains after the Pre-construction Phase will carry an agreed on contingency that can be traced back to the initial cost model. Subject to the terms of the Contract Documents and with prior notification to and approval by COUNTY, Design-Builder will be entitled to allocate from and apply against the Design-Builder Contingency increases in the Cost of the Work that could not have been reasonably anticipated by a Design-Builder using the standard of care and skill that a professional Design-Builder in Arizona would exercise under similar conditions at the time the GMP was established or for increases in General Condition Costs. COUNTY may disallow such Design-Builder Contingency use and deny reimbursement in the absence of prior notice or if COUNTY determines that the use was not consistent with the Contract Documents.
- B. Design-Builder may not apply, use, or allocate from the Design-Builder Contingency any amounts for any of the foregoing purposes that are the result of a material breach or material failure to perform by Design-Builder, any subcontractor, or vendor (except as necessary to replace any subcontractor, or vendor because of the bankruptcy or failure of such entity to perform), or any entity for which any of them are liable or responsible at law or under the Contract Documents, or for any non-allowable costs of the Work.
- C. Each application of the Design-Builder contingency by Design-Builder will be reflected (with narrative explanation) on the Application for Progress Payment for the period during which Design-Builder makes such application. Application of Design-Builder Contingency to any particular risk event should not exceed the agreed associated amount of the Design-Builder Contingency previously assigned to the specific line item in the GMP. Any portion of the Design-Builder Contingency remaining unapplied at final completion will be a credit against and reduce the GMP. When Design-Builder utilizes Design-Builder's Contingency funds, Design-Builder will make the appropriate changes to the Schedule of Values with the next regular progress payment request. Design-Builder will deduct the amount of Design-Builder's Contingency funds used from Design-Builder's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If Design-Builder's Contingency funds are used for a new line item that was not included in the original Schedule of Values, Design-Builder will so indicate.
- D. Design-Builder Contingency is not cumulative across multiple GMPs.
- E. COUNTY's Contingency is a sum of money in the Contract but not included in the GMP that may be used at the discretion of COUNTY to cover any increases in Project costs that result from COUNTY directed changes, changed site conditions, or additional costs of Allowance Items the cost of which exceeds the Allowance therefor. COUNTY's Contingency will be added to the GMP amount provided by Design-Builder, the sum of which will be the full Contract price for construction. Markups for Construction Fee, taxes, and overhead will be applied by Design-Builder at the time that COUNTY's Contingency is used.
- F. COUNTY's Contingency and Design-Builder Contingency will not be combined into a single project contingency.

ATTACHMENT 1 TO APPENDIX "F"

GMP Summary Format

CONSTRUCTION	AMOUNT
CONSTRUCTION COSTS:	
Cost of Construction	\$
Design-Builder Contingency	\$
<i>Subtotal Direct Construction Costs</i>	\$
INDIRECT CONSTRUCTION COSTS:	
General Conditions	\$
Overhead	\$
Insurance	\$
Payment and Performance Bonds	\$
Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance	\$
Construction Fee (As a percentage of Subtotal above or to exclude any items above)	
Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance and Fee	
Arizona Gross Receipts Tax	\$
Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance, Fee and Tax	\$
GUARANTEED MAXIMUM PRICE (GMP)	\$
OTHER PROJECT COSTS:	
COUNTY Contingency	\$
TOTAL CONTRACT COST	\$

END OF APPENDIX "F" – SUPPLEMENTAL PROVISIONS—CONSTRUCTION COSTING

APPENDIX "G" – GLOSSARY OF TERMS AND DEFINITIONS (9 pages)

DESIGN-BUILD CONTRACT DEFINITIONS AND ABBREVIATIONS

DEFINITIONS

"Act" means A.R.S. Title 34, Chapter 6, as amended from time to time.

"Allowance" means an amount of money set aside in the GMP for an item or element of work contained in the Work for which the GMP plans and specifications were inadequate to reasonably support the development of a definite cost.

"Amendment" means a written agreement between Owner and Design-Builder that modifies the contract terms or provisions. An Amendment may modify anything within the general scope of the contract.

"Applicable Law" means: (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the County and the EPA, ADEQ or any other Governmental Body, in each case having the force of law and applicable from time to time to: (a) the siting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of the Project; (b) the conveyance, treatment, storage, discharge, reuse or disposal of the influent thereto or the effluent thereof; (c) the air and odor emissions therefrom; (d) the transfer, handling, processing, transportation or disposal of sludge, biosolids and other residuals produced thereby; or (e) any other transaction or matter contemplated hereby (including any of the foregoing which pertain to wastewater treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination).

"Calendar Day" means any day shown on the calendar, beginning at midnight, extending for a twenty-four (24) hour period, and ending at midnight.

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance therewith materially increases the cost of performing or materially increases the scope of a party's obligations hereunder:

- (a) except as provided below with respect to the exclusions from the definition of "Change in Law", the adoption, amendment, promulgation, issuance, modification, repeal or written change in any Applicable Law, or the administrative or judicial interpretation thereof on or after the Proposal Date, unless such Applicable Law was on or prior to the Proposal Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;
- (b) except as provided below with respect to the exclusions from the definition of "Change in Law", the order or judgment of any Governmental Body issued on or after the Proposal Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Proposal Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Design-Builder or of the County, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment will not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

- (c) except as provided below with respect to the exclusions from the definition of "Change in Law", the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Proposal Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Design-Builder or of the County, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence will not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that none of the following scenarios constitutes a "Change in Law":

- (i) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Proposal Date;
- (ii) acts, events and circumstances relating to any Governmental Approval with respect to which the Design-Builder has assumed the permitting risk as and to the extent provided under the Permitting Workplan drafted by Design-Builder under SOW Task 2;
- (iii) any increase in any fines or penalties provided for under Applicable Law in effect as of the Proposal Date; or
- (iv) any act, event or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Design-Builder by the Contract Standards in effect as of the Contract Date; provided, however, that, for the purposes of this provision, the Contract Standards in effect as of the Contract Date will include Applicable Law as of the Proposal Date but not any Change in Law between the Proposal Date and the Contract Date.

"Change Order" means a written order issued by the County and agreed to in writing by the Design-Builder prior to Final Completion making a Design and Construction Requirement Change, whether made at Design-Builder request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of the County, or otherwise making a Fixed Design-Build Price Adjustment, adjustment to the Scheduled Acceptance Date, or other change to the terms and conditions of this Contract relating to the Design-Build Work. A Change Order will be deemed to constitute a Contract Amendment. No Change Order will bind the County unless it has been approved by the County Board of Supervisors or Procurement Director pursuant to the Pima County Procurement Code.

"Construction Contingency" means the amount included within the GMP that is available for Design-Builder's exclusive use for unforeseeable costs incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include trade-buyout differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions, and Subcontractor defaults. Design-Builder will obtain Owner's approval prior to any use of the Construction Contingency.

"Construction Documents" means the plans and specifications prepared by the Design-Builder for the Project to be used to construct the Project. The Construction Documents set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase).

"Construction Fee" means the Design-Builder's fee, included in the GMP, for managing the Construction Phase of the Project.

"Contract" means the Design-Build Contract between the Design-Builder and the County for the Design and Construction of the Project, including all Exhibits, as the same may be amended or modified from time to time in accordance with the Contract.

"Contract Administration Memorandum" (or "CAM") means a written document evidencing agreement between the Parties concerning administration of routine matters arising under the Contract. Such matters

may include, for example: (1) issues as to the meaning, interpretation, application, or calculation to be made under any provision of the Contract Documents; (2) notice, waivers, releases, satisfactions, confirmations, further assurances, and approvals given under the Contract; and (3) other similar contract administration matters. A CAM cannot be used to modify the Contract.

"Contract Services" means the Design-Build Work.

"Contract Standards" means the standards, terms, conditions, methods, techniques, and practices imposed or required by: (1) Applicable Law; (2) the Technical Specifications; (3) the Performance Guarantees; (4) Good Engineering and Construction Practice; (5) Good Industry Practice; (6) the Construction Plan; (7) the Design-Build Quality Management Plan; (8) the Operation and Maintenance Manual; (9) the Process Control Management Plan; (10) applicable equipment manufacturers' specifications; (11) applicable Insurance Requirements; and (12) any other standard, term, condition, or requirement specifically provided in this Contract to be observed by the Design-Builder.

"Contract Time" means the number of Working Days or Calendar Days, as specified in the Contract, allowed for completion of the Work, including authorized time extensions. If a specified completion date is shown in the bid documents in lieu of the number of Working or Calendar days, the Contract Time expires as of that date, and the construction will be completed on or before that date.

"County" means Pima County, Arizona, a body politic and corporate, and a subdivision of the State of Arizona.

"County Fault" means any breach (including the untruth or breach of any County representation or warranty herein set forth), failure, non-performance, or non-compliance by the County under this Contract with respect to its obligations and responsibilities under this Contract to the extent not directly attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Design-Builder's rights, obligations, or its ability or costs to perform under this Contract.

"County Indemnitee" has the meaning specified in Contract Section 8 (Indemnification).

"Critical Path Method" (or "CPM") means a way of depicting the sequence of activities in a project, including interdependencies, and containing all activities needed for successful completion of the Work. CPM is used to produce a Critical Path Schedule.

"Critical Path Schedule" means the sequence of critical, time sensitive activities from the start of the Work to Substantial Completion of the project, for which any delay in the completion of these activities will extend the Substantial Completion date.

"Day" means, unless otherwise designated in writing, a Calendar Day.

"Delay Costs" means those items of Cost of the Work attributable to an Excusable Delay for which the Owner is responsible and which are payable by the Owner to the Design-Builder pursuant to a Change Order as provided in Special Condition 6.14.

"Deliverable Material" means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses, and other documents and materials required to be delivered by the Design-Builder to the County pursuant to this Contract, including the Design Documents.

"Design and Construction Requirement Change" means a change in the Design and Construction Requirements made: by a Change Order pursuant to Special Condition 6.14 (Changes to GMP and Time); by a Unilateral Change Directive pursuant to Contract Section 12 (Unilateral Change Directive); as a result of a Design-Builder request (not requiring a change in GMP or time) agreed to by the County; due to Uncontrollable Circumstances; as a result of a term or condition imposed by a Governmental Body; or, provided the change does not require a change in GMP or time, at the direction of the County.

"Design-Builder" means _____ a [corporation] organized and existing under the laws of _____, and its permitted successors and assigns.

"Design-Builder Fault" means any breach (including the untruth or breach at the time made by any Design-Builder representative or warranty in the Contract, failure, non-performance or non-compliance by the Design-Builder with respect to its obligations and responsibilities under this Contract to the extent not directly attributable to any Uncontrollable Circumstance, which materially and adversely affects the County's rights, obligations, or its ability or costs to perform under the Contract.

"Design and Construction Requirements" means those portions of the Technical Specifications designated as "Design and Construction Requirements".

"Design-Build Work" (or Work) means the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, Required Insurance, temporary facilities, and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder's design, engineering, construction, start-up, shakedown, Performance Testing, obtaining and maintaining Governmental Approvals, and related obligations with respect to the construction of the Project Improvements during the Design-Build Period under this Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Design-Builder's administrative, accounting, record-keeping, notification, and similar responsibilities of every kind whatsoever under this Contract pertaining to such obligations. A reference to Design-Build Work means any part and all of the Design-Build Work unless the context otherwise requires, and includes all Design-Build Work authorized or required by Change Order or Unilateral Change Directive.

"Design Documents" means the Design-Builder's plans, technical specifications, interim design and Construction Drawings, record drawings, and other design documents prepared in connection with the Design-Build Work.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Project Site that materially differ from the geotechnical conditions reasonably anticipated by the data and information set forth in the geotechnical reports set forth in the reference documents provided by the County in conjunction with the Contract.

"Encumbrance" means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment, or encumbrance of any kind with respect to the Project.

"Engineer-of-Record" means the professional engineer licensed in the State of Arizona in good standing who is designated by the Design-Builder and acceptable to the County, in its reasonable discretion, and is responsible for the preparation, signing, dating, sealing, and issuing of the engineering documents relating to a portion of or all of the Design-Build Work.

"Event of Default" means, with respect to the Design-Builder, those items specified in Contract Section 14.1 (Events of Default).

"Final Completion" means for each Project full and successful completion of all Construction Phase Work noted in or reasonably inferred from the Construction Documents and the Contract, including but not limited to, all Punch List work, submission of all record and close-out documents specified the Contract Documents, all County training, and all start-up activities.

"General Conditions Costs" includes, but is not limited to, the following types of costs during the Construction Phase: payroll costs for Project Manager or Construction Manager for work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor

burdens for direct labor costs; costs of bond premiums; costs of contractors not in the direct employ of the Design-Builder or Subcontractors; and fees for licenses. General Conditions shall be a fixed sum. For payment purposes, General Conditions shall be divided by the number of days allowed for performance to arrive at a fixed daily rate.

"Guaranteed Maximum Price" or "GMP" - means the sum of the maximum cost of the Work; the Construction Fee; Design-Builder Contingency, General Conditions Costs, and Taxes.

"GMP Plans and Specifications" means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

"Good Engineering and Construction Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal wastewater treatment industry as followed in the southwestern region of the United States.

"Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services. "Governmental Approvals" includes, without limitation, the County-designated Governmental Approvals.

"Guaranteed Maximum Price" or "GMP" means the Fixed Design-Build Price and any Fixed Design-Build Price Adjustments made pursuant to SC 6.14 (Changes to GMP and Time).

"Hazardous Material" means any waste, substance, object or material deemed hazardous under Applicable Law, including "hazardous substance" as defined under CERCLA and "hazardous waste" as defined under RCRA.

"Labor Rates" means the actual cost of salary plus benefits paid to employees.

"Lien" means any and every lien against the Project or against any monies due or to become due from the County to the Design-Builder under this Contract, for or on account of the Contract Services, including mechanics', materialmen's, laborers', and lenders' liens.

"Line Item" means individual elements of work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of work. Also refers to individual items of work within the Schedule of Values.

"Losses and Expenses" means and is limited to any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, Taxes, charges, costs, or expenses, except as explicitly excluded or limited under any provision of this Contract, relating to third party claims for which the Design-Builder is obligated to indemnify the County Indemnitees pursuant to this Contract. "Loss-and-Expense" for the purpose of any provision hereunder requiring indemnification of the County Indemnitees by the Design-Builder means and includes any special, incidental, consequential, punitive, or similar damages incurred by the County Indemnitees for third party claims.

"Notice to Proceed" means written notice to the Design-Builder from County stating that Design-Builder is to commence work on a phase of the Project and specifying the date on which the Contract Time begins.

"Open Book" means the concept allowing the County to attend any and all meetings or discussions pertaining to the project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind at any time pertaining to the project. For the purposes of this definition, "written" includes storage in electronic format.

"Owner Contingency" means an amount provided for use at County's discretion to cover Project costs for which the Design-Builder is not responsible. Owner Contingency may not be used to expand Project scope. Costs of an Allowance item that exceeds the Allowance therefor will be paid from Owner Contingency. Owner Contingency is not included in the GMP.

"Party" or "Parties" means the County and the Design-Builder, their respective permitted successors and assigns, and any other future signatories to the Contract.

"Payment Bond" means the payment bond required to be provided by the Design-Builder in accordance with the Contract and A.R.S. § 34-611 and in the form set forth in **Attachment 5** to the Solicitation.

"Performance Bond" means the performance bond required to be provided by the Design-Builder in accordance with the Contract and A.R.S. § 34-610 and in the form set forth in **Attachment 5** to the Solicitation.

"Performance Standards" means those criteria specified in the Technical Specifications defining the how the Project must perform when fully operational.

"Performance Test" means the test required to show the Project meets the Performance Standards.

"Performance Test Plan" means the testing protocols, procedures, and processes for the performance of the Performance Test prepared and documented by the Design-Builder and approved by the County in accordance with the Scope of Work.

"Performance Test Procedures and Standards" means the test procedures and standards for Performance Testing.

"Project" means the Project Sites, the Project Improvements, the Project Equipment, and the Project Structures.

"Preliminary Schedule" means the schedule attached to the Contract as Exhibit A pursuant to which the Design-Builder proposes to substantially complete the Work. The Preliminary Schedule will be replaced by the Project Schedule pursuant to the provisions of the Contract Documents.

"Project Equipment" means all manufactured equipment, property, or assets, other than Project Structures, whether or not constituting personal property or fixtures, constituting part of the Project. As applicable, Project Equipment includes, but is not limited to: pumps; motors; motor control centers; odor control systems; process control systems, including all necessary software; chemical feed and storage equipment; piping; conduits; wiring; valves; process equipment; storage tanks; manholes; diversion structure; and permanent safety systems.

"Project Schedule" means a computerized listing, consistent with the terms of the Contract, of Project milestones, activities, and deliverables which includes: start and finish dates for each listed item; resource allocations information; budget information; and linkages between listed items showing dependencies and identifying critical path(s).

"Project Site" means the parcel(s) of real property identified in the Contract Documents where the Project Improvements are to be constructed. It also includes any parcels of real property designated by County for use by Design-Builder during construction.

"Regulated Site Condition" means, and is limited to, (1) surface or subsurface structures, materials, or conditions having historical, archaeological, or similar significance; (2) any habitat of a rare or threatened species subject to the protections of Applicable Law; (3) the presence anywhere in, on, or under the Project Sites on the Contract Date of wells or underground storage tanks for the storage of chemicals, petroleum products, or Regulated Substances (in each of items (1), (2) and (3), however, only to the extent not

disclosed to the Design-Builder as of the Contract Date), (4) the presence of Regulated Substances in environmental media anywhere in, on, or under the Project Sites (including presence in surface water, groundwater, soils, or subsurface strata), whether or not disclosed to the Design-Builder; and (5) contamination of the Project Sites from groundwater, soil, or airborne Regulated Substances migrating from sources outside the Project Sites and not caused by Design-Builder Fault.

"Regulated Substance" means (1) any oil, petroleum, or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials and contaminated soils requiring special handling or disposal.

"Response Action" means any action taken in the investigation, removal, confinement, remediation, or cleanup of a release of any Regulated Substance. "Response Actions" include any action which constitutes a "removal", "response", or "remedial action" as defined by Section 101 of the CERCLA.

"Sales Taxes" means: (1) a consumptive tax on the sale of goods and services; or (2) a tax on the privilege of doing business. Sales Taxes include all privilege, sales, use, excise, consumer, franchise, and other taxes which are legally enacted when negotiations of the Contract Price were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

"Schedule of Values" or "SOV" means a spreadsheet with estimated costs organized by subcontract categories, construction items, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the Design-Builder's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the Schedule of Values. The backup information will consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the Schedule of Values, if applicable. The SOV may be output from the Project Schedule if the Project Schedule is cost-loaded.

"Scheduled Date of Substantial Completion" means the date by which the Design-Builder has agreed to achieve Substantial Completion of the Project in accordance with the Schedule, as adjusted.

"Subcontract" means an agreement or purchase order by the Design-Builder, or a Subcontractor to the Design-Builder, as applicable, entered into in connection with the performance of the Contract Services.

"Subcontractor" means every person (other than employees of the Design-Builder) employed or engaged by the Design-Builder or any person directly or indirectly in privity with the Design-Builder (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

"Substantial Completion" means the Construction Work, or an agreed portion of the Construction Work that County has agreed to accept separately, is sufficiently complete, as determined by County's issuance of a Certificate of Substantial Completion, so that County can fully occupy and utilize the Project, or the agreed upon portion thereof, for the purposes for which it is intended. Upon Substantial Completion, all Construction Work must be complete except for Punch List items. Only incidental site work, corrective work, and final cleaning, beyond cleaning needed for the County's full use may remain for final completion.

Requirements for substantial completion of the work (or a specified part thereof) include:

- All submittals for the Work (or a specified part thereof) approved by County;
- Installation of all equipment included in the Work (or a specified part thereof) certified by the equipment manufacturer;
- Operation and maintenance manuals for the Work (or a specified part thereof) approved by the County;

- Successful completion of equipment and system startup and performance testing of the Work;
- Updates and addenda to the Record Documents and operation and maintenance manuals for the Work (or a specified part thereof) resulting from successful completion of the equipment and system startup and performance testing by Design-Builder.
- Operator and maintenance training.

“Surety” means the surety company issuing the Performance Bond or the Payment Bond, as applicable.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment, or withholding, or any payment-in-lieu thereof, and any related interest, penalty, or addition to tax.

“Technical Specifications” means the document of that same name specifying the County’s technical criteria for the Project.

“Uncontrollable Circumstance” has the meaning provided in Contract Section 10.2. An Uncontrollable Circumstance may include any of the following provided the condition is consistent with the meaning in Section 10.2:

- a Change in Law;
- Differing Site Conditions to the extent provided in Special Condition 5 (Site Conditions);
- Regulated Site Conditions to the extent provided in Special Condition 5 (Site Conditions -Company Obligations);
- naturally occurring events (except weather conditions normal for the geographic region of the County) such as landslides, underground movement, earthquakes, fires, tornadoes, floods, epidemics, and other acts of God;
- explosion, sabotage, or similar occurrence, acts of a declared public enemy, terrorism, extortion, war, blockade or insurrection, riot or civil disturbance;
- labor disputes, except labor disputes involving employees of the Design-Builder, its Affiliates, or Subcontractors which affect the performance of the Contract Services;
- the failure of any Subcontractor to furnish services, materials, chemicals, or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly, and the Design-Builder is not able to timely obtain substitutes after exercising all reasonable efforts;
- the failure of any appropriate Governmental Body or private Utility having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project which are required for the performance of the Contract;
- the preemption, confiscation, diversion, or destruction of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;
- with respect to the Design-Builder, any County Fault or County-directed Change Orders not due to Design-Builder fault; and
- with respect to the County, any Design-Builder fault.

The term “Uncontrollable Circumstance” does not include:

- any act, event or circumstance that would not have occurred if the affected party had complied with its obligations under the Contract;
- changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates, or other economic conditions;

- changes in the financial condition of the County, the Design-Builder, the Design-Builder's Affiliates, or its Subcontractors affecting the ability to perform their respective obligations;
- the consequences of error, neglect, or omissions by the Design-Builder, any Subcontractor, any of their Affiliates, or any other person in the performance of the Contract Services;
- union or labor work rules, requirements, or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Design-Builder of performing the Contract Services;
- any impact of prevailing wage or similar laws, customs or practices on the Design-Builder's costs associated with the performance of the Design-Build Work;
- weather conditions normal for the geographic region of the County;
- any surface or subsurface geotechnical or hydrological conditions, including the existence of compressible soil layers, masses, unstable soils, manmade deposits, and water table fluctuations, except those constituting Differing Site Conditions or Regulated Site Conditions to the extent provided in SC 5 (Site Conditions);
- any act, event, circumstance, or Change in Law occurring outside of the United States;
- mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition; and
- failure of the Design-Builder to secure patents which it deems necessary for the performance of the Contract Services.

"Unilateral Change Directive" means a written Change Order unilaterally issued by County directing Design-Builder to change the Scope of Work. Such order will specify a proposed basis for adjustment, if any, in the GMP or Schedule, associated with the Unilateral Change Directive.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, internet, or cable and any other telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Working Day" means a Calendar Day, exclusive of Saturdays, Sundays, and County recognized holidays, on which weather and other conditions, not under control of the Design-Builder, permit construction operations to proceed for the major part of the Day with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/30/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis of Arizona, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED Achen-Gardner Construction, LLC Attn: Lorna Tremaine 550 South 79th Street Chandler, AZ 85226	INSURER A: Phoenix Insurance Company 25623	
	INSURER B: Travelers Property Casualty Company of Ame 25674	
	INSURER C: Travelers Casualty and Surety Company 19038	
	INSURER D: Illinois Union Insurance Company 27960	
	INSURER E:	
	INSURER F:	

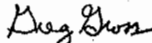
COVERAGES **CERTIFICATE NUMBER:** W6325709 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	DT-CO-6C321481-PHX-17	12/31/2017	12/31/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000	
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	DT-810-6C321481-TIL-17	12/31/2017	12/31/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-8J750336-17-26	12/31/2017	12/31/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Yes	N/A	Y	UB-8J537642-17-26-G	12/31/2017	12/31/2018	<input checked="" type="checkbox"/> PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			COO G27267816 006	12/31/2017	12/31/2018	Per Claim: \$2,000,000 Aggregate: \$4,000,000 Self-Insured Ret. \$25,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project No: 3TPBBS, TWIN PEAKS-BLUE BONNET ROAD GRAVITY SEWER PROJECT - DESIGN-BUILD.
SEE ATTACHED

CERTIFICATE HOLDER **CANCELLATION**

PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT 201 N STONE AVE, 8TH FLOOR TUCSON, AZ 85701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



ADDITIONAL REMARKS SCHEDULE

AGENCY Willis of Arizona, Inc.		NAMED INSURED Achen-Gardner Construction, LLC Attn: Lorna Tremaine 550 South 79th Street Chandler, AZ 85226	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

AGC Project No: 3645100.

PIMA COUNTY REGIONAL WASTEWATER, its departments, districts, boards, commissions, officers, officials, agents, and employees are included as Additional Insureds as respects to General Liability and Auto Liability. General Liability policy shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insureds. Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability, Auto Liability and Workers Compensation as permitted by law.

INSURER AFFORDING COVERAGE: Illinois Union Insurance Company NAIC#: 27960
 POLICY NUMBER: COO G27267816 006 EFF DATE: 12/31/2017 EXP DATE: 12/31/2018

TYPE OF INSURANCE:	LIMIT DESCRIPTION:	LIMIT AMOUNT:
Pollution Liability	Per Claim:	\$2,000,000
	Aggregate:	\$4,000,000
	Self-Insured Ret.	\$25,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph A.1.c., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., Other Insurance of SECTION IV – BUSINESS AUTO CONDITIONS:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. Other Insurance, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE - INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE - GLASS PROVISIONS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE- INCREASED LIMIT I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.i., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A't., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.S., Other Insurance, of SECTION IV - BUSINESS AUTO CONDITIONS:

h. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

person, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS- INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:
 - (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
2. The following replaces Paragraph A.2.a.(4), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:
 - (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE-INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV - BUSINESS AUTO CONDITIONS:

- (5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies, and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

- (i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.
 - (ii) Neither you nor any other involved "insured" will make any settlement without our consent.
 - (iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".
 - (iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE.
 - (v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.
- (b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.
- (c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE - GLASS

The following is added to Paragraph D., Deductible, of SECTION III - PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION 111-PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for anyone "accident".

I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., Exclusions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV - BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - BUSINESS AUTO CONDITIONS:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV - BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED - (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III - Limits Of Insurance.
 - b) The Insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - ii. Supervisory, inspection, architectural or engineering activities.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
 - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
5. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. Aircraft Chartered With Pilot
- B. Damage To Premises Rented To You
- C. Increased Supplementary Payments
- D. Incidental Medical Malpractice
- E. Who Is An Insured – Newly Acquired Or Formed Organizations
- F. Who Is An Insured – Broadened Named Insured – Unnamed Subsidiaries
- G. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises
- H. Blanket Additional Insured – Lessors Of Leased Equipment
- I. Blanket Additional Insured – States Or Political Subdivisions – Permits
- J. Knowledge And Notice Of Occurrence Or Offense
- K. Unintentional Omission
- L. Blanket Waiver Of Subrogation
- M. Amended Bodily Injury Definition
- N. Contractual Liability – Railroads

PROVISIONS

A. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

B. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A. BODILY**

INJURY AND PROPERTY DAMAGE LIABILITY:

Exclusions c. and g. through n. do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water;

unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE:**

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- (b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

C. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGE:**

- b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES:**

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

D. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

"Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraph (1)(d) above does not apply to "bodily injury" arising out of providing or failing to provide:

- (i) "Incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or
- (ii) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

F. WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED:**

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.

G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
 - b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.
 - c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.
- I. BLANKET ADDITIONAL INSURED – STATES OR POLITICAL SUBDIVISIONS – PERMITS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required

by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The insurance provided to such state or political subdivision does not apply to:

- a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
 - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.
 - (2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
 - (a) Any individual who is:
 - (i) A partner or member of any partnership or joint venture;

- (ii) A manager of any limited liability company; or
 - (iii) An executive officer or director of any other organization;
- that is your partner, joint venture member or manager; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

K. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

L. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of that contract or agreement.

M. AMENDED BODILY INJURY DEFINITION

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

TRAVELERS

ONE TOWER SQUARE
HARTFORD, CT 06183

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 0313 (00)-01

POLICY NUMBER: (UB-8J537642-17-26-G)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.