

Appendix C

Contract & Agreement

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

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.1 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 prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.
 2. *Application for Payment*: The Owner approved form to be used by Design-Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 3. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Bonds*: Performance and payment bonds and other instruments of security.
 5. *Change Order*: A written agreement signed by Design-Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, 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.
 7. *Conceptual Documents*: The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.
 8. *Construction*: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
 9. *Owner's Representative*: _____ is the Owner's Representative, and as such is the Owner's duly authorized agent and representative for the Owner. The Owner's Representative shall be the point of contact for Design-Builder's communications with the Owner. _____ and Mob. _____ – Email _____.
 10. *Subcontract*: A written agreement between Design-Builder and a construction Subcontractor for provision of Construction.
 11. *Contract*: The entire and integrated written agreement between Owner and Design-

Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*: The Contract Documents are defined in Article 8 of the Agreement. Unless specifically enumerated, the Contract Documents do not include the Request for Proposals, proposal instructions, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Design-Builder's bid or Proposal, or portions of Addenda relating to bidding or proposal requirements.
13. *Contract Price*: The total amount of money payable by Owner to Design-Builder for completion of the Work in accordance with the Contract Documents.
14. *Contract Times*: The numbers of days or the dates stated in the Contract to (i) achieve Substantial Completion, and (ii) to complete the Work so it is ready for final payment in accordance with Paragraph 13.08. Contract Times are of the essence of the Contract.
15. *Design-Builder*: The individual or entity with whom the Owner has entered into the Contract.
16. *Design Subagreement*: A written agreement between Design-Builder and a design professional Subcontractor for provision of Design Professional Services.
17. *Design Professional Services*: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during bidding/negotiating, Construction, or operational phases.
18. *Drawings*: Those portions of the Contract Documents prepared by or for Design-Builder and approved by Owner consisting of drawings, diagrams, illustrations, schedules, and other data which show the scope, extent, and character of the Work.
19. *Effective Date of the Contract*: The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
20. *Field Order*: A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times. Field Orders shall be binding on the Design-Builder who shall carry out the written orders promptly.
21. *Hazardous Environmental Condition*: The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.
22. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.²³ *Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
23. *Liens*: Charges, security interests or encumbrances upon real property or personal property.
24. *Milestone*: A principal event specified in the Contract Documents relating to an

intermediate completion date or time prior to Substantial Completion of all the Work.

25. *Notice of Award*: The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Contract.
26. *Notice to Proceed*: A written notice given by Owner to Design-Builder fixing the date on which the Contract Times shall commence to run and on which Design-Builder shall start to perform the Work.
27. *Owner*: The individual or entity with whom Design-Builder has entered into the Contract and for whom the Work is to be performed. City of Whittier is the Owner of the Project.
28. *Owner's Consultant*: Owner's Consultant, also called the Construction Manager, will report directly to the Owner's Representative and be included on all correspondence to the Owner's Representative.
29. *Partial Utilization*: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
30. *PCBs*: Polychlorinated biphenyls.
31. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
32. *Project*: The total design and construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents, and which may include design and construction by Owner or Owner's separate contractors.
33. *Project Manager*: The Project Manager is the Design-Builder's duly authorized agent and representative for the Project with full power to perform, supervise and coordinate the services of Design-Builder under the Contract.
34. *Quality Manger*: The Quality Manager shall be the Design Builders designated representative responsible for maintaining records and reports and issuing correspondence, reviewing errors and their causes, and assuring the correction such errors.
35. *Quality Program*: The Design Builders methods and procedures for assuring the design and construction are completed in accordance with the contract requirements and associated standards.
36. *Radioactive Material*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Project Superintendent*: The Project Superintendent is the authorized representative and agent of Design-Builder who shall be assigned to the Site during all phases of Construction.
38. *Schedule of Values*: A schedule prepared by Design-Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work. The Schedule of Values shall be provided in the form and supported by such data to

substantiate its accuracy as the Owner may require. The Schedule of values may be updated periodically to reflect agreed changes in the allocation of the Contract Price.

39. *Site*: Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design-Builder. The site is depicted in the attached Appendix D, Performance Requirements.
40. *Specifications*: The part of the Contract Documents prepared by the Design-Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
41. *Subcontractor*: An individual or entity other than a Supplier having a direct contract with Design-Builder or with any other Subcontractor for the performance of a part of the Work.
42. *Submittal*: A written or graphic document prepared by or for Design-Builder which is required by the Contract Documents to be submitted to Owner by Design-Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.
43. *Substantial Completion*: The time at which the Work (or a specified part) is sufficiently complete, in accordance with the Contract Documents, so the Work (or a specified part) can be utilized for its intended purpose(s). The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
44. *Supplementary Conditions*: The part of the Contract Documents which amends, supplements, or supersedes these General Conditions.
45. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Design-Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or any Subcontractor.
46. *Unit Price Work*: Work to be paid for on the basis of unit prices.
47. *Work*: Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.
48. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract and signed by Owner ordering an addition, deletion, or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times. When the Owner and Design-Builder reach agreement

concerning the adjustments in the Contract Price or the Contract Times, such agreement shall be effective immediately and shall be recorded by an appropriate Change Order. If the parties are not able to reach agreement on a Change Order, a Claim may be made for an adjustment in the Contract Price or Contract Times as provided in Article 15.

1.2 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Contract Documents have the indicated meanings.
- B. Intent of Certain Terms or Adjectives:
 - 1. The word "day" shall mean a calendar day unless otherwise specifically defined.
 - 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

2.1 Delivery of Bonds

- A. Within ten (10) business days after the Owner, provide the Design-Builder the full Notice to Proceed, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 5.01.A.
- B. *Evidence of Insurance*: Within ten (10) days of execution of this Agreement, 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 5.

2.2 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times shall commence to run on the day indicated in the Notice to Proceed. A Limited Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Contract with the full Notice to Proceed no later than May 31, 2024.

2.3 Starting the Work

- A. Design-Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.4 Before Starting the Work

- A. Preliminary Schedules: Within ten (10) days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner's Representative for its 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 which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal; and
 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.
 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.
- B. Schedule Format: All preliminary, progress and other schedules (including any updates thereto) shall be produced by Design-Builder in both hard copy format and in an electronic format utilizing Primavera Microsoft Project or another format mutually agreed to by Owner's Representative and Design-Builder.

2.5 Initial Conference

- A. Within thirty (30) days after the Contract Times start to run, Design-Builder shall arrange a conference attended by Owner's Representative 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.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records and other matters.

2.6 Initial Acceptance of Schedules

- A. At least ten (10) days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder shall submit for review the schedule submitted in accordance with Paragraph 2.04.B. Design-Builder shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Builder until acceptable schedules are submitted to Owner's Representative.

1. The progress schedule will be acceptable to Owner's Representative if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance shall not impose on Owner or Owner's Representative any responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design-Builder from Design-Builder's full responsibility therefore.
2. Design-Builder's schedule of Submittals will be acceptable to Owner's Representative if it provides a workable arrangement for reviewing and processing the required Submittals.
3. Design-Builder's Schedule of Values will be acceptable to Owner's Representative as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

2.7 Liquidated Damages

- A. Contractor acknowledges that Owner will foreseeably suffer damages in the event the Contractor delays in obtaining Substantial Completion by the Substantial Completion date. Such damages would foreseeably include, but may not be limited to loss of income, impacts to the local fishing industry which is a critical component of the local economy to name a few. The parties agree that it would be extremely difficult and impractical under the presently known and anticipated facts and circumstances to establish the actual damages which Owner would incur should the Contractor fail to achieve Substantial Completion within the Contract Time as defined in, and as may be extended pursuant to applicable sections of the Contract. Accordingly, the parties hereby agree that if the Contractor fails to achieve Substantial Completion by the Substantial Completion Date as adjusted liquidated damages may be assessed by the Owner against the Contractor in the amount of \$5,000 per calendar day for each day the Work is completed late. The parties specifically agree that the liquidated damages set forth herein are intended as a reasonable estimate or approximation of Owner's actual damages for delay in completion of the project by Contractor (not as a penalty) and are in lieu of all actual damages for delay in completion of any nature or cause whatsoever. The parties further agree that the Owner may withhold from the Design-Builder progress payments otherwise due and that the Payment Bond is likewise responsible for the pay of all liquidated damages so assessed.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent

- 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 including but not limited to the Conceptual Documents, the Drawings, and the Specifications to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Design-Builder shall furnish or perform all labor, documentation, 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.

3.2 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.

3.3 Resolving Discrepancies

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Drawings or Specifications on the other hand, the Drawings or Specifications will control except when Owner's Representative has approved a Submittal pursuant to Paragraph 6.17.B.
- B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - 1. The provisions of any such standard, specification, manual or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - 2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Laws or Regulations).

3.4 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 1. Owner's Representative's approval of required Submittals (pursuant to Paragraph 6.17.B);
 - 2. A Work Change Directive;
 - 3. A Change Order;
 - 4. A Field Order.

3.5 Reuse of Documents

- A. Design-Builder shall retain an ownership and property interest in all documents including Drawings and Specifications prepared or furnished by Design-Builder pursuant to this Contract ("Instruments of Service") whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the

Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner on any other project.

- B. Upon execution of the Contract, the Design-Builder grants to the Owner a non-exclusive irrevocable license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive irrevocable licenses from its design professional Subcontractors. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder, which will not be unreasonably withheld, delayed or conditioned. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professional Subcontractors.
- C. Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Contract Documents.
- D. If this Contract is terminated for any reason, each of the Design-Builder's design professional Subcontractors shall be contractually required to convey to the Owner a non-exclusive irrevocable license to use that design professional Subcontractor's Instruments of Service for the completion, use and/or maintenance of the Project, conditioned upon the Owner's written notice to that design professional Subcontractor of the Owner's assumption of the Design-Builder's remaining contractual duties. If the Owner does not assume the remaining duties of the Design-Builder to that design professional Subcontractor under this Contract, then the Owner shall indemnify and hold harmless that design professional Subcontractor from all claims and any expense, including legal fees, which that design professional Subcontractor shall thereafter incur by reason of the Owner's use of that design professional Subcontractor's Instruments of Service. The Design-Builder shall incorporate the requirements of this Paragraph 3.05.D in all agreements with its design professional Subcontractors.
- E. Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any rights reserved in this Paragraph 3.05.

3.6 Electronic Data

- A. The data furnished by Owner to Design-Builder or Design-Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it shall perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors

detected within the sixty (60) day acceptance period shall be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.1 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. Unless otherwise provided in the Contract Documents, Owner shall obtain in a timely manner and pay for easements to access the site. If Design-Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design-Builder may make a Claim therefore as provided in Article 15.
- 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.

4.2 Differing Site Conditions

- A. Within ten (10) days of first becoming aware of any differing site conditions, and before the conditions are disturbed, Design-Builder shall give a written notice to Owner of (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 shall investigate the Site conditions promptly after receiving the notice. 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 and the Contract Price or Times shall be modified in writing by Change Order in accordance with Article 9.
- C. No request by Design-Builder for an equitable adjustment under Paragraph 4.02 shall be allowed unless Design-Builder has given the timely written notice required; provided that the time prescribed in Paragraph 4.02.A for giving written notice may be extended by Owner in writing.
- D. The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.3 Reference Points

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to Paragraph 8.01.A.5.e, and shall make no changes or relocations without the prior written approval of Owner's

Representative. Design-Builder shall report to Owner's Representative 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.

4.4 Hazardous Environmental Condition at Site

- A. Design-Builder shall not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design-Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design-Builder, Subcontractors, Suppliers or anyone else for whom Design-Builder is responsible.
- B. If Design-Builder encounters a Hazardous Environmental Condition, Design-Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16); and (iii) notify Owner's Representative (and thereafter confirm such notice in writing). Owner, through the Owner's Representative, shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.
- C. Design-Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design-Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design-Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design-Builder, either party may make a Claim therefore as provided in Article 15.
- D. If after receipt of such special written notice Design-Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design-Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in Article 15. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other 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 resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created or exacerbated by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or from the negligence of those for whom that individual or entity is responsible.

- F. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Representative, Owner's Consultant and the officers, directors, partners, employees, agents, other 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 resulting from such Hazardous Environmental Condition created by Design-Builder or anyone for whom Design-Builder is responsible. Nothing in this Paragraph or Paragraph 4.04.E shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or from the negligence of those for whom that individual or entity is responsible.

ARTICLE 5 – BONDS AND INSURANCE

5.1 Performance, Payment and Other Bonds

- A. Design-Builder shall furnish a Design/Build Contract Performance Bond and Payment Bond consistent with Appendix A attached to the contract, equal to the Contract Price as security for the faithful performance and payment of all Design-Builder's obligations to furnish, provide and pay for Work, design and related materials under the Contract Documents. These Bonds shall remain in effect for a minimum of six years after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design-Builder shall also furnish such other Bonds as are required by the Contract Documents.
- B. The Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds 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 each bond.
- C. If the surety on any Bond furnished by Design-Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B and 5.02, Design-Builder shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.2 Licensed Sureties and Insurers

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design-Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3 Certificates of Insurance

- A. Design-Builder shall deliver to Owner, with copies to each additional insured and loss payee,

certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured or loss payee) which Design-Builder is required to purchase and maintain.

- B. Owner shall deliver to Design-Builder, with copies to each additional insured and loss payee, certificates of insurance (and other evidence of insurance requested by Design-Builder or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Design-Builder's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Design-Builder's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability to Owner or to others, including liability under the indemnities granted to Owner and others in the Contract Documents.

5.4 Design-Builder's Insurance

- A. Design-Builder shall purchase and maintain such insurance as follows:

Table 1. Summary of Insurance Requirements

Coverage Item	Limits
Comprehensive Marine Liability including Wharfinger’s Legal, Stevedore’s Legal Liability	\$ 1,000,000
Commercial General Liability – Occurrence Form	
General Aggregate	\$ 2,000,000
Products/Completed Operations	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Per Occurrence	\$ 1,000,000
Damage to Premises Rented to You (any one premise)	\$ 100,000
Medical Payments (any one person)	\$ 10,000
Name as Additional Insureds as respects premises, operations, products and completed operations	
Add Waiver of Subrogation	
Contractors Insurance is Primary and Non-Contributory	
Severability of Interest (Separation of Insureds) - should be provided under GL Policy	
COMMERCIAL AUTO	
Combined Single Limit per accident – Owned, Non-Owned and Hired Auto Liability Symbol “1” or “Any Auto” Add Waiver of Subrogation	\$ 1,000,000

Protection and Indemnity – Combined Single Limit Including Crew (if any)	\$ 1,000,000
Pollution Liability – Contractors Pollution Legal – both Land and Water limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.	\$ 1,000,000
BUMBERSHOOT (Excess) Liability	\$10,000,000
Over Primary Marine Liability Commercial, General Liability, Protection and Indemnity, Commercial Auto Liability, Employers’ Liability, Pollution Liability Pollution Liability.	
WORKERS’ COMPENSATION	
Statutory Coverage for project/work as required by AS 23.30.045	
Broad Form All States Endorsement	
Add Waiver of Subrogation	
Design-Builder shall ensure a Certificate of Insurance and other evidence of insurance required by Owner or any other additional insured or loss payee are on file at Owner prior to starting work/project.	
DESIGN INSURANCE REQUIREMENTS	
Professional Liability Insurance (“E & O”). The Design-Builder or its engineer shall provide E & O coverage for claims arising from their respective negligent performance of professional services under this Agreement with limits not less than \$2,000,000. The E & O policy shall contain a rider extending coverage for a period of three (3) years after substantial completion of the Work.	

- B. The Design-Builder shall furnish, prior to start of Construction, evidence satisfactory to Owner and to all Additional Insureds that insurance in the following kinds and minimum amounts has been secured, through insurance companies authorized to do business in the state of Alaska and which maintains an A.M. Best rating of A:X or better. Evidence of insurance shall be provided on ACORD certificate of insurance (or its substantial equivalent) in conjunction other evidence of insurance required by Owner or any other additional insured or loss payee.
- C. The policies of insurance required by Paragraph 5.04.A shall:
 1. Include as additional insureds the Owner and Owner’s Representative all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, and employees, agents, and other 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;
 2. Include at least the specific overages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. Include contractual liability insurance covering Design-Builder's indemnity obligations under Paragraphs 4.04.F., 6.07.B., 6.11.A.3. and 6.21;

4. Contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and each other additional insured to whom a certificate of insurance has been or was required to have been issued (and the certificates of insurance furnished by the Design-Builder pursuant to Paragraph 5.03 shall so provide); if such provision or endorsement is not available, Design-Builder shall provide such notice subject to the same terms;
5. Remain in effect at least until final payment and at all times thereafter when Design-Builder may be correcting, removing or replacing defective Construction in accordance with Paragraphs 12.06 and 12.07; and
6. Include completed operations coverage:
 - a. Such insurance shall remain in effect for ten (10) years after final payment.
 - b. Design-Builder shall furnish Owner and each other additional insured to whom a certificate of insurance has been or was required to be issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and three years thereafter.

5.5 Owner's Liability Insurance

- A. Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.6 Property Insurance

- A. Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations) for the limits set forth in the Supplementary Conditions. This insurance shall:
 1. Include the interests of Owner, Owner's Representative, Owner's Consultant Design-Builder and Subcontractors, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. Be written on a Builder's Risk Causes of Loss-Special Form" (ISO CP 10 30 or the substantial equivalent) policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, false work, and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, wind, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or 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;
 3. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. Cover materials and equipment stored at the Site or at another location that was agreed

to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;

5. Allow for partial utilization by Owner of the Work;
 6. Include coverage during testing and start-up; and
 7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design-Builder with thirty (30) days' written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with this Paragraph 5.06 shall contain a provision or endorsement that the coverage afforded shall not be canceled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Design-Builder and to each other loss payee to whom a certificate of insurance has been issued (if such provision or endorsement is not available, Design-Builder shall provide such notice subject to the same terms) and shall contain waiver provisions in accordance with Paragraph 5.07.
- C. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design-Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts. The risk of loss within such identified deductible amount shall be borne by Design-Builder, Subcontractor, Supplier or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.7 Waiver of Rights

- A. Owner and Design-Builder intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner and Owner's Representative, Owner's Consultant, Design-Builder, Subcontractors and Suppliers (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Design-Builder waive all rights against each other and their respective officers, directors, members, partners, employees, agents, and other 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 Work; and, in addition, waive all such rights against Design-Builder Owner, Owner's Consultant, Owner's Representative, Subcontractors and Suppliers each other 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 as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, Subcontractors, and Suppliers and the officers, directors, members, employees and agents of 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 caused by, arising out of or

resulting from fire or other natural peril whether or not insured by Owner; and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 13.06, after Substantial Completion pursuant to Paragraph 13.05, or after final payment pursuant to Paragraph 13.08.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers shall have no rights of recovery against Design-Builder, Subcontractors, Suppliers, Owner's Representative, Owner's Consultant, Owner, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.8 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 shall be adjusted with Owner and made payable to Owner not as a fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.9 Acceptance of Bonds and Insurance; Option to Replace

- A. If either Owner or Design-Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within twenty (20) days after receipt of the certificates (or other evidence requested) required by Paragraph 5.03. Owner and Design-Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds or insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurance

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN-BUILDER'S RESPONSIBILITIES

6.1 Design Professional Services

- A. Standard of Care: The standard of care for all Design-Builder and all Design Professional Services performed or furnished by Design-Builder under this Contract shall be the standard of care and skill used by members of the subject profession practicing under similar conditions at the same time and in the same locality.
- B. Preliminary Design Phase:
 - 1. Preliminary design—Design-builder will submit with this contract, a preliminary Basis of Design which defines the design specifications of the final delivered facility which shall serve as the final deliverable of the preliminary design phase.
- C. Final Design Phase: After written acceptance by Owner of the preliminary design phase documents Design-Builder shall:
 - 1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design-Builder and Specifications.
 - 2. Provide technical criteria, written descriptions, and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner's Representative in consultations with appropriate authorities;
 - 3. Furnish the above documents, Drawings, and Specifications to and review them with Owner's Representative and Owner's Consultant within the times indicated in the schedules described in Paragraphs 2.06.A.1 and 2.06.A.2; and

6.2 Supervision and Superintendence of Construction

- A. Design-Builder shall, through its Project Manager and Project Superintendent 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. Design-Builder shall be responsible to see that the completed Construction complies fully with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction. Contractor acknowledges that a major consideration in its selection for this

Project was the Contractor committing to assign and to be the Project Manager and Resident Project Superintendent, respectively. Contractor reaffirms that and shall be assigned to the Project as the respective Project Manager and Resident Project Superintendent and shall devote all, or substantially all, of their time to the Project through the Substantial Completion of the Project. Contractor shall not substitute another person for or without the express written consent of the Owner, which will not be unreasonably withheld. In the event Contractor replaces either of these persons without the express written consent of the Owner, Contractor shall pay the Owner as liquidated damages (but not as a penalty), the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) for each person replaced.

- B. Design-Builder accepts the obligations of the special trust given by the Owner. Design-Builder will act in a fiduciary manner to protect Owner's interests. Design-Builder shall provide detailed review of plans, submittals, and changes and shall advise Owner's Representative of any changes that might advance Owner's interests of quality, cost, and schedule. Design-Builder shall maintain ongoing value engineering effort, and shall provide quality assurance at all levels, from drawing review through submittal review, to inspection of materials and Work. Design-Builder shall review all cost proposals for Change Orders from Subcontractors and Suppliers, identify errors or costs higher than standard, and obtain revised pricing as appropriate prior to submittal to Owner's Representative. Design-Builder shall keep Owner's Representative fully informed concerning progress of the Work, potential problems, and potential opportunities to improve the Project.
- C. Design-Builder shall have direct control, management, and supervision while on Site of all Construction operations, shall be responsible for the satisfactory performance of its Subcontractors and Suppliers, and shall ensure that the entire Work is properly coordinated and supervised. Design-Builder shall coordinate access to the Project and Work schedules relating to the Work with Owner's Representative. Design-Builder expressly agrees that it is the "employer" within the meaning of OSHA and local regulations for Construction as they apply to Design-Builder's obligations under this Contract for the Project.

6.3 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, all Construction at the Site shall be performed during regular working hours, which may include the performance of Construction on a Saturday, Sunday, or any legal holiday.

6.4 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 Drawings or Specifications, or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. 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.

6.5 Progress Schedule

- A. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.06.A as it may be adjusted from time to time as provided below:
 - 1. Design-Builder shall submit to Owner's Representative for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments shall conform generally to the progress schedule then in effect.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Paragraph 11.02. Such adjustments may only be made by a Change Order.

6.6 Concerning Subcontractors, Suppliers, and Others

- A. Prior to the commencement of any Work, Design-Builder shall provide Owner's Representative with written notice of the Subcontractors, Suppliers and any other individual it proposes to perform any portion of the Work. Design-Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner's Representative may have reasonable objection, and Design-Builder shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Design-Builder has reasonable objection.
- B. Design-Builder shall be fully responsible to Owner, Owner's Representative and/or Owner's Consultant for all acts and omissions of the 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. Nothing in the Contract Documents:
 - 1. Shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner, Owner's Representative and/or Owner's Consultant, and any such Subcontractor, Supplier, or other individual or entity.
 - 2. Shall create any obligation on the part of Owner, Owner's Representative or Owner's Consultant to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.
- C. Design-Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design-Builder.

- D. Design-Builder shall require all Subcontractors, Suppliers, and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner and/or Owner's Representative through Design-Builder.
- E. All Work performed for Design-Builder by a Subcontractor or Supplier shall be pursuant to an appropriate Design Subagreement or Subcontract between Design-Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Design-Builder and the Subcontractor or Supplier shall contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Owner's Representative, Design-Builder, Owner's Consultant, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design-Builder shall obtain the same.

6.7 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 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, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.
- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Representative 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 Conceptual Documente
- 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, 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 Conceptual 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.

6.8 Permits

- A. Unless otherwise provided in the Contract Documents, Design-Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner's Representative shall assist Design-Builder, when necessary, in obtaining such permits, licenses and approvals. Design-Builder shall pay all governmental charges and testing and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design-Builder shall pay all charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto. Owner shall pay for any mitigation cost if such expenditure is required by a governing agency.
- B. Owner shall obtain the tidelands lease or permission from tideland owner to access the tideland area.

6.9 Laws or Regulations

- A. It is Design-Builder's responsibility to ascertain that the Work is in accordance with, and shall give all notices required by, all applicable Laws and Regulations. Except where otherwise expressly required by applicable Laws and Regulations, Owner, Owner's Representative and Owner's Consultant shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work 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 without any increase in the Contract Price or adjustment in the Contract Times..
- C. Changes in Laws or Regulations not enacted or otherwise known on the Effective Date having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 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. Owner shall reimburse Contractor for any sales tax paid.

6.11 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 in writing by Owner's Representative 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 Representative, Owner's Consultant 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 Site 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.
- E. Access: Design-Builder shall provide the Owner, Owner's Representative and Owner's Consultant with access to the Site and to the Work in preparation and progress wherever located.

6.12 Record Documents

- A. Design-Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals shall be available to Owner, Owner's Representative and Owner's Consultant for reference. Upon completion of the Work, Design-Builder shall deliver these record documents to Owner in both electronic and printed copy. Final payment will not be issued until the project record documents have been accepted by the Owner.

6.13 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, and shall provide Owner's Representative with Design-Builder's written Site-specific safety plan prior to commencing construction. Such responsibility does not relieve 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 warning signs and safeguards for such safety and protection. Design-Builder shall notify owners of adjacent property and of underground facilities, and utility owners, when prosecution of the Work may affect them, and shall cooperate with them and with public authorities in the protection, removal, relocation, and replacement of their property.
- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any.
- D. Design-Builder shall inform Owner's Representative of the specific requirements of Design-Builder's safety program with which Owner, Owner's Representative and Owner's Consultant and their respective employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraphs 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any 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 at Design-Builder's expense and without any adjustment in the Contract Times.
- 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 and Owner has issued a notice to Design-Builder in accordance with Paragraph 13.08.B that the Work is finally acceptable.

6.14 Safety Representative

- A. Design-Builder shall designate in writing to Owner's Representative 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.

6.15 Quality Manager

- A. Design Builder shall designate in writing to the Owner's Representative a qualified and experienced Quality Manager whose duties and responsibilities shall be the implementation and management of the Design Builder's Quality Program.

6.16 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 for which Design-Builder is not responsible, a Work Change Directive or Change Order shall be issued.

6.17 Submittals

- A. Owner's Representative shall review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.06.A. Owner's Representative's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's Representative's review and approval shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such shall not indicate approval of the assembly in which the item functions.
- B. Owner's Representative's review and approval of Submittals shall not relieve Design-Builder from responsibility for 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 Representative's attention to each such variation and Owner has given written approval.
- C. Construction prior to Owner's Representative's review and approval of any required Submittal shall be at the sole risk of Design-Builder.

6.18 Continuing the Work

- A. Design-Builder shall continue the Work and adhere to the progress schedule during all Claims, disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any Claims, disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

- A. Design-Builder shall:
 1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
 2. Assist Owner in training staff to operate and maintain the Work.
 3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.
 4. Provide Owner with as-constructed (aka as-built) drawings and specifications for the

completed Construction associated with the Project.

6.20 Design-Builder's General Warranty and Guarantee

- A. Design-Builder warrants and guarantees to Owner that all Construction shall be in accordance with the Contract Documents and shall 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, Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Design-Builder shall cause all of the guarantees and warranties provided by all Suppliers and Subcontractors to be issued directly to Owner. Unless specifically allowed by Owner, said guarantees and warranties shall not become effective until after Substantial Completion. If, despite the foregoing, any such guarantees or warranties are issued to Design-Builder, Design-Builder shall assign such guarantees and warranties to Owner by a written instrument acceptable to Owner.
- D. Design-Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following shall constitute an acceptance 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:
 - 1. Observations by Owner, Owner's Representative or Owner's Consultant;
 - 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.

6.21 Indemnification

- A. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Representative, Owner's Consultant, and the officers, members, directors, partners, employees, agents, other consultants and subcontractors of each from and against all claims, damages, losses, penalties, costs and expenses (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 the performance of the Work, provided that any such claim, damage, loss, penalty, cost or expense is attributable to bodily injury, sickness, disease, or death, or to injury 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, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work, regardless of whether such claim, damage, loss, penalty or expense is caused in part by an entity or person indemnified

hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph 6.21.A.

- B. In any and all claims against Owner, Owner's Representative, Owner's Consultant, or any of their respective consultants, agents, officers, members, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design-Builder, any Subcontractor, any Supplier, any 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, the indemnification obligation under Paragraph 6.21.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 or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.22 Hazard Communication Programs

- A. Design-Builder shall be responsible for coordinating any exchange of material 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.

ARTICLE 7 – OTHER CONSTRUCTION

7.1 Related Work at Site and Adjacent to Site

- A. Owner reserves the right to perform Work or other construction or operations related to the Project at the Site with Owner's employees, or through other direct contracts therefore, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. Written notice thereof shall be given to Design-Builder prior to starting any such other work; and
 - 2. If Owner and Design-Builder are unable to agree on entitlement to or on the extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, Design-Builder may make a Claim therefore as provided in Article 15.
- B. Design-Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design-Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and 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's Representative and the others whose work will be affected. The duties and responsibilities of Design-Builder under this Paragraph 7.01B are for the benefit of such utility owners and other contractors.

- C. If the proper execution or results of any part of Design-Builder's Work depends upon work performed or services provided by others under this Article 7, Design-Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner's Representative in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design-Builder's Work. Design-Builder's failure so to report shall constitute an acceptance of such other work as fit and proper for integration with Design-Builder's Work except for latent or non-apparent defects and deficiencies in such other work.
- D. Design-Builder shall reimburse and indemnify Owner for costs Owner incurs or that are payable by Owner to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction of the separate contractor. If such a separate contractor sues or initiates any proceeding against Owner on account of any damages or delays alleged to have been caused by the Design-Builder, Owner shall notify Design-Builder. Design-Builder shall defend all such proceedings at its own expense, and shall defend, indemnify, and hold Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by Owner.
- E. Design-Builder shall promptly remedy damage caused by the Design-Builder to completed or partially completed construction by Owner or its separate contractors on the Site or on property adjacent to the Site.
- F. Should Design-Builder or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any separate contractor or subcontractor of Owner, Design-Builder shall, upon due notice, promptly attempt to settle with such other separate contractor or subcontractor by agreement or otherwise to resolve the dispute.

7.2 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following shall be set forth in Supplementary Conditions:
 - 1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

7.3 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Design-Builder for the reasonable direct delay and disruption costs incurred by Design-Builder as a result of the other contractor's wrongful actions or inactions.

- C. Design-Builder shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Design-Builder's wrongful actions or inactions or the wrongful actions or inactions of Subcontractors or Suppliers or others for whom Design-Builder is responsible.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.1 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
 - 1. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design-Builder;
 - 2. 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 fifteen (15) days' notice to the Owner;
 - 3. Make payments to Design-Builder promptly when they are due as provided in Paragraphs 13.03 and 13.08;
 - 4. Furnish the Site as set forth in Paragraph 4.01.A;
 - 5. Furnish to Design-Builder, as required for performance of Design-Builder's Services the following, all of which Design-Builder may use and rely upon in performing services under this Contract:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
 - f. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - h. Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
 - 6. Review Submittals through the Owner's Representative pursuant to Paragraph 6.17.A;

and

7. Provide information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.2 Insurance

- A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.3 Limitations on Owner's Responsibilities

- A. The Owner, Owner's Representative and Owner's Consultant 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, Owner's Representative and Owner's Consultant shall not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

8.4 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in Paragraph 4.04.

8.5 Owner's Consultant

- A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design-Builder.

8.6 Compliance with Safety Program

- A. While at the Site, Owner, Owner's Representative and Owner's Consultant and their respective 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 6.13.D.

ARTICLE 9 – CHANGES IN THE WORK

9.1 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, a Work Change Directive or a Field Order. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work addressed in the Change Order, Work Change Directive or Field Order which shall be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided in such document).

9.2 Unauthorized Changes in the Work

- A. Design-Builder shall not be entitled to an increase in the Contract Price or to an extension of the Contract Times with respect to any Work performed that is not required by the Contract

Documents as amended, modified and supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Construction as provided in Paragraph 12.04.

9.3 Execution of Change Orders

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
 - 1. Changes in the Work which are (i) ordered by Owner pursuant to Paragraph 9.01, (ii) required because of acceptance of defective Construction under Paragraph 12.08 or Owner's correction of defective Work under Paragraph 12.09 or (iii) agreed to by the parties; and
 - 2. 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.

9.4 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 shall be Design-Builder's responsibility. The amount of each applicable Bond shall be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.1 Cost of the Work

- A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the Work. The value of Work covered by a Change Order or a Claim for an adjustment in Contract Price will be determined based on the Cost of the Work, and the costs to be reimbursed to Design-Builder shall be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design-Builder.
 - 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 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 Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent

authorized by Owner.

- b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this Paragraph 10.01.A.1, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Contract, for all services performed or furnished by such employees engaged on the Project.
2. Cost of all materials and equipment furnished and incorporated in the 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. Payments made by Design-Builder to Subcontractors (excluding payments for Design Professional Services pursuant to Paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the 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.
4. Payments made by Design-Builder for Design Professional Services provided or furnished under a Design Subagreement.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
6. 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 which remain the property of Design-Builder.
 - c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design-Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the 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

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 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 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.
- h. Minor expenses such as telegrams, 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.

B. 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, engineers, architects, 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 10.01.A.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 Work and charges against Design-Builder for delinquent payments.
- 4. Costs due to the negligence of Design-Builder, any Subcontractor, 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 10.01.A.

C. 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, the Design-Builder's fee shall be determined as set forth in Paragraph 11.01.C.

D. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph

10.01.A and 10.01.B, Design-Builder shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with all supporting data.

10.2 Cash Allowances

- A. The Contract Price includes all allowances, if any, specifically identified in the Contract Documents. Design-Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design-Builder agrees that:
 - 1. The allowances include the cost to Design-Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Except as set forth in the Contract Documents, Design-Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing shall be valid.
- B. Prior to final payment, an appropriate Change Order shall be issued to reflect actual amounts due Design-Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.3 Unit Prices

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price shall 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 Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder shall be made by Owner.
- B. 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.
- C. Design-Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 15 if:
 - 1. the quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly (i.e., more than twenty-five percent (25%) from the estimated quantity of such item indicated in the Contract Documents;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Design-Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.1 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order or through the disposition of a Claim. Any Claim for an adjustment in the Contract Price shall be based on timely written notice delivered by the party making the Claim to the other party in accordance with Article 15.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price shall 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 10.03); 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 in accordance with Paragraph 11.01.C.1); 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 11.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).
- C. Design-Builder's Markup: The Design-Builder's markup for overhead and profit on Change Orders shall be determined as follows:
 1. The markup based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Article 10, the design builder shall apply % for overhead and profit.
 - b. 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 Subcontractor who actually performs or furnishes Work, at whatever tier, shall be paid a markup of fifteen percent (15%) of the costs incurred by such Subcontractor and that any higher tier Subcontractor and Design-Builder will each be paid a markup of ten percent (10%) of the amount paid to the next lower tier Subcontractor;
 - c. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost shall be the amount of the actual net decrease in cost plus a deduction in Design-Builder's markup by an amount equal to ten percent (10%) of such markup decrease; and
 - d. 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.

11.2 Change of Contract Times

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to

Paragraph 9.03.A.

- B. Delays Beyond Design-Builder's Control: Where Design-Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design-Builder, the Contract Times (or Milestones) shall be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 11.02.A. Delays beyond the control of Design-Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.
- D. If Design-Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design-Builder, then Design-Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 11.02.D.
- E. 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.
- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design-Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design-Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.1 Notice of Defects

- A. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected, or accepted as provided in this Article 12.

12.2 Access to Construction

- A. Owner, Owner's Representative, Owner's Consultant, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests shall 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.

12.3 Tests and Inspections

- A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design-Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner's Representative the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Work.
- B. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. Design-Builder shall give Owner's Representative and Owner's Consultant reasonable notice of the planned schedule for all required inspections, tests, or approvals so they may be present.
- C. If tests or inspections reveal a failure of the portions of the Work to comply with requirements of the Contract Documents, all costs made necessary by such failure, including those of repeated tests, inspections or other procedures, shall be at the Design-Builder's expense and without any adjustment in the Contract Times.
- D. The results of all tests or inspections, and required certificates of testing, inspection or approval, shall, unless otherwise required by the Contract Documents, be secured by Design-Builder and promptly delivered to Owner's Representative.
- E. 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's Representative, then Design-Builder shall, if requested by Owner's Representative, uncover such Construction for observation.
- F. Uncovering Construction as provided in Paragraph 13.03.E shall be at Design-Builder's expense unless Design/ Builder has given Owner's Representative timely notice of Design-Builder's intention to cover the same and Owner's Representative has not acted with reasonable promptness in response to such notice.

12.4 Uncovering Construction

- A. If any Construction is covered contrary to requirements specifically expressed in the Contract Documents or contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered for Owner's Representative's observation and recovered at Design-Builder's expense without any change in the Contract Times.
- B. If Owner's Representative otherwise considers it necessary or advisable that covered Construction be observed by Owner's Representative or inspected or tested by others, Design-Builder, at Owner's Representative's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner's Representative may require, that portion of the Construction in question, furnishing all necessary labor, material and

equipment. If it is found that such 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 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, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Article 15. If, however, such 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 and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design-Builder may make a Claim therefore as provided in Article 15.

12.5 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's Representative 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 shall not give rise to any duty on the part of Owner or Owner's Representative to exercise this right for the benefit of Design-Builder or any other party.

12.6 Correction or Removal of Defective Construction

- A. Owner's Representative shall have authority to disapprove or reject defective Construction and shall have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner's Representative, Design-Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner's Representative, remove it from the Site and replace it with non-defective Construction at Design-Builder's expense and without any adjustment in the Contract Times. Design-Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to all inspection and testing fees and fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.7 Correction Period

- A. If within one (1) 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 or Owner's Representative's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner or Owner's Representative, remove it from the Site and replace it with Construction that is not defective, and (ii) 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) shall 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, removed or replaced under this Paragraph 12.07, the correction period hereunder with respect to such Construction shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

12.8 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. 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 shall 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. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Article 15. If the acceptance occurs after final payment, an appropriate amount shall be paid by Design-Builder to Owner.

12.9 Owner May Correct Defective Construction.

- A. If Design-Builder fails within seven (7) days after receipt of written notice from Owner to carry out the Work in accordance with the Contract Documents, to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, 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, without prejudice to other remedies the Owner may have, and after and an additional seven (7) days written notice to Design-Builder, carry out the Work, correct and remedy any such defective Construction, and/or remove and replace rejected Construction. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the Owner's actual cost of carrying out the Work, correcting any such deficiencies and/or removing and replacing any rejected Construction. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.
- B. In exercising the rights and remedies under this Paragraph 12.09 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, take possession of Design-Builder's

tools, appliances, construction equipment and machinery at the Site, 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 Representative, Owner's Consultant, Owner's representatives, agents, employees, and other contractors' access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. 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 such rights and remedies under this Paragraph 12.09 shall be charged against Design-Builder and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Article 15.
- D. 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 the exercise by Owner of Owner's rights and remedies under this Paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN-BUILDER AND COMPLETION

13.1 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.06.A shall serve as the basis for progress payments. Progress payments on account of Unit Price Work shall be based on the number of units completed.

13.2 Application for Progress Payment

- A. On or about the date established in the Contract for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner's Representative 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 substantiating the Design-Builder's right to payment 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 must be satisfactory to Owner. Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Subcontractor or Supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder does intend to pay.
- B. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment will similarly be made for materials and equipment

suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to Owner's Representative to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the Site for such materials and equipment stored off the Site.

- C. 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, and shall be accompanied by conditional and unconditional waivers and releases of Liens as the Construction Manger may require.
- D. Retainage shall not be withheld.

13.3 Progress Payments

- A. Procedure: Progress payments shall be made by the Owner to the Design-Builder according to the following procedure:
 - 1. Owner shall, within fifteen (15) 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 in whole or in part. Not more than thirty (30) days after accepting such Application the amount will become due and when due shall be paid by Owner to Design-Builder.
 - 2. 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 it will stop the Work within twenty (20) days after receipt of the notice by Owner and Owner's Representative, and after such twenty (20) 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 and Owner's Representative.
 - 3. Payments due but unpaid shall bear interest at the rate specified in the Contract.
 - 4. 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.
- B. Reduction in or Refusal to Make Payment: The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work is not in accordance with the Contract Documents. Owner may also refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:
 - 1. The Construction is defective, or completed Construction has been damaged requiring correction or replacement; or
 - 2. The Contract Price has been reduced by Change Order; or
 - 3. Owner has been required to correct defective Construction or complete Work in

accordance with Paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.A.; or
 5. Claims have been made against Owner on account of Design-Builder's performance or furnishing of the Work; or
 6. 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
 7. The Work has not progressed to the point indicated in the Application for Payment; or
 8. There are other items entitling Owner to a set off against the amount for which application is made.
- C. If Owner refuses to make payment of the full amount requested by Design-Builder, Owner must give Design-Builder immediate written notice stating the reasons for such action and promptly pay Design-Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design-Builder the amount withheld or any adjustment thereto agreed to when Design-Builder remedies the reason for such action.
- D. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be subject to interest as provided in the Contract.

13.4 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 incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.5 Substantial Completion

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner's Representative 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, Owner's Representative 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 shall notify Design-Builder in writing giving the reasons therefore. In such case, Design-Builder shall complete or correct such items, and shall then submit a request for another inspection to determine whether Design-Builder's Work is substantially complete. When Owner considers the Work substantially complete, Owner shall prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents. At the time of delivery of the certificate of Substantial Completion, Owner shall also deliver to Design-Builder a written determination on the division of responsibilities pending final payment between Owner and Design-Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

- B. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion, but Owner shall allow Design-Builder reasonable access to complete or correct items on the list of items to be completed.
- C. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of Milestone No. 2 unless otherwise provided in the certificate of Substantial Completion.

13.6 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) 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 which 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 13.05 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 shall notify Design-Builder in writing giving the reasons therefore. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05 shall 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. There shall be no use or occupancy of part of the Construction prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.
 - 5. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

13.7 Final Inspection

- A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner and Owner's Representative shall make a final inspection with Design-Builder and Owner shall 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. In such case, Design-Builder shall complete or correct such items, and shall then submit a request for another inspection to determine whether Design-Builder's Work is complete. If Owner prefers to accept Work not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal or correction, in which case the

Contract Price shall be equitably adjusted by Change Order whether or not final payment has been made.

13.8 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, record documents (as provided in Paragraph 6.12) and other 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: an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (ii) a certificate evidencing that insurance required by the Contract Documents will remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (iii) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) consent of surety, if any, to final payment, and (v) if required by Owner, 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, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Design-Builder may furnish a bond satisfactory to Owner to indemnify Owner against such Lien. If such Lien remains unsatisfied after payments are made, Design-Builder shall refund to Owner all money that Owner may be liable to pay in connection with the discharge of such Lien, including all costs and reasonable attorneys' fees.
3. In lieu of such releases or waivers of Liens specified in Paragraph 13.08.A.2 and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) 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 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 shall, within fifteen (15) days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner shall 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. Payment Becomes Due: Thirty (30) days after the presentation to Owner of an acceptable final Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the remaining unpaid Contract Price shall become due and shall be paid by Owner to Design-Builder.

13.9 Final Completion Delayed

- A. If, through no fault of Design-Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design-Builder's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if Bonds have been furnished as required in Paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 Waiver of Claims

- A. The making and acceptance of final payment shall constitute:
 - 1. A waiver of all Claims by Owner against Design-Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to Paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design-Builder's continuing obligations under the Contract Documents, including its indemnity and hold harmless obligations; and
 - 2. A waiver of all Claims by Design-Builder against Owner, Owner's Representative and Owner's Consultant other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.1 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 ninety (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. Unless the Work is, was or would have been suspended by cause for which Design-Builder is responsible, Design-Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design-Builder makes a Claim therefore as provided in Article 15.

14.2 Owner May Terminate for Cause.

- A. The occurrence of any one or more of the following events justifies the termination of the Design-Builder's services for cause:
 - 1. Design-Builder's persistent or repeated 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, failure to adhere to the progress schedule established under Paragraph 2.06.A as adjusted from time to time pursuant to Paragraph

6.05, or failure to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and Subcontractors or Suppliers).

2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
 3. Design-Builder's violation or breach of the Contract Documents.
- B. If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving Design-Builder seven (7) days' written notice, terminate the services of Design-Builder, take possession of any completed Drawings and Specifications prepared by or for Design-Builder (subject to the indemnification provisions of Paragraph 3.05.D), exclude Design-Builder from the Site, and take possession of the Work and of all Design-Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design-Builder (without liability to Design-Builder for trespass or conversion), 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 shall 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 shall 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 14.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within seven (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 thirty (30) days of receipt of said notice.
- D. Where Design-Builder's services have been so terminated by Owner, the termination shall not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Design-Builder's warranty, guaranty and indemnity obligations, both under the Contract and as may otherwise exist under the Laws and Regulations, shall survive termination of the Design-Builder's services. Any retention or payment of moneys due Design-Builder by Owner shall not release Design-Builder from liability.
- E. If it is determined that the Owner wrongfully terminated the Design-Builder for Cause, the termination shall be converted into one of Convenience as provided in Section 14.03 which provisions shall act as the Design-Builder's sole remedy.

14.3 Owner May Terminate for Convenience

- A. Upon seven (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 Subcontractors, Suppliers and others; 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.
- C. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall: (1) cease operations as directed by in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.
- D. When the Contract has been so terminated by Owner, the termination shall not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Design-Builder's warranty, guaranty and indemnity obligations, both under the Contract and as may otherwise exist under the Laws and Regulations, shall survive termination of the Contract. Any retention or payment of moneys due Design-Builder by Owner shall not release Design-Builder from liability.

14.4 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 ninety (90) days by Owner or under an order of court or other public authority through no act or fault of Design-Builder, or Owner fails to act on any Application for Payment within thirty (30) days after it is submitted, then Design-Builder may, upon seven (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 14.03.A. If Owner has failed for thirty (30) days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon seven (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 14.04.A are not intended to preclude Design-Builder from making a Claim under Article 15 for 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 15 – DISPUTE RESOLUTION

15.1 Claims and Disputes.

- A. Time Limits on Claims. Claims by either party must be initiated by written notice to the other party within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is

later. Substantiating documentation shall be submitted by the claiming party with the Claim. Any failure to strictly comply with the time limits on initiating or making a Claim constitutes a full and complete waiver of the Claim.

- B. Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Paragraph 14.04.A, the Design-Builder shall proceed diligently with performance of the Design/Build Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- C. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner's Representative shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Price or Contract Times, or both. If the Owner's Representative determines the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner's Representative shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within ten (10) days after the Owner's Representative has given notice of the decision. If the conditions encountered are materially different, the Contract Price and/or Contract Times shall be equitably adjusted, but if the Owner's Representative and Design-Builder cannot agree on an adjustment in the Contract Price or Contract Times, the adjustment shall proceed pursuant to Paragraph 15.02.
- D. Claims for Additional Cost. If the Design-Builder wishes to make a Claim for an increase in the Contract Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 6.16.A. If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner's Representative to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner's Representative, (3) failure of payment by the Owner, (4) termination of the Contract, (5) the suspension of Work or (6) other reasonable grounds, a Claim shall be filed in accordance with this Paragraph 15.01.
- E. Claims for Additional Time. If the Design-Builder wishes to make a Claim for an increase in the Contract Times, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled Construction.
- F. Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after discovery. The notice shall provide sufficient detail to enable the

other party to investigate the matter.

- G. Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Work Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.
- H. Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Contract. This mutual waiver includes, without limitation: (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Paragraph 15.01.H shall be deemed to preclude an award of direct damages or liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
- I. Changes in Laws or Regulations. If the enactment or revision of Laws or Regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Price and/or Contract Times. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Price or Contract Times, the Design-Builder shall submit a Claim pursuant to this Paragraph 15.01.
- J. Claims involving Sureties. In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- K. Lien Claims. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to the Owner's Representative's initial decision pursuant to Paragraph 15.02.A, or any subsequent mediation or arbitration of the Claim as provided in Paragraphs 15.02.B and 15.02.C.

15.2 Resolution of Claims and Disputes.

- A. Initial Decision by Owner. An initial decision by the Owner's Representative shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Owner's Representative with no decision having been rendered by the Owner's Representative. The Owner's Representative's initial decision shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Price or Contract Times or both. The initial decision shall be final and binding on the parties subject only to the right to mediation pursuant to Paragraph 15.02.B and thereafter to binding arbitration pursuant to Paragraph 15.02.C.
- B. Mediation. Any Claim arising out of or related to the Contract, except those waived as

provided for in Paragraphs 13.10 and 15.01.H shall, after the Owner's Representative's initial decision of the Claim or thirty (30) days after submission of the Claim for the Owner's Representative's initial decision, be subject to mediation as a condition precedent to binding arbitration.

1. A request for mediation shall be made in writing and delivered to the other party to the Contract. The mediation shall be conducted, to the extent practicable, within sixty (60) days of the date the request for mediation is delivered to the other party. The request may be made concurrently with the filing of a demand for arbitration, but, in such event the mediation shall proceed in advance of the arbitration, which shall be stayed pending mediation for a period of sixty (60) days from the date of the mediation request, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for the arbitration.
 2. If the parties are not able to agree on a mediator, the parties shall each submit the names of three attorneys with at least twenty (20) years of experience in construction law to a court of competent jurisdiction which shall then select a mediator. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Juneau, Alaska, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall each pay fifty percent (50%) of the mediator's fee, and shall each bear their own costs and expenses, including attorneys' fees, incurred in the mediation.
- C. Binding Arbitration. Claims, except those waived as provided for in Paragraphs 13.10 and 15.01.H for which initial decisions have not become final and binding, and which have not been resolved by mediation shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") in effect on the date of the Contract; however, unless the parties agree otherwise, the arbitration shall not be administered by the AAA. The arbitration shall be conducted and administered by a single arbitrator regardless of the amount of any Claim or controversy. A demand for arbitration shall be made in writing and delivered to the other party to the Contract. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
1. A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
 2. If the parties are unable to agree upon the arbitrator, the parties shall each submit the names of three attorneys (any person who served as a mediator is not eligible) with at least twenty (20) years of experience in construction law to a court of competent jurisdiction which shall then select the arbitrator.
 3. An arbitration pursuant to this Paragraph 15.02.C may be joined with another arbitration involving common issues of law or fact between the Owner or Design-Builder and any

person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Contract shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

4. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
5. Unless the parties otherwise agree in writing, the arbitrator shall render a reasoned written award within thirty (30) days of the close of the arbitration hearing. The arbitrator shall award the substantially prevailing party its attorneys' fees, costs, and any expert witness fees along with all arbitrator fees and administrative costs. Venue for the arbitration shall be in Juneau, Alaska, unless the parties agree otherwise in writing. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The court shall award the substantially prevailing party its attorneys' fees, costs and any expert witness fees incurred with the confirmation of the arbitration award and entry of judgment thereon, including attorneys' fees and costs incurred in connection with any appeal of the award, confirmation order or judgment, and further including attorneys' fees and costs incurred in connection with the enforcement and collection of judgment.

ARTICLE 16 – MISCELLANEOUS

16.1 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if sent by certified mail, postage prepaid, to the last business address known to the party giving notice or if sent to the email addresses identified in the Contract Documents.

16.2 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

16.3 Cumulative Remedies

- A. The duties and obligations imposed by the Contract Documents and the rights and remedies

available thereunder to the parties hereto are in addition to, and are not a limitation on, 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 Documents.
- B. The provisions of Paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.4 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.

16.5 Controlling Law

- A. The Contract Documents shall be construed and interpreted in accordance with the law of the State of Alaska.

This Agreement will be effective on _____, 2024, which is the Effective Date of the Agreement.

OWNER:

DESIGN-BUILDER:

CITY OF WHITTIER

By: _____

By: _____

Its: _____

Its: _____

AK Cont. Lic. # _____

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

THIS AGREEMENT is by and between the City of Whittier (Owner) and _____
(Design-Builder).

Owner and Design-Builder hereby agree as follows:

ARTICLE 1 – THE PROJECT

1.1 The Project, of which the Work under the Contract Documents may be the whole or only a part, is generally described as follows:

The Project consists of the renovation and modernization of Whittier Small Boat Harbor Floats A/G/H, wood pile replacement, and necessary uplands improvements.

ARTICLE 2 – WORK

2.1 Design-Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Demolition of existing piles, floats, and docks (A/G/H); and design and construction of new piles, floats, and docks, and utility service and safety upgrades.

ARTICLE 3 – CONTRACT TIME

3.1 Time of the Essence

All time limits for milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.2 Time for Completion

Design-Builder shall begin Work within fifteen (15) days after receipt of a written Notice to Proceed from Owner.

Physical demolition and construction Work shall begin after the end of the 2024 fishing season. The Work shall be substantially complete before the beginning of the 2025 fishing season.

3.3 Liquidated Damages

A. Liquidated Damages. Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 3.01 above, and that Owner will suffer financial loss if the Work is not completed

on or before the dates specified in Paragraph 3.02, plus any extensions thereof allowed in accordance with Article 9 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal, arbitration, or similar proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty), Design-Builder shall pay Owner the sum of:

Five Thousand Dollars (\$5,000) per calendar day after the date specified in Paragraph 3.02 until Substantial Completion for the Work (as adjusted per the Contract).

- B. Design-Builder acknowledges that a major consideration in its selection for this Project was the Design-Builder committing to assign _____ and _____ to be the Project Manager and Superintendent, respectively. Design-Builder reaffirms that _____ and _____ shall be assigned to the Project as the respective Project Manager and Superintendent and shall devote all, or substantially all, of their time to the Project through the Substantial Completion of the Project. Design-Builder shall not substitute another person for _____ or _____ without the express written consent of the Owner, which will not be unreasonably withheld. In the event Design-Builder replaces either of these persons without the express written consent of the Owner, Design-Builder shall pay the Owner as liquidated damages (but not as a penalty), the sum of Fifty Thousand Dollars (\$50,000) for each person replaced.
1. Design-Builder agrees the Project Manager shall be available, as necessary, throughout the Project.
 2. Design-Builder agrees the Superintendent shall be assigned to the Site during all phases of Construction.
- C. Design-Builder and Owner acknowledge and agree that (1) the liquidated amounts set forth in paragraphs 3.03.A above represent a reasonable and genuine estimate of Owner’s anticipated damages considering all of the circumstances existing on the date of the execution of this Contract, including the relationship of the amounts to the range of harm to Owner that reasonably could be anticipated; (2) proof of Owner’s actual damages for such losses would be impractical or extremely difficult; and (3) said amounts are compensation for actual injuries that will be suffered by Owner, and are not a penalty.

ARTICLE 4 – CONTRACT PRICE

4.1 Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A and 4.01.B below (the “Contract Price”):

- A. For all Work other than Unit Price Work, a Lump Sum of:

The specific cash allowances, if any, are included in the above price and have been computed in accordance with paragraph 10.02 of the General Conditions.

4.2 The hourly fees for employees in the direct employ of Design-Builder performing Design Professional Services for design services beyond the scope of work shall be discussed and

agreed upon by the City.

ARTICLE 5 – PAYMENT PROCEDURES

5.1 Design-Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

- A. Progress Payments; Retainage: Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder's Applications for Payment, which are to be submitted on or about the 25th day of each month during performance of the Work as provided in paragraphs 5.01.A.1 and A.2 below. All such payments will be measured by the Schedule of Values established in paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.
 - a. Ninety-five percent (95%) of Work completed (with the balance being retainage); and
 - b. However, the Owner shall pay One Hundred percent (100%) of the cost of materials and equipment not incorporated in the Work (but fabricated, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 13.02.A of the General Conditions.
- B. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 – INTEREST

6.1 All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of six percent (6%) per annum.

ARTICLE 7 – DESIGN-BUILDER'S REPRESENTATIONS

7.1 To induce Owner to enter into this Agreement, Design-Builder makes the following representations:

- A. Design-Builder has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposals.
- B. Design-Builder has visited the Site and become familiar with and is satisfied as to the general and local Site conditions that may affect cost, progress, and performance of the Work.
- C. Design-Builder is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Design-Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to

existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Owner.

- E. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site and at Property adjacent to the Site that relates to the Work as indicated in the Contract Documents.
- F. Design-Builder has considered the information known to Design-Builder; information commonly known to Design-Builders doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Design-Builder's safety precautions and programs.
- G. Based on the information and observations referred to above, Design-Builder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- H. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Design-Builder.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Design-Builder and all Subcontractors providing Design Professional Services are properly licensed in the State of Alaska to provide the Design Professional Services they have been contracted to provide for the Project and are authorized to do business in the State of Alaska.

ARTICLE 8 – CONTRACT DOCUMENTS

8.1 The Contract Documents consist of the following:

- A. This Agreement
- B. Performance Bond, attached hereto as Appendix A
- C. Design-Build Payment Bond attached hereto as Appendix A
- D. Modified Standard General Conditions of the Contract between Owner and Design-Builder
- E. Supplementary Conditions
- F. Conceptual Documents identified in the Supplementary Conditions.
- G. Drawings and Specifications
- H. Addenda Numbers: _____

- I. Design-Builder's Proposal dated _____
- J. Price and Payment Procedures
- K. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:
 - 1. Notice to Proceed;
 - 2. All Work Change Directives and Change Orders amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
 - 3. Specifications as defined in paragraph 1.01.A.41 of the General Conditions; and
 - 4. Drawings as defined in paragraph 1.01.A.18 of the General Conditions.

8.2 There are no Contract Documents other than those listed above in this Article 8.

8.3 The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.1 The Modified Standard General Conditions of the Contract between Owner and Design-Builder are referred to herein as the General Conditions.

9.2 Terms used in this Agreement shall have the meanings indicated in the General Conditions.

9.3 No assignment by a party hereto of any rights under or interests in the Contract Documents shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

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

9.6 No action or failure to act by the Owner, Construction Manager, or Design-Builder shall

constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

9.7 The Project may being funded, in part, through grants from the State of Alaska. If the Project is funding through a State grant(s), a copy of the grant(s) shall be made available to Design-Builder on request. Design-Builder shall fully comply and timely comply with all requirements of the grant(s) (including, without limitation, the provisions addressing access to records, reporting, record keeping, record retention, audits, prevailing wages, and subcontract requirements). The Design-Builder shall incorporate the grant requirements in all of its Construction Sub-agreements and Design Professional Sub-agreements.

9.8 The Buy American Act is not applicable to this Project unless required due to grant requirements.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design-Builder. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Design-Builder.

This Agreement will be effective on this _____ Day of 2024, (which is the Effective Date of the Agreement).

OWNER: City of Whittier

DESIGN-BUILDER: _____

By: _____

By: _____

Its: City Manager

Its: _____

Address for giving notices:

PO Box 608

Whittier, AK 99693

Address for giving notices:

_____, AK _____

Email: citymanager@whittieralaska.gov

Email: _____

Contractor License No.: _____

State: Alaska