

**CITY OF PALM DESERT
PROGRESSIVE DESIGN-BUILD CONTRACT
BETWEEN THE CITY OF PALM DESERT
AND TILDEN-COIL CONSTRUCTORS, INC.**

This Progressive Design-Build Contract (“Contract”) is made and entered into this **13th** day of **November, 2025** (“Effective Date”) by and between the City of Palm Desert, a municipal corporation and charter city organized under the laws of the State of California with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California 92260-2578 (“City”) and **Tilden-Coil Constructors, Inc., an S Corporation**, with its principal place of business at **33612 Mission Inn Ave., Riverside, CA 92501** (“Design-Builder”). City and Design-Builder are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. City is a public agency of the State of California and is in need of turnkey design and construction for the following project:

**New Library Facility
Project # CFA00027**
(herein after referred to as “Project”)

The Project includes two phases which are more fully described in the Contract Documents (collectively, “Services” or “Work”):

- (1) Preconstruction design phase services (“Phase 1”); and
- (2) Final design services and construction services to complete the Project (“Phase 2”).

B. City issued a Request for Proposals (“RFP”) to interested and qualified firms to a submit proposal on October 23, 2025 (“Proposal”).

C. City determined that Design-Builder’s Proposal provided the best value to the City and the City Council has awarded this Contract to Design-Builder at its regular **November 13, 2025**, meeting.

D. During Phase 1, Design-Builder shall perform Phase 1 Services consistent with the requirements of the Contract Documents, during or after which Design-Builder shall prepare and propose to City, on an Open Book Basis, a Guaranteed Maximum Price (“GMP”) to complete Phase 2 Services and, if accepted by City, the Parties shall enter into an amendment to this Contract for Design-Builder’s performance of Phase 2.

E. In entering into this Contract, the Parties expressly agree that City is under no obligation to proceed with Phase 2.

F. Design-Builder warrants and represents that it is duly licensed in the State of California and is able and qualified to perform the Services for the Project.

- G. The Parties desire to enter into this Contract for the purpose of setting forth the terms and conditions upon which Design-Builder will complete the Project.

TERMS

1. CONTRACT DOCUMENTS.

Incorporation of Recitals; Contract Documents.

1.1 The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following documents which are the "Contract Documents", including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (i) Progressive Design-Build Contract
- (ii) General Conditions (Attachment 1)
- (iii) Phase 1 Scope of Services (Attachment 2)
- (iv) Special Conditions (Attachment 3)
- (v) Design-Builder's Cost Proposal Form (Attachment 4)
- (vi) Performance Bond (Attachment 5)
- (vii) Payment Bond (Attachment 6)
- (viii) GMP Amendment (Attachment 7)
- (ix) RFP and all addenda, attachments and appendices
- (x) Design-Builder Certifications from Proposal
- (xi) GMP Amendment
- (xii) Change Orders
- (xiii) Permits
- (xiv) Construction Documents

1.2 Use of Defined Terms. Any capitalized term herein not defined in the Contract, or other Contract Documents, shall have the meaning set forth in the General Conditions.

1.3 Integration/Modification. The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and

exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of City and Design-Builder. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference.

2. DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES.

2.1 Phase 1.

(a) Phase 1 Services. Design-Builder promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform Phase 1 and complete Phase 1 Services consistent with the requirements in the Contract Documents. The Phase 1 Services are more particularly in the Contract Documents, including, without limitation, Attachment 2.

(b) Phase 1 Commencement. Design-Builder shall commence the performance of Phase 1 Services upon City's issuance of a Notice to Proceed to complete Phase 1 Services in accordance with the Contract Documents. City has no obligation to issue a Notice to Proceed for Phase 1 Services. All Phase 1 Services performed by Design-Builder prior to City's issuance of a Notice to Proceed shall be at Design-Builder's sole risk.

(c) Phase 1 Term. Design-Builder shall commence the performance of Phase 1 upon City's issuance of a Notice to Proceed and shall complete the Phase 1 Work within **180 calendar days** of City's issuance of the Notice to Proceed. Design-Builder shall not be entitled to any costs due to any impacts, disruption, or delays occurring during performance of Phase 1 Services. If City or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during Phase 1 Services, Design-Builder's sole remedy shall be an adjustment of the time period for performance of Phase 1 Services. Any delay that occurs during Phase 1 shall have no impact on City's right to terminate Phase 1 at any time as provided in the General Conditions.

(d) Early Purchase Items; Early Construction Packages. The Parties may agree to have Design-Builder procure Early Purchase Items and perform Early Construction Packages prior to commencing Phase 2.

2.2 Phase 2.

(a) Guaranteed Completion Date. Design-Builder shall complete Phase 2 within the Guaranteed Completion Date. As of the Effective Date, the Guaranteed Completion Date has not been agreed to by the Parties. The Guaranteed Completion Date will be established in a GMP Amendment, and it shall run from the Notice to Proceed for Phase 2 even if issued prior to completion of the 100% Construction Documents.

(b) Commencement of Phase 2. Design-Builder shall not commence Work for Phase 2 until City executes a GMP Amendment and issues a Notice to Proceed for Phase 2. Design-Builder may request a Notice to Proceed with Construction Work prior to

completion of the 100% Construction Documents, and City may issue same, provided that Design-Builder shall not construct any portion of the Project until the design of such portion has been issued for construction.

(c) Work Packages. City and Design-Builder may agree to complete the Construction Work in multiple stages with individual Work Packages. Each Work Package would be a discrete and defined portion of the Project that includes its own GMP and Milestone Date, agreed to by the Parties in a GMP Amendment. City may issue Work Packages that Design-Builder can perform concurrently.

3. DESIGN-BUILDER'S COMPENSATION.

3.1 Phase 1 Compensation.

(a) City shall pay Design-Builder a lump sum amount of **One Million Seven Hundred Thirty-Seven Thousand Two Hundred Twenty-Seven and 00/100 Dollars (\$1,737,227.00)** for performance of the Phase 1 Services based on the Work satisfactorily performed and accepted by City pursuant to the Contract Documents, subject to any additions or deductions as provided in the Contract Documents ("Phase 1 Fee"). The Phase 1 Fee includes any and all costs and expenses required to provide the Phase 1 Services. City shall not be liable to Design-Builder for any other costs or expenses paid or incurred by Design-Builder in performing Phase 1 Services, except as expressly provided for in this Contract.

3.2 Phase 2 Compensation.

(a) Construction Phase Compensation. Design-Builder's compensation for Phase 2 Services shall be the Phase 2 Price as further described, and subject to, the limitations set forth below and as indicated in the Contract Documents. Design-Builder expressly agrees and acknowledges that, as of the Effective Date, Design-Builder is not entitled to any compensation for Phase 2 Services, and shall only be entitled to such compensation if: (1) City accepts the Design-Builder's GMP Proposal; (2) the Parties execute, and the City Council or its designee approves, a GMP Amendment; and (3) City issues a Notice to Proceed for Phase 2.

4. DESIGN-BUILDER'S CONTRACTOR'S LICENSE AND REGISTRATION.

Design-Builder shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. Design-Builder (**License No. CA #208556**) shall act as the licensed contractor for the Project. Design-Builder shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design-Builder shall be fully responsible to City for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (**DIR Registration #100000518**).

5. DESIGN-BUILDER'S DESIGN PROFESSIONAL.

Design-Builder shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of City. Design-Builder hereby designates **Thomas Howell of Holt Architecture (License No. CA #31626)** to act as the Design Professional for the Project. Design-Builder's Design Professional shall perform all Design Work required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and Design-Builder shall be fully responsible to City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to City's prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that City and Design-Builder cannot agree as to the substitution of a new Design Professional, City shall be entitled to terminate this Contract as described in the General Conditions.

6. AUTHORITY OF SIGNATORIES.

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO PROGRESSIVE DESIGN BUILD CONTRACT
BY AND BETWEEN THE CITY OF PALM DESERT
AND TILDEN-COIL CONSTRUCTORS, INC.**

IN WITNESS WHEREOF, the Parties hereby execute this Progressive Design-Build Contract as of the Effective Date.

CITY OF PALM DESERT

**TILDEN-COIL CONSTRUCTORS, INC.,
AN S CORPORATION**

By: _____
Chris Escobedo
City Manager

By: _____
Dayne Brassard
President and CEO

Attest:

By: _____
Greg Lackey
CFO, Secretary and Treasurer

By: _____
Anthony J. Mejia
City Clerk

208556 B – General
Contractor’s License Number and
Classification

Approved as to Form:

1000000518
DIR Registration Number

By: _____
Isra Shah
City Attorney

Clerk QC: _____

Contract QC: _____
Insurance: _____

Initial Review

Final Approval

Bonds: _____

**ATTACHMENT 1
GENERAL CONDITIONS**

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ARTICLE 1 - DEFINITIONS; TERMINOLOGY

1.1 Applicability.

- A. These General Conditions govern Phase 1, Phase 2, and completion of the Project by Design-Builder.

1.2 Defined Terms.

A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, 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. Act of God – Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
2. Additional Work – New or unforeseen work when City’s Representative determines that it is not covered by the Contract Documents.
3. Allowance – A sum used by City for categories of Construction Work that cannot be established at the time of a GMP Amendment.
4. Applicable Laws – The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities, or private authorities with jurisdiction (including utilities), to the extent they apply to the Project.
5. Background Documents – Key documents provided to Design-Build Entity prior to the commencement of Phase 1 to further understand the requirements of the Project. Background Documents are not a Contract Document.
6. Certificate of Final Completion – A certificate issued by City that the Work is entirely complete and in all respects is in compliance with the Contract Documents, including, but not limited, to the Punch List for the Work, as further described in the Contract Documents.
7. Change Order – A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Phase 1 Fee, GMP, Phase 2 Price or the Contract Time in accordance with the Contract Documents and in the form contained in the Contract Documents.
8. Change Order Request – A request made by Design-Builder for an adjustment in the Phase 1 Fee, GMP, Phase 1 Price or Contract Time as the result of a Design-Builder-claimed change to the Work.

9. City Council – The City Council of the City of Palm Desert.
10. City’s Representative – The person designed by City to act as its representative during the performance of the Contract, and identified in the Special Conditions, or other person authorized to act for and on behalf of City, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.
11. Claim – A demand or assertion by City or Design-Builder seeking an adjustment of the Phase 1 Fee, GMP, Phase 2 Price, Contract Time, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
12. Concurrent Delay – When the City-caused delay to the Critical Path occurs simultaneously with a Design-Builder caused delay to the Critical Path.
13. Construction Documents – The Drawings and Technical Specifications prepared by Design-Builder for the Project and accepted by City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of Phase 2, Construction Documents become part of the Contract Documents upon their completion and acceptance by City. All amendments and modifications to the Construction Documents must be approved by City in writing.
14. Construction Work – That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
15. Contract – The entire integrated written agreement between City and Design-Builder concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents.
16. Contract Price – The sum total of all compensation due to Design Builder for all Phase 1 Services and Phase 2 Services under the Contract.
17. Contract Time – The number of days or the dates stated in the Contract Documents or GMP Amendment to achieve defined Milestone Dates, if any, and to complete the Work by the Guaranteed Completion Date.
18. Critical Path – A sequence of logically tied activities that represents the longest path within a project, which determines the shortest possible duration. Any delay of activity completion along this path will proportionately affect the completion date of the project.

19. CPM Schedule – A scheduling method that uses a network diagram to depict the sequences of tasks required to complete the Project, or a portion thereof, which are known as paths. Once the paths are defined, the duration of each path is calculated by an algorithm to identify the Critical Path, which determines the total duration of the Project, or a portion thereof.
20. Critical Supply Shortage – An unusual shortage in materials that is (a) supported by documented proof that Design-Builder made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Design-Builder at the time it entered a GMP Amendment. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
21. Day – A calendar day of 24 hours measured from midnight to the next midnight.
22. Defective Work – Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
23. Design-Builder – The individual or entity with which City has contracted for performance of the Work.
24. Design-Builder Contingency – An amount approved by City and part of a GMP that Design-Builder may use with the written approval of City for unanticipated work as further described in the Contract Documents.
25. Design-Builder Representative – The person or firm identified as the primary contact person and representative of Design-Builder as designated in the Contract and who shall not be changed without prior written consent of City.
26. Design-Builder Self-Performance Fee – Design-Builder’s fee for its home office overhead and profit applied to Design-Builder’s Direct Cost and Indirect Cost, as further described in the Contract Documents.
27. Design-Builder’s Proposal – The statement of qualifications submitted by Design-Builder in response to the RFP.

28. Design-Builder Subcontractor Fee – Design-Builder’s fee for its home office overhead and profit applied to Subcontractor Construction Cost, as further described in the Contract Documents.
29. Designer of Record – The individual, partnership, corporation, joint venture, or other legal entity completing the Design Work on the Project and who provides the Design Professional for the Project.
30. Design Professional – The individual named in the Contract who will provide the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
31. Design Work – The portion of the Work on the Project consisting of the design services and design deliverables required to be provided in connection with the design of the Project as set forth in the Contract Documents.
32. Differing Site Conditions – Concealed or latent physical conditions or subsurface conditions at the Site that: (i) Design-Builder believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) materially differ from those indicated in the Background Documents; or (iii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. The term Differing Site Conditions does not include, among other things, conditions of which Design-Builder had knowledge of as of the applicable GMP Amendment date, including conditions that could reasonably have been known, discovered or revealed as a result of the examinations, investigations, explorations, tests or studies of the Site required to be performed by Design-Builder as part of Design Work, including, but not limited to, the Design-Builder’s analysis and validation of the Background Documents, or that Design-Builder could have reasonably inferred based on its experience and expertise.
33. Direct Cost – Verifiable cost necessarily incurred in the performance of Construction Work and more particularly described in the General Conditions.
34. Drawings – The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Construction Documents.
35. Early Construction Package – Construction Work negotiated separately from Phase 2 to commence demolition, grading, site preparation, utility

work, mobilization or other work prior to the start of Phase 2. Design-Builder shall perform an Early Construction Package subject to the requirements of the Contract Documents for Construction Work.

36. Early Construction Package Amendment – An approved amendment to the Contract authorizing Design-Builder to perform an Early Construction Package subject to the requirements of the Contract Documents for Construction Work.
37. Early Purchase Item – Long lead procurement items (manufactured/fabricated items, equipment, materials and supplies) for the Project.
38. Early Purchase Item Amendment – An approved amendment to the Contract authorizing Design-Builder to commence procurement of an Early Purchase Item.
39. 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.
40. Final Completion – The time at which Work has been entirely completed by Design-Builder, and City has accepted Work, at the sole discretion of City, as further described in the Contract Documents.
41. Force Majeure Event – An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Design-Builder and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of City in its capacity as a municipal authority.
42. General Conditions Cost – The costs for activities, facilities, and services required to support the Construction Work and manage the Project site, without mark-up, which shall include, without limitation, those items listed in a GMP Amendment as further described in the Contract Documents.

43. General Contractor – The individual, partnership, corporation, joint venture, or other legal entity that is licensed as a California general contractor and is the prime contractor on the Project.
44. Governmental Approvals – Any permit, license, authorization, consent, certification, exemption, grant, waiver, ruling, entitlement, variance or other approval, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Project.
45. Governmental Body – Any federal, state, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, or any official thereof, other than the City Council, having jurisdiction in any way over or in respect of any aspect of the performance of the Contract or the Project.
46. Guaranteed Completion Date – The time within in which Design-Builder must achieve Final Completion of the Project.
47. Guaranteed Maximum Price or GMP – The maximum possible compensation paid by City to Design-Builder for the performance and completion of the Phase 2 Work, subject to any additions or deductions as provided in the Contract Documents. There may be more than one GMP on the Project, which may be specific to a particular Stage.
48. GMP Amendment – A written amendment duly executed by the Parties resulting from Design-Builder submitting a GMP Proposal and the Parties agreeing to a mutually acceptable GMP. There may be more than one GMP Amendment on the Project, which may be specific to a particular Stage.
49. GMP Proposal – Design-Builder’s proposal to City to complete Phase 2, or a portion thereof, and further described in the Contact Documents.
50. Hazardous Waste – Any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable,

infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by Design-Builder or City; or as defined in the California Health and Safety Code. For the purposes of the Contract, "Hazardous Waste" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

51. Holidays – Holidays occur on:

New Year's Day - January 1
Martin Luther King Jr. Day – Third Monday of January
President's Day – Third Monday of February
Memorial Day - Last Monday in May
Independence Day - July 4
Labor Day - First Monday in September
Veteran's Day - November 11
Thanksgiving Day - Fourth Thursday in November
Friday after Thanksgiving
Christmas Day - December 25
New Years' Eve December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

52. Key Personnel – Design-Builder's personnel identified as key to the overall success of the Project, and, at a minimum, including those positions defined as Key Personnel in Design-Builder's Proposal. Key Personnel are specifically identified in the Special Conditions.
53. Key Subcontractor – A Subcontractor identified in Design Builder's Proposal that Design Builder contracts with to fulfill a key role in Design Builder completing the Project. If any, Key Subcontractors are identified in the Special Conditions.
54. Key Subcontractor Fee – A Key Subcontractor's fee for its home office overhead and profit applied to a Key Subcontractor's Direct Cost and

Indirect Cost, as further described in the Contract Documents. If any, Key Subcontractor Fee is identified in the Special Conditions.

55. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
56. Lump Sum Price – If allowed by City as a substitute for a GMP, the maximum possible compensation paid by City to Design-Builder for the performance and completion of Work, subject to any additions or deductions as provided in the Contract Documents. There may be more than one Lump Sum Price on the Project, which may be specific to a particular Stage.
57. Milestone Date – The date upon which Design-Builder is required to complete an Early Construction Package, Work, Work Package, Stage, or particular element or component of the Project. A Milestone Date may be defined as a date certain or as a number of calendar days or working days from a Notice to Proceed or other event.
58. Notice to Proceed – A written notice given by City to Design-Builder fixing the date on which Design-Builder may proceed with a Phase, Early Construction Package, Early Purchase Item, GMP, Work, Work Package, Stage, or a particular element or component of the Project, and when the Contract Time will commence to run.
59. Open Book Basis – Design-Builder’s provided information, including estimates and pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows City to check and verify the accuracy of the material presented. This entails all information Design-Builder used to develop the cost under consideration, including labor, fringe, benefits, equipment, materials, productivity, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
60. Payment Bond – The labor and materials payment bond provided by Design-Builder’s surety to secure the payment obligations of Design-Builder for Work, as described in and maintained pursuant to the Contract and in the form set forth in the Contract Documents.
61. Performance Bond – The performance bond provided by Design-Builder’s surety to secure performance of Work, as described in and maintained pursuant to the Contract and in the form set forth in the Contract Documents.
62. Phase – Either Phase 1 or Phase 2.
63. Phase 1 – The first phase of the Project requiring Design-Builder to perform Design Work as further described in the Phase 1 Scope of Services.

64. Phase 1 CPM Schedule – A CPM Schedule to complete the Phase 1 Services within the Contract Time. The detailed requirements for the Phase 1 CPM Schedule are described in the Contract Documents.
65. Phase 1 Fee – The amount to be paid by City to Design-Builder as full compensation for performance of Phase 1 Services and completion of the Phase 1 Services, subject to any additions or deductions as provided in the Contract Documents.
66. Phase 2 – The second phase of the Project requiring Design-Builder to complete the Design Work, commence the Construction Work, and complete the Project, as further described in the Contract Documents.
67. Phase 2 CPM Schedule – A CPM Schedule to complete the Phase 2 Work on the Project within the Contract Time. The detailed requirements for the Phase 2 CPM Schedule are stated in the Contract Documents.
68. Phase 2 Price – The total price established by the Parties for Design Builder's performance of Phase 2 Work and completion of the Phase 2 Work, in accordance with the Contract Documents and as reflected in a GMP Amendment, subject to any additions or deductions as provide in the Contract Documents. There may be more than one GMP Amendment that is part of the Phase 2 Price.
69. Project – The total design, construction, and performance of the Work and all other requirements of the Contract Documents.
70. Project Warranty – A written guarantee provided to City by Design-Builder that Work remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer, as further described in the Contract Documents.
71. Punch List – A list of items for the Project, prepared by the City, which remain to be replaced or completed in accordance with the requirements for Final Completion of Work.
72. Record Drawings – The record set of as-builts prepared by Design-Builder during the Project that reflect all changes made in the Construction Documents during Phase 2, and show the exact dimensions, geometry, and location (including alignment points) of all elements of the Work completed under the Contract Documents.
73. Request for Information or RFI – Design-Builder's written request to City for clarification about a Project condition.

74. Request for Proposals or RFP – The request for proposals issued by City for the Project and includes all documents, exhibits, attachments, and addenda thereto.
75. Safety Plan – Design-Builder’s plan for health and safety in implementing the Construction Work, to be developed as part of Phase 1 Services in accordance with the Contract Documents.
76. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
77. Schedule of Submittals – A schedule, prepared and maintained by Design-Builder, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
78. Security Plan – Design-Builder’s plan for security at the Site in implementing the Construction Work, to be developed as part of Phase 1 in accordance with the Contract Documents.
79. Self-Performed Construction Work – Construction Work performed by Design-Builder with its own forces in accordance with the Contract Documents.
80. Separate Contractor – A person, or firm, under separate contract with City performing other work at the Project site which may affect the Work.
81. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Builder and submitted by Design-Builder to illustrate some portion of the Work.
82. Site – Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Design-Builder.
83. Stage – A discrete and defined portion of the Project that requires its own GMP and Milestone Date.
84. Stop Payment Notice – A written notice as defined in Civil Code section 8044.
85. Subcontractor Construction Cost – Any and all costs by a Subcontractor with a direct contract with Design-Builder to perform Construction Work. What constitutes Subcontractor Construction Cost is further defined in the General Conditions.

86. Subcontracted Construction Work – Construction Work performed by a Subcontractors, but not Key Subcontractors or Design-Builder, with their own forces in accordance with the Contract Documents.
87. Subcontractor – An individual or entity that has a contract with Design-Builder for performance of any portion of Work and, where applicable, any lower Tier subcontractors performing Services.
88. Submittal - Written or graphic information and physical samples prepared and supplied by Design-Builder demonstrating various portions of the Work.
89. Supplier – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Builder or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
90. Task Order – An order issued by City that authorizes Design-Builder to proceed with certain Design Work during Phase 1.
91. Technical Specifications – That part of the Construction Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
92. Tier – The contractual level of a Subcontractor or supplier or consultant with respect to Design-Builder. For example, a first tier Subcontractor is under subcontract with Design-Builder, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
93. Underground Facilities – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
94. Work – The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.
95. Work Package – A package of Work for specific scopes of the Project developed by Designer of Record as part of the Construction Documents that are self-performed by Design-Builder or awarded to a Subcontractor. A

Work Package may be a discrete and defined portion of the Project that contains (or will contain) its own GMP and Contract Time for completion.

96. Work Product – All papers, maps, models, estimates, plans, specifications, calculations, designs, studies, surveys, reports, data, notes, computer files, documents, drawings and other work product developed by Design-Builder pursuant to the Contract Documents, including, but not limited to, the Construction Documents.

1.3 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
1. 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 Project site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. 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 complete and ready for intended use.
 3. 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.
 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Design-Builder is implied.
- B. 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 such recognized meaning.

ARTICLE 2 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

2.1 Intent of Contract Documents.

- A. Complementary. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- B. Completion of Work. Design-Builder shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project. If utilities to equipment or fixtures are not shown but are necessary to operate the equipment or fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control Design-Builder in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

2.2 Reference Standards; Interpretation of Contract Documents.

- A. Standards, Specifications, Codes, Laws, and Regulations. Reference to federal specifications, federal standards, state standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of the Effective Date, and in case of Work during Phase 2, when the Parties executed a GMP Amendment, except as may be otherwise specifically stated in the Contract Documents.
- B. Responsibilities. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of City, Design-Builder, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City, or any of their officers, directors, members, partners, employees, agents, consultants, or Subcontractors, any duty or authority to supervise or direct the performance of Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
- C. Provisions Required by Law. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted

herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

- D. Interpretation of Contract Documents. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings. The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

2.3 Order of Precedence.

- A. Conflicts. Except as may be 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 the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. Resolving Conflicts. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
1. Permits from other agencies as may be required by law;
 2. Change Orders, most recent first;

3. GMP Amendment, most recent first;
 4. Progressive Design-Build Contract;
 5. Special Conditions;
 6. Construction Documents, as follows:
 - a. Technical Specifications
 - b. Drawings, which shall also be interpreted as follows:
 - (i) Figures govern over scaled dimensions
 - (ii) Detail drawings govern over general drawings
 - (iii) Drawings govern over standard drawings
 7. Drawings govern over Shop Drawings
 8. Phase 1 Scope of Services;
 9. General Conditions;
 10. RFP and all addenda, attachments and appendices;
 11. Design-Builder Certifications from RFP;
 12. Design-Builder's Proposal in response to RFP;
 13. To the extent applicable, in the following order:
 - a. Local agency standards and specifications
 - b. Standard drawings
 - c. Reference documents
- C. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

2.4 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 only by a Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to City, by one or more of the following ways:

1. City's Representative's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or
 2. City's Representative's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify Design-Builder's obligation to fully satisfy and comply with the requirements of the Contract Documents.

2.5 Examining Contract Documents, Project Site.

- A. Confirming Contract Documents. City and Design-Builder acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which Design-Builder based its Proposal. Prior to the commencement of design and construction on the Project, the Parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by City, the Construction Documents become a part of the Contract Documents and define the entire scope of Work, so long as such documents incorporate all minimum requirements of the Background Documents. Design-Builder shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.
- B. Examining Contract Documents. Before commencing any Work on the Project, Design-Builder shall carefully examine the Contract, the Contract Documents, the Background Documents and other information given to Design-Builder as to Project requirements. Design-Builder shall immediately notify City's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither Design-Builder nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Contract, the Contract Documents, the Background Documents or other information given to Design-Builder. If Design-Builder or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the Contract Time. In no case shall any Subcontractor proceed with Work if uncertain without Design-Builder's written direction and/or approval.
- C. Contract Document Conformance with Laws. Before commencing any Work on the Project, Design-Builder shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental

authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event Design-Builder observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, Design-Builder shall immediately notify City's Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. Design-Builder shall be solely liable for any such violation, inconsistency or special requirement, if Design-Builder fails to conduct such review or notification to City.

- D. Examination of Project Site. As part of Phase 1 and prior to a GMP Amendment, Design-Builder shall inspect and become familiar with the Site, its physical condition relevant to the obligations of Design-Builder pursuant to the Contract, including surface and subsurface conditions, normal and usual soil conditions, roads, Underground Facilities, topographical conditions and air and water quality conditions and shall, among other things, review the Contract Documents, including, but not limited to, the Background Documents, relative to the Site. Design-Builder shall be familiar with all local and other conditions which may be material to Design-Builder's performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor); Design-Builder shall have received and reviewed all information regarding the Site provided to or developed by it in connection with the Work pursuant to the Contract; and Design-Builder shall have made all other Site investigations that it deems necessary to make a determination as to the suitability of the Site and to submit a Phase 1 Proposal to City in accordance with the Contract Documents. Design-Builder's Phase 1 Proposal shall serve as a representation by Design-Builder that, based on the foregoing, that the Site constitutes an acceptable and suitable site for the Work and that the Work can be performed on the Site within the Contract Price and in accordance with the Contract Documents, including the schedule requirements of the Contract.
- E. Reporting and Resolving Discrepancies. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Design-Builder shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Design-Builder shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy which Design-Builder discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby. If, during the performance of the Work, Design-Builder discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, Design-Builder shall promptly submit a written RFI to City. Design-

Builder shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Design-Builder before receipt of an amendment or supplement shall be at Design-Builder's own risk.

- F. Responsibility for Review of Contract Documents. Design-Builder shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if Design-Builder fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to City in writing.

2.6 Reuse of Documents.

- A. Design-Builder and any Subcontractor shall not have or acquire any title to or ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the Designer of Record or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of City. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Builder from retaining copies of the Contract Documents for record purposes.

2.7 Ownership and Use of Construction Documents.

- A. Ownership and Use. The Construction Documents, and all copies thereof, furnished to, or provided by, Design-Builder are the property of City. Design-Builder hereby assigns to City all right, title, and interest, including any copyrights, patents, or any other intellectual property rights in all Work Product and all ideas, methods or information specifically developed as Work Product. Design-Builder will take such steps as are necessary to perfect or protect the ownership interest of City in such Work Product. Upon completion, expiration or termination of the Contract, Design-Builder shall turn over to City all such original Work Product in Design-Builder's possession or control. City shall have unlimited rights, for the benefit of City, in all Work Product and other Work developed in the performance of the Contract for the Project, including the right to re-use details of the Construction Documents on any other City work at no additional cost to City. Design-Builder, for a period up to five (5) years from the date of completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of City. Any use or reuse by City of the Construction Documents on any project other than this Project without employing the services of Design-Builder shall be at City's own risk with respect to third parties. If City uses or re-uses the Construction Documents on any project other than this Project, it shall remove the Designer of Record's seal from the Construction Documents and hold harmless Design-Builder, Designer of Record, and their officers, directors, agents and employees from claims arising out of the use or re-use of

the Construction Documents on such other project. Upon completion, expiration or termination of the Contract, Design-Builder shall turn over to City all such original Work Product in Design-Builder's possession or control.

- B. Design Subcontractors. To the extent Design-Builder does not directly perform Design Work, Design-Builder shall acquire a license meeting the requirements of this Article 2.7 from each of its designers in order to convey the rights to City. Further, in the event that a subconsultant to Design-Builder, or any other party that is not in privity with City under the Contract, maintains any right to a copyright or other intellectual property right in any portion of the Work Product, Design-Builder shall obtain from that party a grant of a non-exclusive and perpetual license in favor of City as described in Article 2.7(A) above. Design-Builder shall deliver said license to City prior to the subconsultant or other design entity performing any work on the Project. City's obligation to compensate Design-Builder shall not commence until the license is delivered.
- C. Use of Design. Design professionals responsible for performing Design Work on behalf of Design-Builder shall have sole liability for their design errors and omissions, provided City elects to use their complete and stamped designs with subsequent design-build entities or licensed contractors.

2.8 Confidential Information.

- A. No Unauthorized Disclosure. All information gained or Work Product produced by Design-Builder in the performance of the Contract will be considered confidential, unless such information is in the public domain. Design-Builder shall not release or disclose any such information or Work Product to persons or entities other than City without the prior written consent of City, except as otherwise required by law. Design-Builder shall promptly notify City should Design-Builder, or its representatives, be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding the Contract and the Services performed under the Contract.
- B. Media. Design-Builder shall not comment publicly to the press or any other media or issue any news release or public relations item of any nature whatsoever regarding the Contract without prior review of the contents thereof by City and receipt of City's written permission.

ARTICLE 3 -INDEMNIFICATION; INSURANCE; BONDS

3.1 Indemnification.

- A. General Indemnification. To the fullest extent permitted by law, Design-Builder shall immediately defend (with counsel of City's choosing), indemnify and hold harmless City, its officials, officers, employees, agents, and authorized volunteers, and each of them from and against:
1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with Phase 1, Phase 2, Work or the Contract, including claims made by Subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of City or its officials, officers, employees, agents, or authorized volunteers (including passive negligence), except such loss or damages caused by the sole negligence or willful misconduct or active negligence of City or its officials, officers, employees, or authorized volunteers.
 2. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any Applicable Law, compliance with which is the responsibility of Design-Builder.
 3. Any and all losses, expenses, damages (including damages to the Project itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Design-Builder to faithfully perform the Work and all of Design-Builder's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.
 4. Design-Builder's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Design-Builder's Work during the course of construction of the improvements or after the Project is complete, as the result of defects or negligence in Design-Builder's construction of the Work.
- B. Design Professional Indemnification. Design-Builder's obligation to defend, indemnify, and/or hold harmless arises out of Design-Builder's performance as a "design professional" (as that term is defined under Civil Code Section

2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, Design-Builder's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design-Builder, and, upon Design-Builder obtaining a final adjudication by a court of competent jurisdiction, Design-Builder's liability for such claim, including the cost to defend, shall not exceed Design-Builder's proportionate percentage of fault.

- C. Defense. Design-Builder shall immediately defend, at Design-Builder's own cost, expense and risk, with the counsel of City's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City or its officials, officers, employees, agents, or authorized volunteers. Design-Builder shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents, or authorized volunteers, in any such suit, action or other legal proceeding. Design-Builder shall reimburse City and its officials, officers, employees, agents, and authorized volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.
- D. Survival, Insurance. The provisions of this Article shall survive the termination of the Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article. Design-Builder's obligation to indemnify and defend City shall not be restricted to insurance proceeds, if any, received by City and its officials, officers, employees, agents, and authorized volunteers.

3.2 Insurance.

- A. Time for Compliance. Design-Builder shall not commence Work under the Contract until it has provided evidence to City that it has secured all insurance required under this Article. Design-Builder shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein. Design-Builder shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence to City that Subcontractor has secured all insurance required under this Article.
- B. Minimum Requirements. Design-Builder shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Work and Design-Builder's other obligations under the Contract Documents whether by Design-Builder, its agents, representatives, employees or subcontractors. Design-Builder shall also require all of its Subcontractors to procure and maintain the same insurance for the duration of the Contract and verify the Subcontractor's compliance. Design-Builder's and

Subcontractor's insurance shall meet at least the minimum levels of coverage set forth in this Article:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Builder has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; and (5) Professional Liability/Errors and Omissions. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.
2. Minimum Limits of Insurance. Design-Builder shall maintain limits no less than:
 - a. For Commercial General Liability, Design-Builder shall have limits of at least the amount that corresponds to the Contract Price in the following table:

<u>Contract Price</u>	<u>Amount of Liability Insurance</u> (per occurrence)
Up to \$2 million	\$2 million
\$2 million - \$5 million	\$3 million
\$5 million - \$10 million	\$5 million
\$10 million - \$20 million	\$10 million
Over \$20 million	\$15 million

If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit. Should any of the Work involve aircraft (fixed wing or helicopter) owned or operated by Design-Builder, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required. Should any of the Work involve watercraft owned or operated by Design-Builder, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required.

- b. Automobile Liability: \$1 million per accident for bodily injury and property damage.

- c. Workers' Compensation and Employer's Liability:
 - (i) Workers' Compensation: statutory limits.
 - (ii) Employer's Liability limits of \$1 million per accident for bodily injury or disease.
 - (iii) Should any of the Work be upon or contiguous to navigable bodies of water, Design-Builder shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;
- d. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.
- e. Professional Liability/Errors and Omissions: \$2,000,000 per claim.

3. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is cancelled or materially reduced, Design-Builder shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under the Contract does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Design-Builder or City may withhold amounts sufficient to pay premium from Design-Builder payments. In the alternative, City may suspend or terminate the Contract.

C. Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Builder shall provide endorsements on forms approved by City to add the following provisions to the insurance policies:

- 1. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf

of Design-Builder, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of Design-Builder's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of City, before City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of Design-Builder's insurance and shall not be called upon to contribute with it in any way.

2. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Design-Builder or for which Design-Builder is responsible; and (2) the insurance coverage shall be primary insurance as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of Design-Builder's scheduled underlying coverage. Any insurance or self-insurance maintained by City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of Design-Builder's insurance and shall not be called upon to contribute with it in any way.
3. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 03 13 or the exact equivalent, to waive all rights of subrogation against City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.
4. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the Design-Builder, Designer of Record, their officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the Design-Builder or Designer of Record may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities

described in the Contract. Professional Liability Insurance shall remain in full force and effect and shall be certified to City by the insurer, for a period of five (5) years after the completion of all Design-Builder's services hereunder and City's acceptance of the Project. All Subcontractors performing professional services shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).

5. All Coverages. Each insurance policy required by the Contract shall be endorsed to include the following provisions:
 - a. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to City and all additional insureds.
 - b. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and any other additional insureds.
 - c. standard separation of insureds provisions.
 - d. no special limitations on the scope of protection afforded to City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.
 - e. waiver of any right of subrogation of the insurer against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Design-Builder or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, Design-Builder hereby waives its own right of recovery against City or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its Subcontractors.

D. Builder's Risk ["All Risk"]

1. It is Design-Builder's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. City accepts no responsibility for the Work until the Work is formally accepted by City. Design-Builder shall provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Design-Builder, all Subcontractors of any Tier (excluding those solely responsible for Design Work), suppliers, and City, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Design-Builder shall not be required to maintain property insurance for any portion of the Work following acceptance by City.
 3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy and sublimit.
 4. In addition, the policy shall meet the following requirements:
 - a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - b. Coverage shall include all materials stored on site and in transit.
 - c. Coverage shall include Design-Builder's tools and equipment.
 - d. Insurance shall include boilers, machinery and material hoist coverage.
 - e. City shall be named Loss Payee.
- E. Pollution Liability Insurance. Pollution Liability Insurance is required should any of the Project involve pollutants. Liability coverage shall include coverage for the environmental risk associated with the project and expenses related to such, including bodily injury, property damage, on and off-site clean-up, transporting, carrying, or storing pollutants, coverage for non-owned disposal site in an amount not less than that set forth in the Special Conditions. Pollutants include, but are not limited to, asbestos, mold, microbial matter, solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

- F. Receipt and Application of Insurance Proceeds. Any insured loss under the policies of insurance required herein will be adjusted with City and made payable to City as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of the provisions herein. City shall deposit in a separate account any money 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 Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Project and the cost thereof covered by an appropriate Change Order. City as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to City's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, City as fiduciary 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, City as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, City as fiduciary shall give bond for the proper performance of such duties.
- G. Partial Utilization, Acknowledgment of Property Insurer. If City finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing 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.
- H. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. Design-Builder shall guarantee that, at the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2) Design-Builder shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- I. Claims Made Policies. Claims-made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy: The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work; Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after City's acceptance of the Work; and If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Design-Builder must purchase "extended reporting" coverage for a minimum of five (5) years after City's acceptance of the Work.

- J. Subcontractor Insurance Requirements. Design-Builder shall not allow any Subcontractors to commence work on any subcontract relating to the Work until Design-Builder has verified that all Subcontractors maintain insurance meeting all requirements under this Section and has provided evidence to City of such insurance. For Commercial General Liability coverage, Subcontractors shall provide coverage naming City, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Builder, City may approve different scopes or minimum limits of insurance for Subcontractors. Design-Builder shall confirm that City shall be named as additional insureds on all Subcontractors' Commercial General Liability Insurance and Commercial Automobile Insurance policies. The Design-Builder shall require all subcontractors to maintain insurance coverage for the types specified above, including but not limited to Builder's Risk, Pollution Liability, General Liability, Automobile Liability, Workers' Compensation, and Professional Liability, at the same or greater limits as required for the Design-Builder. The Design-Builder shall ensure that subcontractors maintain such coverage throughout the term of the Project. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for:
- Contractual liability; or
 - Cross liability for claims or suits by one insured against another.
- K. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII and are licensed to do business in California. The insurer must be satisfactory to City.
- L. Verification of Coverage. Design-Builder shall furnish City with original certificates of insurance and endorsements evidencing coverage required by the Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- M. Reservation of Rights. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.3 Performance Bond and Payment Bond.

- A. Generally. Prior to Design-Builder's commencement of Construction Work, shall submit Performance Bonds and Payment Bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates

of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City conditioned upon the faithful performance by Design-Builder of all requirements of the Contract Documents. The obligations of the Performance Bond surety shall continue so long as any obligation of Design-Builder remains. Nothing herein shall limit City's rights or Design-Builder's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

- B. Amount of Bonds. The Performance Bond and Payment Bond shall be in a sum no less than one hundred percent (100%) of the Contract Price. No payment will be made to Design-Builder until the bonds have been approved by City. The amount of the Performance Bond and the Payment Bond shall be increased by Design-Builder to reflect the adjustment to the Contract Price. Design-Builder shall, upon request of City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to City. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Phase 2 Price), extensions of time, or modifications of the time, terms, or conditions of payment to Design-Builder will release the surety. If Design-Builder fails to furnish any required bond, City may terminate the Contract for cause.

- C. Monitoring of Sureties. Design-Builder shall be responsible throughout the Project for monitoring the financial condition of any surety issuing bonds under the Contract and for making inquiries no less often than annually to confirm that each such surety complies with the qualification requirements specified in this Article. In the event any surety is declared bankrupt or becomes insolvent or has the rights to do business in the state terminated, Design-Builder shall promptly notify City of such event and shall promptly take steps to ensure continued compliance with this Article by furnishing or arranging for the furnishing of a substitute or additional bond of a surety whose qualifications satisfy all above requirements.

- D. Insufficient Bonds. Should, in City's sole opinion, any bond becomes insufficient, or surety found to be unsatisfactory, Design-Builder shall renew or replace the effected bond within 10 Days of receiving notice from City. In the event the surety or Design-Builder intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to City, and Design-Builder shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under the Contract until any replacement bonds required by this Article are accepted by City.

ARTICLE 4 -CITY RESPONSIBILITIES

4.1 Availability of Site.

- A. City shall furnish the Project site. City shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which Design-Builder must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. Design-Builder shall provide for all additional land and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to City.

4.2 Administration of the Contract by City.

- A. Generally. City's Representative shall have the right to review Design-Builder's Work at such intervals as deemed appropriate by City's Representative. No actions taken during such review or site visit by City's Representative shall relieve Design-Builder of any of its obligations of single point responsibility for the design and construction of this Project. City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, these are solely Design-Builder's responsibility.
- B. Communication. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and Design-Builder shall communicate through City's Representative. Communications by Design-Builder with City's consultants and City's Representative's consultants shall be through City's Representative. Communications by City and City's Representative with Subcontractors will be through Design-Builder. Communications by Design-Builder and Subcontractors with Separate Contractors shall be through City's Representative. Design-Builder shall not rely on oral or other non-written communications.
- C. Authority. City's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. City's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, City's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. City's Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Project completion; and will receive for review and approval any records, written

warranties, and related documents required by the Contract Documents and assembled by Design-Builder. However, no authority of City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of City or City's Representative to Design-Builder, or any person or entity claiming under, or through, Design-Builder.

- D. Interpretation. City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Design-Builder. Should Design-Builder discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, Design-Builder shall notify City's Representative in writing and request interpretation, or clarification. City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Design-Builder proceed with the Work affected before receipt of a response from City's Representative, any portion of the Work on the Project which is not done in accordance with City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Design-Builder shall be responsible for all resultant losses.

ARTICLE 5 - DESIGN-BUILDER'S RESPONSIBILITIES

5.1 General Responsibilities.

- A. Generally. Design-Builder agrees that it has single point responsibility for the design and construction of this Project and agrees to utilize the highest standard of excellent design, engineering and construction practices. Unless otherwise provided in the Contract Documents, Design-Builder shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. Design-Builder shall supervise, coordinate, and direct all Work on the Project using Design-Builder's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project. Design-Builder shall be responsible to City for acts and omissions of Design-Builder, its agents, employees, and Subcontractors, and their respective agents and employees. Design-Builder has the duty to act in City's best interests at all times throughout the course and performance of the Contract. If Design-Builder performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission, without notifying and obtaining the written consent of City's Representative, Design-Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work
- B. Applicable Laws. Design-Builder shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither City nor the City's Representative shall be responsible for monitoring Design-Builder's compliance with any Applicable Laws. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Governmental Approvals. City will not be liable for Design-Builder's failure to obtain, maintain, and comply with all Governmental Approvals. All fines and fees assessed by Governmental Bodies as a result of said failures shall be Design-Builder's responsibility. In the event City is assessed with any fines or fees related to Design-Builder's failure to comply with the requirements set forth in this Article, the amount of fees or fines will be deducted from the Contract Price.

- D. Standard of Care. Design-Builder's performance shall be consistent with the standards set forth in the Contract and the General Conditions. Design-Builder represents that it is fully experienced and properly qualified to perform the class of Work provided for in the Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. Design-Builder warrants to City that all Work shall be performed in accordance with the highest professional standards and degree of care applicable to those design and construction professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the progressive design-build contracting mode. Design-Builder shall perform the Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. Design-Builder warrants that the Services and Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project. Design-Builder shall supervise, inspect, and direct the Services and Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. Design-Builder shall perform, at its own cost and expense and without reimbursement from City, any services necessary to correct errors or omissions which are caused by Design-Builder's failure to comply with the standard of care provided for herein.
- E. Best Efforts. Design-Builder recognizes the relations of trust and confidence that are established by the Contract, and covenants with City to furnish Design-Builder's best skill and judgment, and to actively cooperate and assist in furthering the best interests of City in all matters pertaining to the Project. Design-Builder agrees to furnish efficient business administration and capable supervision, and to use every effort to keep upon the work an adequate supply of workmen and materials in order to secure its execution in the most expeditious and economical manner consistent with City's best interests. Design-Builder's employees assigned to the Project shall at all times be reasonably satisfactory to City.
- F. Independent Contractor. Design-Builder shall be responsible to City for acts and omissions of Design-Builder, their employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with Design-Builder or any of its Subcontractors. Design-Builder in the performance of the Contract shall be and act as an independent contractor. Design-Builder understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of City, and are not entitled to benefits of any kind or nature normally provided employees of City or to which City's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's

Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Design-Builder's employees. In the performance of the Services, Design-Builder is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Design-Builder's Services, City being interested only in the results obtained.

- G. Progress Meetings. Design-Builder shall schedule and hold regular progress meetings at least weekly and at other times as requested by City's Representative or as required by progress of the Work. Design-Builder and City shall attend each meeting. Design-Builder may at its discretion request attendance by representatives of its Subcontractors, Suppliers, or manufacturers. City's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other issues which may develop. During each meeting, Design-Builder shall present any issues which may impact its progress with a view to resolve these issues expeditiously.
- H. Permits and Licenses. City will apply and pay for the review of necessary encroachment permits for Work within the public rights-of-way. All other necessary permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Builder, including, but not limited to, permits, licenses and fees required by a Governmental Body, unless otherwise expressly provided by the Contract Documents. Design-Builder shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by Governmental Bodies, except for such off-site inspections delineated as City's responsibility pursuant to the Contract Documents. Before completion of the Project, Design-Builder shall submit all licenses, permits, certificates of inspection and required approvals to City.
- I. Taxes. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Design-Builder will be responsible. Without limiting any of the foregoing, in the event City seeks to obtain any available exemption under Applicable Law from sales, consumer, use, and similar taxes for the Project, Design-Builder will cooperate with City in seeking such an exemption, and will utilize (and cause its Subcontractors to utilize) any such exemption to the extent available in performance of the Work.
- J. Patent Fees and Royalties. 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. To the fullest extent permitted by Applicable Laws, Design-Builder shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to 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 not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

5.2 Design Work.

- A. Generally. Design-Builder is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. Design-Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Design-Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design-Builder before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to City's Representative.
- B. Construction Documents.
 1. Generally. Design-Builder shall furnish design, architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. The Designer of Record shall design the Project and prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required to complete the construction of the Project, other than such details customarily developed by others during construction. Design-Builder is required to deliver to City, if requested, any and all Construction Documents and Work Product including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other

information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

2. Submittal and Review of Construction Documents. Design-Builder shall submit completed packages of the Construction Documents for review by City at the times indicated on the Phase 1 CPM Schedule and as defined in the Phase 1 Scope of Services. Meetings between Design-Builder and City to review the Construction Document packages shall be scheduled at least every two weeks, or as otherwise agreed by the Parties, and held so as not to delay Work on the Project. Design-Builder will conduct these design meetings with City in accordance with the schedule approved by City. Design-Builder will be responsible for preparing and circulating for the Parties review and design meeting minutes from all such meetings. City's review of the Construction Documents shall be conducted in accordance with the approved Phase 1 CPM Schedule and with procedures set forth in the Contract Documents. Such review shall not relieve Design-Builder from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by City of any deviation from, or of Design-Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by Design-Builder and approved by City. The production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Phase 1 CPM Schedule shall indicate the times for City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
- C. Field Engineering. Design-Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California. Design-Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.
- D. Information and Documents. City will make the Background Documents related to the Project available to the Design-Builder, including but not limited to any preliminary surveys, geotechnical information, and other information that describe the Site. The Background Documents are provided for information only and will not be included as part of the Contract Documents. Design-Builder shall perform its own independent site investigations in accordance with the requirements of the Contract Documents. Design-Builder's reliance on any reference documents shall not be a basis for increases to the Contract Price or Contract Time, nor shall it result in any Claims against City.

- E. Geotechnical and Survey. City may provide a geotechnical report to Design-Builder that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by Design-Builder to form its basis of design. Design-Builder shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also, with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of Design-Builder's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Builder at its sole cost and expense. Design-Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of Design-Builder.

5.3 Staffing of Project.

- A. Generally. Design-Builder and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.
- B. Employment of Workers. Design-Builder shall comply with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors and consultants to comply with the same. Each person executing the Contract on behalf of Design-Builder verifies that he or she is a duly authorized officer of Design-Builder and that any of the following shall be grounds for City to terminate the Contract for cause: (1) failure of Design-Builder or its Subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.
- C. Competent Workers. Design-Builder shall at all times enforce strict discipline and good order among its employees. Design-Builder shall not employ on the Project any unfit person or anyone not skilled in the services assigned to him or her. Any person in the employment of Design-Builder whom City may deem incompetent or unfit, at its sole discretion, shall be dismissed from performing services and shall not be employed on the Project.

- D. Supervision. Design-Builder shall continuously keep at the Project site, a competent and experienced full-time Project superintendent, acceptable to City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of Design-Builder. Design-Builder shall continuously provide efficient supervision of the Project.

5.4 Subcontractors.

A. Subcontracting Generally.

1. Licenses. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. All Subcontractors performing Construction Work shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by Subcontractors at the commencement of the Construction Work and throughout the duration of the Work.
2. Responsibility for Subcontractors. All subcontracted Work shall be performed under written subcontracts. Design-Builder agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Services. Design-Builder shall be as fully responsible to City for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Design-Builder is for acts and omissions of persons directly employed by Design-Builder. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and City. City reserves the right to accept all Subcontractors. City's acceptance of any Subcontractor under the Contract shall not in any way relieve Design-Builder of its obligations in the Contract Documents. Subcontracts entered into by City for the performance of the Work shall neither supersede nor abrogate any of the terms or provisions of the Contract.
3. Claims. Design-Builder shall be responsible for settling and resolving all claims with Subcontractors. Design-Builder shall provide to City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any subcontract that may have a material and adverse effect on performance by Design-Builder of its obligations under the Contract Documents.
4. Payment. Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective subcontracts and the requirements of this Article and Applicable Law. No Subcontractor shall have any right or claim against City for labor, services, materials or equipment furnished for the Project. Design-Builder acknowledges that its

indemnity obligations under the Contract shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Project. Design-Builder shall, at City's request, furnish satisfactory evidence that all obligations of the nature designated above in this Article have been paid, discharged or waived. If Design-Builder fails to do so City may, after having notified Design-Builder, withhold from Design-Builder's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Design-Builder will be resumed in accordance with the terms of the Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon City to either Design-Builder, the surety or any third party.

5. Assignment. Each subcontract agreement shall include a provision that allows for an irrevocable assignment of the subcontract to City, solely at City's election and without cost or penalty. The provision shall indicate that City's acceptance of the assignment shall not affect any obligations of the Subcontractor's performance or payment bond surety. City may accept the assignment by delivering written notice to Design-Builder and Subcontractor.

B. Subcontracting Design Work.

1. Identified in Proposal. Design-Builder shall perform the Design Work with resources available within its own organization and no portion of the Design Work shall be subcontracted without written authorization by City, except that which is expressly identified in Design-Builder's Proposal.
2. City Approval. Design-Builder may request to have a design professional perform Design Work that is not expressly identified in the Proposal by requesting written approval from City. The request shall include, among other things, the scope of Design Work performed by the design professional and the design professionals' qualifications. City may accept the request or may reject any proposed Subcontractor as unsuitable, unqualified, not responsible, having a conflict of interest, or that City otherwise object to performing Design Work on the Project.

C. Substitution of Subcontractors.

1. Subcontractors Performing Design Work. Design-Builder shall not substitute a Subcontractor performing Design Work except with City's express written authorization.
2. Subcontractors Performing Construction Work. Subcontractors performing Construction Work shall be afforded the protections of the Subletting and

Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*). Design-Builder shall not substitute Subcontractors that are awarded a contract pursuant to the above process, except in accordance with the Subletting and Subcontracting Fair Practices Act. Design-Builder may substitute a Subcontractor without following the Subletting and Subcontracting Fair Practices Act that Design-Builder procures through a noncompetitive procurement. Design-Builder shall not substitute in a Subcontractor for Self-Performed Construction Work except with City's express written authorization.

3. All Subcontractor Substitution. City will not grant an increase to a GMP or grant an extension of Contract Time in the event of a substitution of any Subcontractor.

D. Dismissal of Subcontractors.

1. Subcontractor. City reserves the right to order Design-Builder to dismiss any Subcontractor and to terminate any subcontract if, in City's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to the Subcontractor's Work. Nothing herein contained shall create any contractual relation between any Subcontractor and City or relieve Design-Builder of any liability or obligation hereunder for, among other things, its Subcontractor's Work.
2. Staff Member of Subcontractor. If at any time during the Project, City reasonably determines that the performance of any member of Subcontractor's staff performing Work is unsatisfactory, City may require Design-Builder to remove such staff member immediately and replace the staff member at no cost or penalty to City.
3. No Increase in Price, Time. The City will not grant an increase to a GMP or grant an extension of the Contract Time in the event of a dismissal of any Subcontractor.

5.5 Safety Requirements.

- A. General Safety Requirements. Design-Builder shall be solely responsible for all safety precautions and programs in connection with the Project. Design-Builder shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all employees on the Site and all other persons who may be affected thereby. 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 Applicable Laws. Design-Builder shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Design-Builder shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. Design-Builder shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

- B. Safety Manager. Design-Builder assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing Work, designate an individual with the qualifications and experience necessary to supervise the implementation and monitoring of all health and safety precautions and programs related to the Work. The health and safety manager shall be an individual stationed full time at the Site and who shall have no other responsibilities with respect to the Project other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Work.
- C. Safety Inspections and Meetings. Design-Builder is solely responsible to inspect, survey, and assess the Site and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. Design-Builder's Site assessment shall begin upon the initiation of Work and continue throughout the duration of the Project. The health and safety manager shall make routine daily inspections of the Site and shall hold weekly health and safety meetings with Design-Builder's personnel, Subcontractors and others, as applicable.
- D. Safety Plan. Design-Builder shall submit a Safety Plan that includes, among other things, an illness and injury prevention program and a Site-specific safety program to City prior to beginning Work. The Safety Plan shall include, but not be limited to, worker safety, electrical safety, lock-out/tag-out, arc flash safety personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, health and safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, and related items. Design-Builder shall maintain a confined space program that meets or exceeds Applicable Law. Design-Builder needs to make themselves aware of City's safety policies and procedures and shall meet or exceed all City standards in areas where City must enter to perform inspections.
- E. Safety Compliance Requirements. Design-Builder shall, and shall cause all Subcontractors to, comply with: (1) all Applicable Law relating to safety; (2) the

Safety Plan; and (3) any City health and safety requirements. Design-Builder shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Work to the City's Representative and, to the extent mandated by Applicable Law, to any Governmental Body having jurisdiction over health and safety-related matters involving the Project. City shall have the right to suspend any or all Work if Design-Builder fails to comply with its obligations hereunder without any requirements of increasing a GMP or Contract Time.

- F. Emergencies. Design-Builder shall develop an emergency response plan in accordance with the Contract Documents. The emergency response plan shall establish the protocols for Design-Builder in dealing with emergencies impacting the performance of the Work and ensure there is sufficient response to any medical or fire emergency, such as injury to an employee or wildfire at the Site. The emergency response plan shall be subject to the approval of City. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, Design-Builder shall act immediately to prevent threatened loss, damage, injury or death. Design-Builder shall notify City's Representative of the situation and all actions taken immediately thereafter. Prior to commencing Construction Work, and at all times during the performance of the Work, Design-Builder shall provide City with 24-hour emergency phone numbers where its representatives can be contacted. When City has been notified of emergency situations requiring, in City's reasonable opinion, immediate attention and rectification, City will so notify Design-Builder. In the event Design-Builder fails to commence actions to prevent threatened loss, damage, injury or death immediately after notification from City, City may take all appropriate rectification actions and deduct the costs thereof from monies owed to Design-Builder.

5.6 Security.

- A. Security Generally. Design-Builder shall be responsible for the security and protection of the Project and the Site, including any security requirements set forth in the Contract Documents. Design-Builder shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Documents. Design-Builder shall comply with, and cause all Subcontractors to comply with, all terms and conditions related to security.
- B. Security Plan. Design-Builder shall provide, for City's review and comment, a Security Plan, prepared in accordance with the Contract Documents. Design-Builder shall not perform any Construction Work until the City has reviewed and commented on the Security Plan. Design-Builder shall provide a final

Security Plan, having addressed any comments provided by City, as a pre-condition to Construction Work.

5.7 Hazardous Waste.

- A. Hazardous Waste Introduced by Design-Builder. City shall not be responsible for any Hazardous Waste brought to the site by Design-Builder. If Design-Builder: (i) introduces and/or discharges Hazardous Waste onto the Site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Waste identified in the Contract Documents, Design-Builder shall hire a qualified remediation contractor at Design-Builder's sole cost to eliminate the condition as soon as possible. Under no circumstance shall Design-Builder perform Work for which it is not qualified. City, in its sole discretion, may require Design-Builder to retain at Design-Builder's cost an independent testing laboratory.
- B. Encountering Hazardous Waste. If Design-Builder encounters Hazardous Waste which may cause foreseeable injury or damage, Design-Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify City (and promptly thereafter confirm such notice in writing). Design-Builder shall contract for any services required to directly remove and/or abate Hazardous Waste, if required. The Work in the affected area shall not thereafter be resumed except by written agreement of City and Design-Builder.
- C. Hazardous Waste Indemnification. Design-Builder shall indemnify, defend, and hold harmless City from and against claims, damages, losses and expenses, arising from Hazardous Waste on the Site, if such Hazardous Waste was brought to the Site by Design-Builder. Nothing in this paragraph shall obligate Design-Builder to indemnify City in the event of the sole or active negligence or willful misconduct of City, its officers, agents, or employees.

5.8 Water Quality Management and Compliance.

- A. Storm Water. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Project. Design-Builder hereby acknowledges that it has investigated the risk arising from such waters, has prepared a GMP accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. Discharge of Storm Water. Design-Builder shall keep itself and all Subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 *et seq.*); the California Porter-Cologne

Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority.

- C. Construction General Permit. Design-Builder shall comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (“Construction General Permit”) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Design-Builder shall comply with the lawful requirements of City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

- D. Violations. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Design-Builder agrees to indemnify and hold harmless City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Construction General Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of City, its officials, officers, agents, employees or authorized volunteers. City reserves the right to defend any enforcement action or civil action brought against City for Design-Builder’s failure to comply with any applicable water quality law, regulation, or policy. Design-Builder hereby agrees to be bound by, and to reimburse City for the costs associated with, any settlement reached between City and any relevant enforcement entity.

5.9 Environmental Requirements.

- A. Environmental Quality Protection.
 - 1. Environmental Regulations. City operates under a number of environmental permits issued by various agencies. Design-Builder shall comply with all requirements of Applicable Law for environmental rules and regulations. Any infractions of Applicable Law by Design-Builder during the term of the Contract, which result in penalties, will be the responsibility of Design-Builder. If due to an action, inaction, or negligence by Design-Builder, City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by Design-Builder.

2. Preservation of Site. Design-Builder shall exercise care to preserve the natural landscape and vegetation and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Project and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

3. Endangered Plants and Animals. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, Design-Builder shall notify City's Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City's Representative within two (2) Days. Design-Builder shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by City, Design-Builder will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all Applicable Laws. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or Design-Builder due to unreasonable or false notification of an endangered plant or animal will be borne by Design-Builder.

4. Cultural Resources. If, in the performance of the Work, Design-Builder should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, Design-Builder shall notify the City's Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City's Representative within two (2) Days. Design-Builder shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by City's Representative, Design-Builder will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all Applicable Laws. Should the presence of cultural resources be confirmed, Design-Builder will assist City's Representative in the preparation and implementation of a data recovery plan. Design-Builder shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract

Documents. Should Design-Builder, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under Applicable Law. Design-Builder shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Design-Builder shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

- B. Noise Restrictions. Design-Builder shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Design-Builder shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, Design-Builder shall promptly remove the equipment and shall not return said equipment to Project until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment at the Site or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by Design-Builder.
- C. Diversion of Recyclable Waste Material. In compliance with the applicable City's waste reduction and recycling efforts, Design-Builder shall divert all recyclable waste materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Design-Builder will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Design-Builder shall complete and execute any certification forms required by City or other applicable agencies to document Design-Builder's compliance with these diversion requirements.
- D. Air Pollution Control.
1. General. Design-Builder shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.
 2. Air Rules. Without limiting the foregoing, Design-Builder must fully comply with all Applicable Laws in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with

jurisdiction over the Project and/or California Air Resources Board (“CARB”). Design-Builder shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine.

3. CARB Regulations. To the extent applicable, Design-Builder, shall comply, and shall ensure all Subcontractors comply, with all requirements of CARB including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments (“CARB Regulation”). Throughout Project, and for three (3) years thereafter, Design-Builder shall make available for inspection and copying any and all documents or information associated with Design-Builder’s and Subcontractors’ fleet including, without limitation, the certificate of reported compliance, fuel/refueling records, maintenance records, emissions records, and any other information Design-Builder is required to produce, keep or maintain pursuant to the CARB Regulation upon two (2) calendar days’ notice from City. Design-Builder shall be solely liable for any and all costs associated with complying with the CARB Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the CARB Regulation. Design-Builder shall defend, indemnify and hold harmless City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the CARB Regulation.

- E. Dust Control. Design-Builder, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.10 Labor Requirements.

A. Prevailing Rates of Wages.

1. Prevailing Wage Laws. Design-Builder is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Since this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Design-Builder agrees to fully comply with such Prevailing Wage Laws. Design-Builder shall obtain a copy of the prevailing rates of per diem wages at the commencement of the Contract from the website of the Division of Labor Statistics and

Research of the Department of Industrial Relations (“DIR”) located at www.dir.ca.gov. In the alternative, Design-Builder may view a copy of the prevailing rate of per diem wages which are on file at City Hall and shall be made available to interested parties upon request. Design-Builder shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request and shall post copies at Design-Builder’s principal place of business and at the Project site. Design-Builder shall post, at appropriate conspicuous points on the Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned. Design-Builder shall defend, indemnify and hold City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

2. Penalties. Design-Builder shall forfeit as a penalty to City not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design-Builder.
 3. Davis-Bacon. If the Contract is subject to the Davis-Bacon Act, the federal minimum wage rates for this Project are predetermined by the United States Secretary of Labor. These rates are available directly from the Department of Labor at <http://www.wdol.gov> and included in the Contract Documents. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the director of the DIR for similar classifications of labor, Design-Builder and its Subcontractors shall pay not less than the higher wage rate.
- B. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, Design-Builder and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into the Contract, Design-Builder represents that it is aware of the registration requirement and is currently registered with the DIR. Design-Builder shall maintain a current registration for the duration of the Project. Design-Builder shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time the subcontract is entered into and maintain registration for the duration of the Project.

- C. Employment of Apprentices. Design-Builder and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- D. Hours of Work. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Design-Builder stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Design-Builder or by any Subcontractor under the Contract upon the Work or upon any part of the Project contemplated by the Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, Services performed by employees of Design-Builder in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. Design-Builder and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Services or any part of the Services contemplated by the Contract. The record shall be kept open at all reasonable hours to the inspection of City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California. Design-Builder shall pay to City a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by Design-Builder or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- E. Payroll Records; Labor Compliance.
1. Maintaining Records. Pursuant to Labor Code section 1776, Design-Builder and all Subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Services under the Contract. Design-Builder shall certify under penalty of perjury that records maintained and submitted by Design-Builder are true and accurate. Design-Builder shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. Furnishing Records. In accordance with Labor Code section 1771.4, Design-Builder and each Subcontractor shall furnish the certified payroll records directly to the DIR on the specified interval and format prescribed by the DIR, which may include electronic submission. Design-Builder shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.
3. Stop Orders. Any stop orders issued by the DIR against Design-Builder or any Subcontractor that affect Design-Builder's performance of Services, including any delay, shall be Design-Builder's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Builder caused delay subject to any applicable liquidated damages and shall not be compensated by City. Design-Builder shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Design-Builder or any Subcontractor.
4. Certifying Records. The payroll records described herein shall be certified and submitted by Design-Builder at a time designated by City. Design-Builder shall also provide the following:
 - a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Form of Records. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Copies of Records. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, City, the Division of Apprenticeship Standards or the DLSE shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Design-Builder awarded the Contract or performing Services on the Contract shall not be marked or obliterated.
7. Noncompliance. In the event of noncompliance with the requirements of this Article, Design-Builder shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects Design-Builder must comply with this Article. Should noncompliance still be evident after such 10-Day period, Design-Builder shall pay a penalty of one hundred dollars (\$100.00) to City for each Day, or portion thereof, for each worker,

until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the DLSE, such penalties shall be withheld from progress payment then due.

- F. Nondiscrimination/Equal Employment Opportunity. Pursuant to Labor Code section 1735 and other Applicable Law, Design-Builder and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. Design-Builder will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.
- G. Debarment of Contractors and Subcontractors. Contractors or Subcontractors may not perform work on a public works project who are ineligible to perform work pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred Subcontractor by Design-Builder on the Project shall be returned to City. Design-Builder shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.

ARTICLE 6 -COST OF CONSTRUCTION WORK

6.1 Early Work and Purchases.

A. Generally.

1. City may direct, or the Parties may agree, that Design-Builder will procure an Early Purchase Item or perform an Early Construction Package. For purposes of interpretation, and unless otherwise stated, the terms of these General Conditions that apply to procurement of equipment and material or Construction Work shall apply to an Early Purchase Item or an Early Construction Package. This includes, but is not limited to, applicable procurement requirements and compensation for an Early Purchase Item or an Early Construction Package.
2. Approval by City of an Early Purchase Item or an Early Construction Package shall not prejudice any right of City with respect to Phase 2 or the remainder of the Construction Work, including City's right to terminate the Contract if the Parties cannot agree to a GMP Amendment and move to Phase 2. For the avoidance of doubt, in no event shall an Early Purchase Item or Early Construction Package be construed as a GMP Amendment or as a Notice to Proceed with Phase 2.
3. Design-Builder expressly agrees and acknowledges that this process for an Early Purchase Item or an Early Construction Package is a contractual mitigation measure to avoid increased costs and to avoid delay(s) to the construction of the Project. City's consent to this process hereunder shall in no way entitle Design-Builder to an increase in the Contract Price or an extension of the Contract Time after the issuance of the Notice to Proceed for Phase 2, unless otherwise permitted, and consistent with the requirements of, the Contract Documents.

B. Early Purchase Item.

1. Design-Builder shall procure Early Purchase Items on either a best value or low-bid basis, as allowed by City. In the event that a best value procurement is utilized, Design-Builder will obtain approval of the evaluation criteria from City and City has the right to review all proposals submitted. In the event that a low-bid procurement is utilized, City has the right to review and accept all bids submitted.
2. Each Early Purchase Item Amendment, if any, shall set forth all pricing, schedule, and other relevant commercial terms specific to the corresponding Early Purchase Item. Design-Builder shall obtain express written authorization from City prior to procurement of any equipment as part of an Early Purchase Item. Design-Builder may procure equipment at its own risk without obtaining City's prior approval.

3. Upon delivery of an Early Purchase Item to Design-Builder, whether at the Site or off-site, Design-Builder shall provide City with verifiable documentation of the receipt of any Early Purchase Item(s) including bill of lading and photographs specifically identifying:
 - a. The Early Purchase Item;
 - b. The serial number of each Early Purchase Item; and/or
 - c. Other indicia authenticating the Early Purchase Item.
4. Design-Builder's obligations to store an Early Purchase Item shall comply with all requirements for storage of equipment and materials, the Contract Documents and shall ensure that all policies of insurance protecting property shall cover the Early Purchase Item.

C. Early Construction Package.

1. If City chooses to authorize the preparation of a proposal for an Early Construction Package, the Parties will agree upon the specific process for doing so, with the understanding that the process is intended generally to follow the submittal and negotiation process set forth for a GMP Proposal. Design-Builder shall comply with all applicable procurement requirements required by the Contract Documents.
2. An Early Construction Package shall set forth the proposed scope of work under the Early Construction Package, the proposed timing, a procurement plan for the work and any other information necessary to approve and proceed with the Early Construction Package.
3. Each Early Construction Amendment, if any, shall set forth all pricing, schedule, and other relevant commercial terms specific to the corresponding Early Construction Package. If utilized, the form of the Early Construction Amendment shall be generally consistent with the form of a GMP Amendment.
4. Design-Builder shall not commence an Early Construction Package until City issues a Notice to Proceed for the Early Construction Package. City shall have no liability to Design-Builder with respect to an Early Construction Package unless and until City issues a Notice to Proceed for the Early Construction Package, and then only to the extent of the Early Construction Amendment for which City issued a Notice to Proceed.
5. All services performed pursuant to an Early Construction Amendment shall constitute Construction Work and shall be performed in accordance with the Contract Documents for Construction Work.

6.2 Guaranteed Maximum Price.

- A. Design-Builder guarantees that the final cost to construct Work shall not exceed the GMP for the Work, subject to any additions or deductions as provided in the Contract Documents. Except as otherwise provided in the Contract Documents, Design-Builder shall assume the risk of all costs in excess of the GMP in the performance of Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should Design-Builder believe that it is entitled to additional compensation, whether money or time, it must request such compensation through a Change Order Request. If the final accounting of the costs for Work exceeds the GMP for the Work, including all adjustments to the GMP in accordance with the Contract Documents, Design-Builder shall be solely responsible for all costs exceeding such amount.

- B. A GMP includes and assumes that from time to time, Design-Builder will encounter delays and difficult site conditions arising from limited access to work areas, other interference, or conditions at the Project site. Design-Builder assumes full responsibility for its examination, investigation and understanding of the difficulties which may be encountered and has included in a GMP the cost of any Work associated with such difficulties.

6.3 Composition of Guaranteed Maximum Price.

- A. GMP Elements. The GMP will be based on an Open Book Basis and comprised of the following elements:
 - 1. Completion of Design Work for the Project, including any design support services during Phase 2.
 - 2. Cost of Work, including:
 - a. Direct Cost;
 - b. General Conditions Cost; and
 - c. Subcontractor Construction Cost.
 - 3. Bond costs without markup.
 - 4. Insurance costs without markup.
 - 5. Design-Builder's Self-Performance Fee applied to Design-Builder's Direct Cost and General Conditions Cost.
 - 6. Design-Builder's Subcontractor Fee applied to Subcontractor Construction Cost.
 - 7. Design-Builder Contingency, if any.

8. Allowances, if any.
- B. Design Work Services. City and Design-Builder will negotiate an amount for Design-Builder to complete Design Work for the Project and design support services in Phase 2. The amount will be based on pricing in Design-Builder's Cost Proposal Form and how the Phase 1 Fee is established.
- C. Cost of Work Components.
 1. Direct Cost.
 - a. Direct Cost includes the actual and verifiable Direct Cost necessarily incurred and paid by Design-Builder in the proper performance of Construction Work. Direct Cost include, but are not limited to, the following:
 - (i) Field Labor Cost. The cost of field labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. City shall not be responsible for any labor rates in excess of the prevailing wage rate unless specifically authorized by the City's Representative for individuals with special qualifications. Wages, burdens, and fringes will be paid at actual cost as verified as part of the labor compliance reporting process and are fully auditable. They shall include the following: actual wages paid to employees; labor burden, including charges for social security taxes, Medicare taxes, federal unemployment taxes, state unemployment taxes, and other taxes pertaining to labor; and employer payments to or on behalf of the workers for health, welfare, pension, vacation, apprenticeship funds and similar purposes, as well as assessments or benefits required by lawful collective bargaining agreements. Cost for supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in Indirect Cost. Premium and overtime rates shall not be paid by the City unless authorized or directed by the City in writing.
 - (ii) Materials, Equipment Cost. The cost of materials and equipment incorporated into the Project shall be actual costs, including purchase, transportation, inspection, testing, storage and handling costs. Cost of materials described in the preceding sentence in excess of those actually installed but required to

provide reasonable allowance for waste and for spoilage, require written approval by City. Unused excess materials, if any, shall be turned over to City at the completion of the Project or, at City's option, shall be sold by Design-Builder; amounts realized, if any, from such sales shall be credited to City as a deduction from the Direct Cost. City reserves the right to furnish materials and equipment for the Project.

- (iii) Construction Equipment Cost. Regardless of ownership, rates for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed. Design-Builder shall furnish cost data supporting the establishment of the equipment rate. In the absence of a identified direct cost for the equipment, Design-Builder will be paid for the use of equipment at the rental rates identified for such equipment in the edition of the State of California Department of Transportation (Caltrans) publication "Labor Surcharge & Equipment Rental Rates" as supplemented by the Caltrans "Miscellaneous Equipment Rental Rates" publication in effect on the date the Work is performed. If that equipment is not listed in either Caltrans publication, the U.S. Army Corps of Engineers publication "Construction Equipment Ownership and Operating Expense Schedule" in effect on the date the Work is performed shall be used to determine the rental rate. The equipment rates paid, as above provided, shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Rates and quantities of equipment rented will be subject to City's prior approval. The time to be paid for equipment shall be the time the equipment is in productive operation on the Work being performed. Charges for time will not be allowed while equipment is inoperative due to breakdowns. All equipment shall, in the opinion of City, be in good working condition and suitable for the purpose for which the equipment is to be used. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation. Individual pieces of equipment having a replacement value of five thousand dollars (\$5,000.00) or less shall be considered to be small tools or small equipment and no

payment will be made for them. Small tools are part of Indirect Cost.

- (iv) Sales Tax. Design-Builder's charge for sales tax will be its actual, verified direct sales tax costs only.
 - (v) Travel; Lodging Cost. The reasonable cost of travel, accommodation, and meals for Design-Builder's personnel directly involved in the performance of the Work, negotiated in a GMP.
- b. Costs Not Considered Direct Cost. Direct Cost do not include the following: General Conditions Cost; Subcontractor Construction Cost; Design Work; Design-Builder's personnel primarily stationed at Design-Builder's principal or home offices; material or equipment provided by City; cost of Design-Builder's capital used in the performance of the Construction Work; cost that would cause the GMP to be exceeded; discounts and rebates and the salvage value of tools and equipment consumed in the Work charged by Design-Builder; cost incurred in performing call-back, repair and warranty work; cost due to the negligence, error, or omission of Design-Builder or to the failure of Design-Builder to fulfill a specific responsibility to City set forth in the Contract Document; cost incurred as a result of a delay which does not constitute compensable delay under the Contract Documents; cost incurred in the performance of Phase 1 Services; legal fees and costs related to or arising from disputes between the Parties, including, but not limited to, mediation and litigation fees; any cost not specifically and expressly described as a reimbursable cost; and cost Design-Builder is required to bear as a result of Design-Builder's failure to perform in accordance with the Contract Documents.
2. General Conditions Cost. General Conditions Cost will be negotiated between City and Design-Builder and established in a GMP Amendment. Design-Builder will be paid for its General Conditions Cost based on a fixed duration price (i.e. x amount per week or month) and not on the basis of actual verified costs, unless otherwise agreed to by the Parties. General Conditions Cost includes Design-Builder's costs to manage and support the Construction Work for a GMP, including, but not limited to, the following:
- a. Design-Builder's staff at the Site, including the following:
 - (i) Hourly costs of wages or salaries, including fringe benefits, of all Design-Builder's supervisory and administrative personnel engaged in the performance of Construction Work but only for that portion of their time required for Work covered by the GMP, including but not limited to the project manager, construction

manager, superintendent(s), and those responsible for managing and implementing Design-Builder's general conditions, including, but not limited to, scheduling, cost control, billing, surveying, Security Plan, and Safety Plan.

- (ii) Hourly costs of wages or salaries, including fringe benefits, of the Design-Builder's supervisory and administrative personnel engaged off of the Site at suppliers, at workshops, or on the road, to assist in the coordination, production, or transportation of material or equipment for the Construction Work.
- b. Field office costs for Design-Builder staff, including the following:
- (i) Design-Builder field office mobilization and demobilization
 - (ii) Office trailer rental
 - (iii) Office furniture and equipment
 - (iv) Office janitorial
 - (v) Office supplies
 - (vi) Office computers, software and maintenance
 - (vii) Office telephones, telephone and internet services, and all job site communication for the Project
 - (viii) Document reproduction services (off-site or custom)
 - (ix) Copy machines, fax machines, printers, scanners, and paper shredders
 - (x) Postage, courier, and express delivery
 - (xi) Accounting and data processing costs
 - (xii) Jobsite radios/cellular phones
 - (xiii) Scheduling expenses
 - (xiv) Job meeting expenses
 - (xv) Employee identification system
 - (xvi) Record Drawings
 - (xvii) Project preconstruction and progress photos

- (xviii) Job Site security
- c. Temporary amenities and utilities (include hookup, metering, and consumption costs) including the following:
 - (i) Drinking water
 - (ii) Temporary toilets
 - (iii) Temporary water distribution and meters
 - (iv) Temporary fire protection
 - (v) Temporary power
 - (vi) Temporary and emergency lighting
 - (vii) Temporary construction facilities and services
 - (viii) Temporary heat and ventilation
- 3. Subcontractor Construction Cost. Subcontractor Construction Cost includes payments made by Design-Builder to Subcontractors for the proper performance of Construction Work. Subcontractor Construction Cost include, but are not limited to, the following:
 - a. Payments made by Design-Builder to Subcontractors for any and all cost to perform Subcontracted Construction Work as part of the Work established in either a quote, proposal, or bid to Design-Builder, including, but not limited to, the Subcontractor's direct costs, indirect costs, field and office overhead, performance bonds, payment bonds, insurance, and profit.
- D. Bond Costs. Design-Builder's charge for Performance Bond and Payment Bond costs shall be its actual, verified costs, without any markup, and identified in a GMP Amendment.
- E. Insurance Costs. Design-Builder's charge for insurance shall be its actual, verified costs, without any markup, and identified in a GMP Amendment.
- F. Design-Builder's Self-Performance Fee. Design-Builder's Self-Performance Fee shall compensate Design-Builder for its home office overhead, profit, and other costs and expenses not specifically included in the Cost of Work. Design-Builder Self-Performance Fee percentage is identified in the Special Conditions and shall only be applied to Design-Builder's Direct Cost and Indirect Cost.
- G. Design-Builder's Subcontractor Fee. Design-Builder's Subcontractor Fee shall compensate Design-Builder for its home office overhead and profit on

Subcontractor Construction Cost. Design-Builder's Subcontractor Fee percentage is identified in the Special Conditions and shall only be applied to Subcontractor Construction Cost.

H. Design-Builder Contingency.

1. Contingency. Design-Builder may propose within a GMP a Design-Builder Contingency for items such as Construction Work that could not have been anticipated by Design-Builder on the effective date of the GMP Amendment. If agreed upon by City, the GMP Amendment shall describe when Design-Builder Contingency may be used by Design-Builder.
2. Request for Contingency. Prior to performing any Work that Design-Builder intends to be paid for out of any portion of Design-Builder Contingency, Design-Builder must submit to City a written request for Design-Builder's use of Design-Builder Contingency that shall include the same detail and requirements of a Change Order Request and substantiation enabling City to determine that the proposed use of the Design-Builder Contingency covers one of the contingency items identified in the GMP Amendment.
3. Contingency Use. Design-Builder Contingency is not a separate fund but is tracked as a separate line item within the GMP and will be used as a cost management tool. When used, Design-Builder Contingency funds will be subtracted from the Design-Builder Contingency line item and applied to one or more line items in the GMP. If Design-Builder depletes any Design-Builder Contingency, any costs for items referenced by that Design-Builder Contingency shall be at Design-Builder's sole expense.
4. Reconciliation. The unused portion of Design-Builder Contingency shall be retained by City at the end of the Project and will be documented by City through any reasonable means, including, without limitation, a deductive Change Order.

I. Allowances.

1. Allowance. In developing the GMP Proposal, Design-Builder may propose including appropriate Allowances for defined items of Work that cannot be appropriately quantified and estimated at the time the GMP Amendment is established. Each such item of Work will be covered in a separate line item and have a clear description in the GMP Amendment of what is covered by the Allowance.
2. Request for Allowance. Prior to performing any Work that Design-Builder intends to be paid for out of any portion of Allowances, Design-Builder must submit to City a written request for Design-Builder's use of Allowances that shall include the same detail and requirements of a Change Order Request and substantiation enabling City to determine that the proposed use of the

Allowance covers one of the Allowance items identified in the GMP Amendment.

3. Allowance Use. Allowance items will be converted to, and included as a line item within that GMP once conditions exist that allow them to be properly quantified and priced, only with specific written approval of City. Allowance items that cannot reasonably be quantified and estimated before the Allowance Work begins will be reconciled based on the actual cost of the Allowance Work. If the actual cost of the Work covered by an Allowance will be greater than the amount of Allowance, Design-Builder will notify City and if City authorizes the Allowance Work in a Change Order, the GMP will be increased by the additional agreed upon amount.
4. Reconciliation. The unused portion of Allowances shall be retained by City at the end of the Project and will be documented by City through any reasonable means, including, without limitation, a deductive Change Order.

6.4 Convert GMP to Lump Sum Price.

- A. At City's discretion, a GMP may be converted to a Lump Sum Price with a negotiated discount. To the extent that a GMP is converted to a Lump Sum Price, all references to GMP within the Contract Documents shall apply equally to the converted Lump Sum Price except as clearly and expressly indicated in any document effectuating the conversion.

6.5 Self-Performed Construction Work.

A. Self-Performed Construction Work Generally.

1. Amount of Construction Work Performed. The Special Conditions provide for the minimum and maximum amount of Construction Work required to be performed by Design-Builder on the Project.
2. Identification of Self-Performed Construction Work. Design-Builder is entitled to perform Self-Performed Construction Work, competitively bid against an independent cost estimate, in accordance with applicable law and written City approval. Design-Builder shall identify in Design-Builder's Proposal the Self-Performed Construction Work that Design-Builder proposes to perform. To perform Construction Work not identified in Design-Builder's Proposal, Design-Builder must submit a written request to City seeking approval, which is at City's sole discretion, prior to submitting a GMP Proposal. The written request shall explain why the Work cannot be subcontracted and how performing the Work by Design-Builder will be most advantageous to City. City agrees to consider approving such request if Design-Builder demonstrates to City's satisfaction that providing this Construction Work is in the best interest of the Project. If City approves the requests, Design-Builder still must follow the competitive procedures for Self-Performed Construction Work.

B. Competitive Procedures for Self-Performed Construction Work.

1. Design-Builder must submit to City's Representative as part of the GMP Proposal and on an Open Book Basis, pricing for Self-Performed Construction Work that includes a detailed description of the scope of the Work. The bid format shall be consistent with cost modeling provided during Phase 1 Services.
2. Prior to providing City with pricing for Self-Performed Construction Work, Design-Builder shall provide City with notice of when the pricing will be submitted and allow City a sufficient amount of time to engage an independent cost estimator to perform an independent cost estimate of the pricing.
3. Prior to receipt of Design-Builder's pricing for Self-Performed Construction Work, City will perform an independent cost estimate of the pricing using, among other things, current local construction market costs.
4. If Design-Builder's pricing is within X percent of City's independent cost estimate, Design-Builder will be allowed to perform the Self-Performed Construction Work.
5. If Design-Builder's pricing for Self-Performed Construction Work is more than X percent higher than City's independent cost estimate, the Parties shall meet and confer to compare pricing and attempt to reconcile any differences. If necessary, Design-Builder will submit revised pricing and an updated GMP Proposal following the meet and confer process.
6. The Special Conditions provide the value for X in the two foregoing paragraphs.
7. Design-Builder shall submit revised pricing for Self-Performed Construction Work and an updated GMP Proposal as may be necessary to continue negotiations for a GMP Amendment. The process shall continue until either:
 - a. City agrees to the pricing for the Self-Performed Construction Work;
 - b. If City's independent cost estimate cannot be reconciled with Design-Builder's pricing, Design-Builder agrees to perform the Self-Performed Construction Work at City's final independent cost estimate;
 - c. At City's sole discretion, allow Design-Builder to subcontract the Self-Performed Construction Work pursuant to the subcontracting procedures for Subcontractors in these General Conditions. Design-Builder shall not be allowed to compete against bidders for the Construction Work. If City allows Design-Builder to subcontract the Self-Performed Construction Work, the minimum and maximum

amount of Construction Work required to be performed by Design-Builder on the Project shall not change.

- d. At City's sole discretion, follow the procedures in these General Conditions for when the Parties are unable to execute a GMP Amendment.

- 8. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time related to the foregoing process.

C. Costs to Price and Bid Self-Performed Construction Work.

- 1. Any and all costs expended by Design-Builder to price Self-Performed Construction Work shall be part of the Phase 1 Fee.
- 2. If City allows Design-Builder to subcontract the Self-Performed Construction Work after failing to agree to pricing with Design-Builder for Self-Performed Construction Work, Design-Builder shall be responsible for any and all costs related to subcontracting the Self-Performed Construction Work. This includes, but is not limited, costs to prepare Work Packages and following the competitive subcontractor procurement procedures.

6.6 Key Subcontractors.

- A. If applicable, pricing for Key Subcontractors shall be determined by following the competitive procedures for Self-Performed Construction Work.

6.7 Subcontracted Construction Work.

- A. Subcontracted Construction Work. Design-Builder shall develop and prepare separate and specific Work Packages for each category of Subcontracted Construction Work that clearly delineates the scope of subcontracted Work. Design-Builder shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each category of Subcontracted Construction Work.

B. Competitive Subcontractor Procurement.

- 1. Compliance with Law. Design-Builder shall procure Subcontractors through a competitive process that complies with Applicable Law, including, but not limited to, legislation that authorizes the Contract. Subcontractors shall be selected in accordance with protections provided by State law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*). Exceptions to the competitive process shall only be authorized as set forth in the Contract Documents.

2. Prequalification. Design-Builder may, at its option, advertise for statements of qualifications in order to prequalify or shortlist interested subcontractors prior to soliciting bids or proposals.
3. Public Notice. Design-Builder shall provide notice of bidding for Subcontracted Construction Work in accordance with the publication requirements applicable to City's competitive bidding process including a fixed date and time on which qualification statements, bids, or proposals will be due. These posting requirements shall also apply to a request for qualifications.
4. Award Based on Best Value. Design-Builder shall award subcontracts to responsible subcontractors based on a best value basis. The solicitation shall identify all evaluation factors and their relative importance to determination of the award. Design-Builder shall develop a written method of determining the proposer who will provide the best value to the Project, which shall include consideration of price and other relevant factors. Design-Builder shall document its basis for making the award.
5. City Review of Bid Packages and Notice. At least fourteen (14) Days prior to the release of Subcontracted Construction Work for bidding, Design-Builder shall provide City with a copy of the written notice it will publish (including newspaper advertising) to solicit potential subcontractors and a copy of the Work Packages for the Subcontracted Construction Work. City reserves the right to request that Design-Builder reasonably revise its published notice or Work Package for Subcontracted Construction Work.
6. Bid/Proposal Opening. Design-Builder shall invite City to attend all bid and proposal opening(s) for Subcontracted Construction Work and shall within 48 hours of the bid or proposal opening(s) provide copies or access to all bid or proposal documents provided by all proposers or bidders.
7. Review of Bids, Proposals.
 - a. Solicitations shall include a procedure, developed and administered by Design-Builder, for protesting a prequalification determination or contract award. Design-Builder shall notify City of any protest prior to responding to such protest. Design-Builder shall be solely responsible for determining any protests to any of its subcontract awards.
 - b. Design-Builder may reject all bids or proposals and may waive any inconsequential irregularities in any bid or proposal. If Design-Builder rejects a bid or proposal as non-responsive, or otherwise determines the bidder or proposer is not eligible or qualified, Design-Builder shall document the basis for any rejection.

8. Contracts. Construction subcontracts shall be on a lump sum or unit price basis, and Design-Builder shall not award contracts to Subcontractors on a basis that uses a percentage of construction cost contracting.
9. Rights of City.
 - a. Without limiting anything set forth herein, Design-Builder acknowledges and agrees that City shall have the right to: (a) review and comment on all procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective subcontractors; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including Design-Builder's tabulation, scoring or evaluation materials; and (e) otherwise participate in the contract award process. Design-Builder shall provide City sufficient time, but in no case less than 20 Days, to exercise its rights regarding the foregoing. Upon contract award, Design-Builder shall provide the City with a description of the competitive process undertaken in connection with such contract award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.
 - b. City, in its discretion, shall have the right to direct Design-Builder to reject any or all bids and proposals and re-solicit any Subcontracted Construction Work in accordance with the procurement requirements of this Article in the event City is not satisfied that the competitive process or pricing received is fair, reasonable and consistent with industry standards for similar services. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time if City requires Design-Builder to re-solicit any Subcontracted Construction Work due to Design-Builder failing to follow the Contract requirements for solicitation of Subcontracted Construction Work.

C. Noncompetitive Subcontractor Procurement.

1. Design-Builder may procure Subcontractors without following the above competitive procurement procedures only if:
 - a. The Phase 2 Price is less than \$10,000,000; or
 - b. If the Phase 2 Price is equal to or greater than \$10,000,000, the Subcontracted Construction Work is equal to or less than one-half of one percent (0.5%) of the Phase 2 Price.
2. If following Design-Builder's diligent and good faith solicitation of a number of sources, Design-Builder determines that competition is determined to be inadequate, Design-Builder may, with City's express written authorization, utilize a noncompetitive process or may self-perform the Subcontracted

Construction Work by following the procurement procedures for Self-Performed Construction Work.

3. For a noncompetitive procurement, Design-Builder may obtain quotes, negotiate price or utilize any other selection method. Noncompetitively procured Subcontractors must still meet all other requirements of the Contract Documents, including but not limited to agreeing to being registered with the Department of Industrial Relations to perform public works and maintaining all appropriate licenses and qualifications to perform the respective Subcontracted Construction Work.

6.8 GMP Proposal.

A. Generally.

1. As part of Phase 1 Services, Design-Builder shall prepare a GMP Proposal as directed by City.
2. Prior to providing City with a GMP Proposal, Design-Builder shall provide City notice of when the GMP Proposal will be submitted. City shall be provided with a sufficient amount of time to review a GMP Proposal.
3. The GMP Proposal shall include and be based upon the Contract Documents and all other information, analysis, findings and reports provided to Design-Builder during the performance of Phase 1 Services and shall be prepared in accordance with the Contract Documents, including the Phase 1 Scope of Services.
4. Design-Builder shall develop the GMP on an Open Book Basis, providing City with full access to all details that make up the GMP Proposal.
5. Each GMP Proposal shall include a detailed and comprehensive description of how the proposed GMP was derived and the material factors on which it was based, all in compliance with the contractual requirements for establishing the GMP, together with any other related information required pursuant to this Article. All costs, bids, quotes, estimates and other information supporting the GMP Proposal shall be made available to City.
6. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time related to the GMP Proposal process.

B. Components of GMP Proposal. Design-Builder shall include with the GMP Proposal a written statement of its basis for the GMP, which shall include the following:

1. A list of the Construction Documents, including, among other things, the Drawings and Technical Specifications used as the basis for the GMP.

2. A list of the assumptions, exceptions, and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the Construction Documents.
 3. Design-Builder's proposed GMP on an Open Book Basis, including, but not limited to, the following:
 - a. A proposed cost to complete the Design Work for the Project and providing design support services during Phase 2;
 - b. A proposed Cost of Work with Design-Builder's Self-Performance Fee and Design-Builder's Subcontractor Fee;
 - c. A proposed bond cost;
 - d. A proposed insurance cost;
 - e. A proposed Design-Builder Contingency, if any;
 - f. A proposed Allowance, if any;
 - g. A proposed schedule of values for the Work; and
 - h. A proposed list of Subcontractors performing Subcontracted Construction Work, if known.
 4. A proposed Phase 2 CPM Schedule.
 5. A proposed Contract Time; and
 6. Any other information requested by City as necessary or appropriate to negotiate and execute the GMP Amendment.
- C. Early Purchase Items; Early Construction Packages. In the event that an Early Purchase Item Amendment or Early Construction Package Amendment has been executed prior to submittal of the Phase 1 Proposal, a proposal as to the manner in which the technical, price, schedule and other terms and conditions contained in the Early Purchase Item Amendment or Early Construction Package Amendment will be incorporated and taken account of in the GMP Amendment, with the objective that the GMP Amendment will contain and supersede all of the terms and conditions of any Early Purchase Item Amendment or Early Construction Package Amendment.

6.9 GMP Amendment.

A. Obligations of Design-Builder.

1. Design-Builder shall be obligated (1) to make a complete bona fide GMP Proposal in accordance with this Article and the Contract Documents, and

(2) to negotiate in good faith toward a GMP Amendment based on the GMP Proposal.

2. If the GMP Proposal does not comply with the requirements of the Contract, City's Representative shall provide written notice to Design-Builder of any additions, corrections or revisions required to achieve such compliance. In such event, Design-Builder, at its cost and expense and without any increase in the Phase 1 Fee, shall promptly take all necessary rectification action, make multiple re-submittals if required. The failure of Design-Builder to provide a GMP Proposal in accordance with the Contract Documents shall be a material breach of the Contract.

B. Negotiation, Execution of GMP Amendment.

1. City and Design-Builder acknowledge and agree that each intends to negotiate and enter a GMP Amendment mutually acceptable to the Parties for the performance of the Work based on the GMP Proposal.
2. The execution and delivery of the GMP Amendment shall establish the GMP and the Contract Time for Phase 2, along with other basic terms and conditions of the Contract which were not established at the Effective Date. Unless otherwise expressly stated by the Parties in the GMP Amendment, the GMP Amendment shall not modify any portion of the Contract Documents.
3. The execution of a GMP Amendment shall not prejudice any right of City with respect to the remainder of the Construction Work, including City's right to terminate the Contract and not construct Work Packages.

C. Representations in the GMP Amendment.

1. In the event the Parties execute a GMP Amendment, the GMP Amendment shall be deemed to constitute a representation by Design-Builder that:
 - a. It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Project;
 - b. It has thoroughly reviewed and verified all information provided to or obtained by Design-Builder through the performance of Phase 1 Services, including reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site;
 - c. It has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Project;

- d. It is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Project;
- e. It has considered the information known to Design-Builder, including information commonly known to contractors doing business in the localities of the Site; information and observations obtained from visits to the Site; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - (i) The cost, progress, and performance of the Project; and
 - (ii) 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.
- f. Based on all of the foregoing and the performance of Phase 1 Services, the Site constitutes an acceptable and suitable location for construction of the Project;
- g. It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the GMP Amendment for the completion of the Work for the GMP within the Contract Time, and in accordance with the other terms and conditions of the Contract;
- h. The Contract Documents are sufficient to enable Design-Builder to determine the GMP and Contract Time; and
- i. Subject to the terms and conditions of the Contract, the GMP can be completed in accordance with the Contract Documents for the GMP within the Contract Time.

D. Failure to Execute GMP Amendment.

- 1. If the Parties are unable to reach an agreement on Design-Builder's GMP Proposal and execute a GMP Amendment, City reserves the right, in its sole discretion, to, without limitation, do any of the following (or, a combination thereof):
 - a. Allow the Design-Builder to complete Phase 1, if not yet completed. City shall pay Design-Builder only for the compensation agreed to for Phase 1. All deliverables, including but not limited to, Work Product and Construction Documents shall become the exclusive property of City.

- b. Complete the Project as a traditional design-bid-build project and have the Design-Builder prepare of a fully biddable set of Drawings and Technical Specifications, provide bid phase support, and provide design support services during construction. City and Design-Builder shall negotiate compensation for Design-Builder to perform such services based on Design-Builder's Cost Proposal Form.
 - c. Terminate Design-Builder for convenience in accordance with the General Conditions and take possession of any Work Product Construction Documents, even if not complete.
 - d. Complete the Project by any other project delivery method, including, but not limited to, soliciting proposals to complete the Project from other firms that submitted SOQs in response to the RFP for this Project, or seek approval from the City Council that it is in the best interest of City to formally solicit proposals from other design-build entities. Design-Builder shall not be entitled to bid or propose on any part of the Project.
2. City shall have the right at any time in its discretion to proceed to develop and implement Work Packages with other contractors. City may exercise such right during the performance of Phase 1 Services, upon termination of the Contract or upon any failure of the Parties to execute a GMP Amendment.

ARTICLE 7 - SUBMITTALS; SHOP DRAWINGS

7.1 Submittals.

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed for Phase 2 or any GMP (unless otherwise specified in the Contract Documents), Design-Builder will prepare and deliver a Schedule of Submittals to City that has been fully integrated with the Phase 2 CPM Schedule and identifies each Submittal required by the Contract Documents as well as the date on which Design-Builder will deliver each Submittal to City. Each Submittal must be delivered to City at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. Design-Builder is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Procedures. Except as otherwise specifically stated in the Contract Documents, Design-Builder will abide by the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

- a. Submittals must be transmitted electronically.
- b. Transmittals will be sequentially numbered. Design-Builder to mark revised Submittals with original number and sequential alphabetic suffix.
- c. Each Submittal will identify the Project, Design-Builder, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification section number appropriate to Submittal.
- d. By transmitting a Submittal, Design-Builder certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Work and Contract Documents.
- e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of a completed Work.
- f. When Submittal is returned to Design-Builder with comments for revision, Design-Builder shall promptly address the City's Representative's comments and resubmit. Design-Builder shall identify changes made since previous submission. Delays resulting from incorrect submittals are not the responsibility of City.
- g. City's review of Shop Drawings shall not relieve Design-Builder from responsibility for deviations from the Contract Documents unless

Design-Builder has, in writing, called City's attention to such deviations at time of submission and City has taken no exception to the deviation. City's review of Shop Drawings shall not relieve Design-Builder from responsibility for errors in Shop Drawings.

- h. Submittals not required by the Contract Documents or requested by City will not be acknowledged or processed.
- i. Incomplete Submittals will not be reviewed by City and returned to Design-Builder. Delays resulting from incomplete Submittals are not the responsibility of City.
- j. Design-Builder shall not be entitled to an increase of a GMP or any extension of the Contract Time as a result of the Submittal process.
- k. Design-Builder shall allow a minimum of 20 Days for review of Submittals unless otherwise specified in the Contract Documents.

2. Early Work. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City review and acceptance of the pertinent submittal will be performed at the risk and sole expense and responsibility of Design-Builder.

C. Schedule Milestone for Submittals. Design-Builder must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Design-Builder fails to submit the Submittals in accordance with the Schedule of Submittals, Design-Builder will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Design-Builder will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

7.2 Shop Drawings and Sample Submittal Procedures.

A. Prerequisites. Except as otherwise specifically stated in the Contract Documents, Design-Builder will abide by the following procedures for Shop Drawings and Samples. Before submitting each Shop Drawing or Sample, Design-Builder shall have:

- 1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- 2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 4. Determined and verified all information relative to Design-Builder's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- B. Variations. With each Submittal, Design-Builder shall give City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to City for review and approval of each such variation.
- C. Shop Drawings.
1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City the services, materials, and equipment Design-Builder proposes to provide and to enable City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.
 2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by Governmental Bodies having jurisdiction over the Project.
 3. Shop Drawings for steel structures shall consist of shop details, erection and other working drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.
 4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.
 5. Design-Builder shall make revisions and provide additional information when required by Governmental Bodies having jurisdiction over the Project.
- D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as

required to enable City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

- E. City's Review. City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, 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. City review and approval will 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 will not indicate approval of the assembly in which the item functions. City's review and acceptance shall not relieve Design-Builder from responsibility for any variation from the requirements of the Contract Documents unless City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

- F. Resubmittal Procedures. Design-Builder shall make corrections required by City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Design-Builder shall direct specific attention in writing to revisions other than the corrections called for by City on previous Submittals.

ARTICLE 8 - MATERIALS; EQUIPMENT

8.1 Materials, Equipment.

- A. New Materials, Equipment. Unless otherwise specified, all materials, parts, and equipment furnished by Design-Builder in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality. No materials, supplies, or equipment for Construction Work under the Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or Supplier. Design-Builder warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to City free from any claims, Liens, or charges.
- B. Necessary Materials, Equipment. Except as otherwise specifically stated in the Contract Documents, Design-Builder shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Project within the Contract Time. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Construction Work and shall be stored properly and protected as required by the Contract Documents. Design-Builder shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Site in such manner so as not to interfere with any operations of City or any Separate Contractor.
- C. Verifications of Needed Materials, Equipment. Design-Builder shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or equipment or performing any Work, and City shall not be liable for Design-Builder's failure to do so. No additional compensation will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Construction Documents.
- D. Materials and Equipment Provided by City. If applicable and upon written request of Design-Builder, any materials or equipment furnished by City shall be available to Design-Builder within a reasonable time at the points designated in the Contract Documents. The cost of handling, including loading and unloading, transport, storing, and placing all materials or equipment after they are made available to Design-Builder shall be considered as included in the GMP. Design-Builder shall be responsible for all material or equipment furnished to Design-Builder, and deductions will be made from any monies due to Design-Builder to make good any shortages, damages and deficiencies, from any cause whatsoever, which may occur after materials or equipment are provided.

- E. Storage of Materials, Equipment. Design-Builder may request payment for materials and equipment not incorporated in the Work but properly stored at the Site or at another location. Such request must be in writing, accompanied by a bill of sale, paid invoice or other documentation warranting that Design-Builder has received the materials and equipment free and clear of all charges, security interests and encumbrances, and include evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, including security and transportation to the Site. City has the sole discretion whether or not to approve the request. If City approves the request, payment may be requested on the next application for payment. No payment will be made for perishable materials that could be rendered useless because of long storage periods.

8.2 Test and Inspections of Work.

A. Inspection of Work.

1. Inspection Notifications, Costs. If the Contract Documents, City's Representative, Applicable Law, or Governmental Body requires any part of the Work to be tested or approved by City, Design-Builder shall provide City's Representative at least two (2) Days' notice of its readiness for observation or inspection. If inspection is by a Governmental Body other than City, Design-Builder shall provide proper notice as required by the Governmental Body and promptly inform City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Design-Builder. Costs for City testing and inspection shall be paid by City. Cost for any testing and inspection not performed by Agency shall be included in the GMP. Costs of tests for Work found not to be in compliance shall be paid by Design-Builder.
2. Inspection Hours. If Design-Builder gives notice of an inspection pursuant to the Contract Documents, City will provide inspection during normal working hours, Monday through Friday, between 7:00 a.m. and 5:00 p.m. For inspections on Saturdays, Sundays, or Holidays, Design-Builder shall first, pursuant to procedures in the Contract Documents, receive authorization in writing from City to work outside normal working hours.
3. Extra Costs. Design-Builder shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by Design-Builder but ultimately Design-Builder work was not ready for the inspection. Any such costs shall be deducted from any amounts due to Design-Builder. If any Work is done or covered up without the required testing or approval, Design-Builder shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at Design-Builder's cost in compliance with the Contract Documents.

4. Independent Laboratory. Where inspection or testing is conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by City's Representative, and not by Design-Builder. Unless otherwise stated and as provided by the Contract Documents, City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
5. Reexamination of Work. Reexamination of Work may be ordered by City. If so ordered, Work must be uncovered or deconstructed by Design-Builder. If Work is found to be in accordance with the Contract Documents, City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Design-Builder shall pay all costs.

B. Testing of Materials.

1. Manufactured Materials. In advance of manufacture of materials to be supplied by Design-Builder which must be tested or inspected, Design-Builder shall notify City so that City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from City, Design-Builder shall pay for and include in the GMP any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
2. Testing. Unless otherwise specified in the Contract Documents, all initial testing and a reasonable amount of retesting will be performed under the direction of the City's Representative, and at no expense to Design-Builder. Design-Builder shall notify the City's Representative in writing, at least 15 Days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed Supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be Design-Builder's responsibility to re-notify the City's Representative when samples which are representative may be obtained.
3. Certificate of Compliance. A certificate of compliance shall be furnished to the City's Representative prior to the use of any material or assembled material for which these Contract Documents so require or if so required by the City's Representative. The City's Representative may waive the

materials testing requirements and accept a certificate of compliance. Material test data may be required by the City's Representative to be included with the Submittal. Materials used on the basis of a certificate of compliance may be sampled and tested at any time. The submission of a certificate of compliance shall not relieve Design-Builder of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the City's Representative whether in place or not. Copies of mill certificates of composition and quality of all component materials (e.g., reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

4. Unacceptable Material. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, Design-Builder shall remove such material and furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Site all at Design-Builder's expense.

ARTICLE 9 - PROJECT SITE

9.1 Use of Project Site.

- A. Design-Builder Laydown Areas, Field Office. Laydown and staging areas for construction materials and equipment required for the Work and Design-Builder's field office shall be located on the Site or at other locations approved by City. The locations at the Site shall be identified in a GMP Amendment or the Construction Documents.
- B. City Field Office. If specified in a GMP Amendment or the Construction Documents, Design-Builder shall provide and maintain an on-site field office and bathroom for the exclusive use of the City's Representative and their staff. The field office shall be completely equipped, fully functional, and ready for use within ten (10) Days of the commencement date for Phase 2 stated in the Notice to Proceed and must be maintained for the duration of the entire Project. The locations at the Site shall be identified in a GMP Amendment or the Construction Documents.
- C. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Project will be provided as shown in the Contract Documents. Unless otherwise specified in the Contract Documents, Design-Builder shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. Design-Builder shall indemnify, defend and hold City harmless from all claims for damages caused by such actions. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall not use the Site for anything not directly related to constructing the Work, including, but not limited to, housing employees and other non-Work activities. Design-Builder shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- D. Sanitary Facilities. Design-Builder shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with Applicable Laws. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed of without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be presented in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Any other

sanitary facilities required by Cal/OSHA shall be the responsibility of Design-Builder.

- E. Utility Usage. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used for the Project shall be furnished and paid for by Design-Builder. Design-Builder shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points where the utility is needed. Upon completion of the Project, Design-Builder shall remove all temporary distribution systems. Design-Builder shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in Design-Builder's name until the Project is accepted. For Work to be performed in existing City facilities, Design-Builder may use City's existing utilities, provided such use is reasonable under the circumstances. If Design-Builder uses City utilities, it will not need to compensate City for reasonably consumption of utilities, but Design-Builder will be responsible for any excessive, unreasonable or wasteful utility usage.
- F. Site Maintenance. During the progress of the Work, Design-Builder shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris including without limitation before the end of each shift. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. Design-Builder shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.
- G. Cleaning. Prior to completion of the Project, Design-Builder shall clean the Site and make it ready for utilization by City. At the completion of the Project Design-Builder shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- H. Work Hours. Work may be performed at the Site Monday through Friday, between 7:00 a.m. and 5:00 p.m. and shall be considered normal working hours. For Work performed on Saturdays, Sundays, or Holidays, Design-Builder shall request authorization in writing from City at least 72 hours prior to the requested date of work. Approval from City to work outside normal working hours shall be at its sole discretion.
- I. Parking. Design-Builder shall be responsible for the parking of any and all vehicles belonging to its employees or employees of its Subcontractors in a legal manner at no additional expense or inconvenience to the City.

9.2 Preservation and Restoration of Property.

- A. Document Site. With the latest technology and prior to Construction Work, Design-Builder shall digitally record video and take photographs of the Site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Site and adjacent improvements immediately prior to the start of work. Design-Builder shall submit the video and photos in a manner specified by City.
- B. Responsible for Damage. Design-Builder shall be responsible for all damages to persons or property that occur as a result of the Work. Design-Builder shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by City. All Work shall be solely at Design-Builder's risk. Design-Builder shall be responsible for the preservation of public and private property including along and adjacent to the Site. Design-Builder shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Design-Builder shall take every precaution necessary to prevent damage to pipes, conduits, and other underground structures and shall protect carefully from disturbance or damage all land, survey monuments, and property markers. When or where any direct or indirect damage is done to City's, or adjacent, property by or on account of any act, omission, neglect, or misconduct in the performance of Work or in consequence of the non-performance thereof on the part of Design-Builder, Design-Builder shall restore, at Design-Builder's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding, or otherwise restoring same, or Design-Builder will make good such damage in an acceptable manner.
- C. Protection of Site. Design-Builder shall comply with all Applicable Laws to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Design-Builder shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction. Design-Builder shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions. Design-Builder shall:
1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 3. Deliver materials to the Site over a route designated by City.
 4. Confine Design-Builder's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or

directions of City. Design-Builder shall not unreasonably encumber the Site with its materials.

5. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to City, at no cost to City.
 6. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to City.
 7. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.
 8. At the completion of work each day, leave the Work and the Site in a clean, safe condition.
 9. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with City's written approval. Any request for approval to reduce or restrict access to residences and business must be submitted to City at least seven (7) Days in advance, and City may issue or withhold approval in its sole discretion.
- D. Continuous Protection of Site. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the GMP, and no additional allowance will be made therefor.
- E. Notification of Damage. Should damage to persons or property occur as a result of the Work, Design-Builder shall promptly notify City in writing. Design-Builder shall be responsible for proper investigation and documentation, including video or photography, to adequately memorialize and make a record of what transpired. City shall be entitled to inspect and copy any such documentation, video, or photographs. If Design-Builder fails to respond to written demand for the repair of damage to property within twenty-four (24) hours of such notification, City reserves the right to repair the damage. Repairs made by City on Design-Builder's behalf shall be reimbursed by Design-Builder to City or said costs of repairs may be deducted from amounts owed to Design-Builder.

9.3 Conditions at Project Site.

- A. Reports and Drawings. City has provided to Design-Builder those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and those drawings known to City of physical conditions

relating to existing surface or subsurface structures at the Site, including, among other things, Underground Facilities.

- B. Verification of Reports and Drawings. As part of Phase 1, Design-Builder shall independently verify and confirm the accuracy, completeness, and sufficiency of any documents furnished by City, and shall promptly report in writing to City any error, omission, or insufficiency in such documents that Design-Builder discovers.
- C. Unverified Reports and Drawings. For “technical data” in reports and drawings provided to Design-Builder, but not verified during Phase 1, Design-Builder may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents.
- D. Reports and Drawings. Design-Builder shall make its own interpretation of the “technical data” in the reports and drawings and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Design-Builder may not rely upon or make any claim against City, City’s Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. The completeness of such reports and drawings for Design-Builder’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, and safety precautions and programs incident thereto;
 - 2. Other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
 - 3. Any Design-Builder interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

9.4 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Builder or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by City. Neither Design-Builder nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Except as otherwise specified in the Contract Documents, Design-Builder will, as determined by City, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided City shall have the right to use or consume these materials without payment to a third party.

9.5 Existence of Utilities at the Work Site.

A. Existing Utilities. The location of known existing utilities and pipelines are shown on the Construction Documents in their approximate locations. However, nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project. City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified in the Contract Documents, cannot reasonably be inferred from the presence of other visible facilities, or could not have identified by Design-Builder in its performance of its Phase 1 Services or other contractual responsibilities.

B. Utility Location.

1. Location. It shall be Design-Builder's responsibility to determine the exact location and depth of all utilities, including service connections, which Design-Builder believes may affect or be affected by Design-Builder's operations, by taking all reasonable steps necessary including, but not limited to, calling Underground Service Alert to locate utilities in accordance with the procedures described in Government Code 4216 *et seq.* Design-Builder shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if Design-Builder does not expose all such existing utilities as required by this Article. The locating of utilities shall be in conformance with Government Code section 4216 *et seq.* except for City's utilities located on City's property and not on public right-of-way.
2. Notification. Pursuant to Government Code section 4216.2, Design-Builder shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, Design-Builder shall delineate the area to be excavated. Design-Builder shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. Design-Builder shall furnish to the City's Representative written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.
3. Potholing. After the utility survey is completed, Design-Builder shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. A "subsurface installation" is defined in Government Code

section 4216 (s) as “any underground pipeline, conduit, duct, wire, or other structure, except non-pressurized sewer lines, non-pressurized storm drains, or other non-pressurized drain lines.” The City’s Representative shall be given notice prior to commencing potholing operations. Design-Builder shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Construction Documents, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

4. High Priority Subsurface Installation. Design-Builder's attention is directed to the requirements of Government Code section 4216.2 (c) which provides: “When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.” A “high priority subsurface installation” is defined in Government Code section 4216 (j) as “high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged.” Design-Builder shall notify the City’s Representative in advance of this meeting.

- C. Utility Relocation and Repair. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, Design-Builder shall notify the City’s Representative in writing. The City’s Representative will supply a method for correcting said interferences in accordance with the responsibilities of this Article and Government Code section 4215. Care shall be exercised by Design-Builder to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, Design-Builder shall call 911 emergency services. Temporary or permanent relocation or alteration of utilities desired by Design-Builder for its own convenience shall be Design-Builder’s responsibility and it shall make arrangements and bear all costs for such work.

- D. Construction at Existing Utilities. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, Design-Builder shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of Design-Builder to determine the actual locations of, and make accommodations to maintain, all utilities. Before any utility is taken out of service, permission shall be obtained by Design-Builder from the owner. The owner, any impacted resident or business owner and City will be advised of the nature and duration of the utility outage as well as Design-Builder's plan for providing temporary utilities if required by the owner. Design-Builder shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and Design-Builder shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

9.6 Trenches.

- A. Trenches Five Feet or More in Depth. Design-Builder shall submit to City prior to Construction Work, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. Design-Builder shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Site each day that trenching and excavation is in progress. The "competent person" shall prepare and provide daily trenching and excavation inspection reports to the City's Representative. Design-Builder shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench and excavation permit.

9.7 Differing Site Conditions.

- A. Phase 1 Services. Design-Builder shall, during Phase 1, take all measures necessary to determine the conditions of the Site. Design-Builder shall be responsible for any Site conditions that are not as Design-Builder anticipated, and such conditions shall not be considered Differing Site Conditions.
- B. Discovery of Differing Site Conditions.

1. If Design-Builder encounters a Differing Site Condition, Design-Builder shall within three (3) Days, and before the Differing Site Condition is further disturbed, notify City in writing of the Differing Site Condition.
2. The written notice from Design-Builder shall describe the specific Differing Site Condition encountered and demonstrate that a Differing Site Condition exists, why Design-Builder could not reasonably have worked around the Differing Site Condition, and how the Differing Site Condition adversely impacted the GMP or Contract Time.
3. City shall promptly investigate the conditions and, if it finds that there is a Differing Site Condition that causes an increase in the GMP or Contract Time, shall issue a Change Order under the procedures described in these General Conditions.
4. In the event that a dispute arises between City and Design-Builder as to whether there is a Differing Site Condition or whether it causes an increase in the GMP or Contract Time, Design-Builder shall not be excused from the GMP or Contract Time, but shall proceed with all Work to be performed under the Contract. Design-Builder shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

ARTICLE 10 - PROSECUTION OF THE WORK

10.1 Access to Work.

- A. City, Designer of Record, City's Representative, their consultants and other representatives and personnel, independent testing laboratories, and Governmental Bodies with jurisdictional interests will have access to the Site and Project at reasonable times for their observation, inspection, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's safety procedures and programs.

10.2 Construction Quality Assurance, Quality Control.

- A. Generally. Design-Builder shall have full responsibility for quality assurance and quality control for the Construction Work, including compliance with the Contract Documents. Without limiting any other requirement hereunder, Design-Builder shall perform quality control inspection and testing services to ensure compliance with the Contract Documents. Sampling and testing of materials, laboratory inspection of materials and processes for quality control purposes shall be performed in compliance with the Contract Documents.
- B. Quality Control Plan. Design-Builder shall prepare and submit to City for review and approval a written Quality Control Plan that encompasses all requirements of the Contract Documents with regard to all quality control processes for the Construction Work. The Quality Control Plan shall identify Design-Builder's overall framework for implementation of its Quality Control programs across all aspects of the Work. Design-Builder shall submit the Quality Control Plan for City's approval. City's approval of the overall Quality Control Plan shall be a condition precedent to Design-Builder performing Construction Work. The Technical Specifications provide more detail on what shall be included in the Quality Control Plan.
- C. Internal Quality Control Audits. Design-Builder shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system. Audits shall be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed. Design-Builder's management personnel responsible for the relevant area shall take timely corrective action on deficiencies found during the audit. City shall have the right to request and review the audit results. Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken. City may require Design-Builder to perform follow-up audits at City's sole discretion.
- D. Review and Update of QC Plan. Design-Builder shall continuously review the performance of the Quality Control Plan to ensure its continuing suitability in satisfying the requirements of the Contract Documents. Design-Builder's

reviews shall, at a minimum, review the results of internal audits, City audit results, corrective actions taken, trends in Defective Work, and time to resolution. City may, in its sole discretion, participate in Design-Builder's reviews and may request data from the reviews. Design-Builder shall incorporate the findings and quality improvement recommendations of Design-Builder reviews into the Quality Control Plan.

10.3 Design-Builder's Performance of Services.

- A. Means and Methods. Design-Builder is solely responsible for the means and methods utilized to perform Work. Design-Builder shall perform all Work in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Design-Builder warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Design-Builder represents that it, its employees and Subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of the Contract. Design-Builder shall perform the Work in full compliance with all Applicable Laws and to all Governmental Bodies having authority over the Project.
- B. Design-Builder's Responsibility for Work. Responsibility for, and security of, all Work and materials related to Design-Builder's Work is the responsibility of Design-Builder until final acceptance of Design-Builder's Work by City. City shall not be held responsible for the care or protection of any material or parts of the Work prior to final acceptance. Design-Builder shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by Design-Builder. Design-Builder shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, City will pay for repair or restoration to damaged Work in excess of 5% of the Contract Price unless City has required Design-Builder to obtain insurance to indemnify City for any damage to the Project caused by an Act of God.
- C. Layout and Field Engineering. Design-Builder shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work and all necessary surveys to compute quantities of Work performed.

10.4 Related Projects; Cooperation.

- A. Generally. City reserves the right to let other contracts in connection with this Work or at or adjacent to the Site. Design-Builder acknowledges that City will be undertaking several other projects at and in the vicinity of the Site and,

without limiting any other obligation under the Contract, agrees to reasonably coordinate the Construction Work (including making reasonable adjustments to its construction schedule and activities) to minimize conflicts with the work associated with such other projects in accordance with the Contract Documents.

- B. Cooperation. Design-Builder shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by City in prosecution of the Project in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Design-Builder exclusive occupancy of the Site. Design-Builder shall not cause any unnecessary hindrance or delay to any other contractor working at the Site. City shall not be responsible for any damages suffered or for extra costs incurred by Design-Builder resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Site.
- C. Coordination Meetings. City intends to have coordination meetings among City, Design-Builder and the various Separate Contractors in an effort to manage the overall program associated with the work being performed at or in the vicinity of the Site and to avoid or mitigate cost and time impacts to the overall Project. Design-Builder agrees that it will attend and participate in these logistics meetings and shall cooperate with City and the Separate Contractors to the extent reasonably necessary for the performance by such Separate Contractors of their work.
- D. Equipment and Materials Storage at Site. Design-Builder shall afford City and any Separate Contractors reasonable opportunity for the introduction and storage of their equipment and materials and the execution of their work at and in the vicinity of the Site. Design-Builder shall coordinate with City and any Separate Contractors to store apparatus, materials, supplies and equipment in such orderly fashion at the Site as will not unduly interfere with the progress of the Construction Work or the work of City or any Separate Contractor.
- E. Interrelated Work. If part of the Work depends on proper execution of construction or operations by City or a Separate Contractor, Design-Builder shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City any apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Design-Builder to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that City's or the Separate Contractor's completed or partially completed construction is fit and proper to receive the Work.
- F. Disputes Associated with Separate Work. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, City shall decide which contractor shall cease work

temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

10.5 Traffic Control.

- A. Except for as otherwise provided for in the Contract Documents, traffic control plans, if required, shall be prepared by Design-Builder. Traffic control shall be performed by Design-Builder in accordance with the requirements of City or the Governmental Body with jurisdiction over traffic control. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by City shall be included in the GMP. All warning signs and safety devices used by Design-Builder to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" and to the requirements of the Governmental Body with jurisdiction over traffic control. Design-Builder shall be responsible for all traffic control required by the Governmental Body having jurisdiction over the Project on the intersecting streets. Design-Builder must submit a traffic control plan to the Governmental Body having jurisdiction over the Project for approval prior to starting Work. Design-Builder's representative on the Site responsible for traffic control shall produce evidence that he or she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the Governmental Body having jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. Design-Builder shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of material will be allowed in traveled rights-of-way after working hours unless otherwise approved by City.

10.6 Record Drawings.

- A. Design-Builder shall maintain one record set of Construction Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Construction Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. If Work involves the installation of pipelines, Design-Builder shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of

civil engineering elements of the Work shall be prepared by a registered civil engineer. These master Record Drawings of the as-built conditions, including all revisions made necessary by Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the City's Representative at all times during the construction period. Failure on Design-Builder's part to keep Record Drawings current could result in withholding partial payment to Design-Builder. As a condition of Final Completion, Design-Builder shall finalize and deliver a complete set of Record Drawings to City's Representative. The information submitted by Design-Builder will be assumed to be correct, and Design-Builder shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

10.7 Defective Work.

A. Correction of Defective Work.

1. Failure to Correct. If Design-Builder fails to correct Defective Work, remove and replace rejected Work as required by City, or fails to perform the Work in accordance with the Contract Documents, City may, after seven (7) Days written notice to Design-Builder, correct, or remedy any such deficiency if Design-Builder has failed to schedule or commence correcting such deficient Work.
2. Correction of Work by City. In connection with such corrective or remedial action, City may exclude Design-Builder from all or part of the Site, take possession of all or part of the Work 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 Work all materials and equipment stored at the Site or for which City has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow City, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the Defective Work.
3. Costs of Correcting Defective Work. 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 other dispute resolution costs) incurred or sustained by City correcting the Defective Work will be charged against Design-Builder, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to reimbursement of the costs from Design-Builder. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective

Work. If the Change Order is executed after all payments under the Contract have been paid by City and the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Builder will promptly alert the escrow holder, in writing, of the amount of retention to be paid to City. Design-Builder shall not be allowed an extension of Contract Time because of any delay in the performance of the Work attributable to City correcting Defective Work.

- B. Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work, City prefers to accept it, City may do so. Design-Builder shall pay 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 other dispute resolution costs) attributable to City's evaluation of and determination to accept the Defective Work and for the diminished value of the Work. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the GMP, reflecting the diminished value of Work, and reimbursement of all costs incurred by City.

10.8 Partial Utilization.

- A. Use by City, at City's option, of any part of the Project which (a) has specifically been identified in the Contract Documents or (b) constitutes a separately functioning and usable part of the Project that can be used by City for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Work, may be accomplished prior to Final Completion. This use shall not relieve Design-Builder of its responsibilities under the Contract. Partial utilization of the Project shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents, unless specifically accepted in writing by City, and this use shall not relieve Design-Builder of its responsibilities under the Contract.

ARTICLE 11 - SCHEDULE; CONTRACT TIME

11.1 Progress and Completion.

A. Design-Builder shall proceed expeditiously with adequate forces and shall achieve full completion of the Work within the Contract Time. If City's Representative determines and notifies Design-Builder that Design-Builder's progress is such that Design-Builder will not achieve full completion of the Work within the Contract Time, Design-Builder shall immediately and at no additional cost to City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from City's representative, Design-Builder shall immediately notify City's Representative of all measures to be taken to ensure full completion of the Work within the Contract Time. Design-Builder shall reimburse City for any extra costs or expenses (including the reasonable value of any services provided by City's employees) incurred by City as the result of such measures.

11.2 Time for Completion.

A. Completing Work. Design-Builder shall complete all or any designated portion of the Work called for under the Contract in all parts and requirements within the Contract Time. If, at any time Design-Builder's Critical Path Work progress falls behind schedule, City reserves the right to require Design-Builder to work overtime to bring the Project back on schedule. Such overtime shall be at the Design-Builder's expense. Design-Builder shall furnish City's Representative a monthly statement showing the following:

1. Number of days originally specified for completion;
2. Number of days charged to date;
3. Number of days of time extensions approved;
4. Number of days remaining to completion; and
5. Revised date for completion.

B. Time for Completion. The Contract Time shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and, in both cases, shall be completed within the Contract Time. City is under no obligation to consider early completion of the Work and Contract Time shall not be amended by City's receipt or acceptance of Design-Builder's proposed earlier completion date. Any difference in time between Design-Builder's early completion and the Contract Time shall be considered a part of the Project float. Design-Builder shall not be entitled to compensation, and City will not compensate Design-Builder, for delays which impact early completion. Design-

Builder shall not, under any circumstances, receive additional compensation from City (including but not limited to direct, indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by Design-Builder and the Contract Time.

11.3 Extension of Time for Completion.

- A. Procedure for Extension of Contract Time and Delay Damages. Design-Builder shall not be entitled to any extension of Contract Time or adjustment to the GMP for delay damages unless Design-Builder properly notices the delay and requests a Change Order in accordance with these General Conditions. Design-Builder's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Design-Builder's right to an extension of Contract Time or adjustment to the GMP for delay damages.
- B. Extension of Time.
1. City-Caused Extension of Time. Design-Builder's entitlement to an extension of Contract Time for an City-caused delay shall only be allowed when, and then only to the extent that, the City-caused delay extends the Critical Path beyond the Contract Time. The delay to the Critical Path must be established by a proper time impact analysis. City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Design-Builder shall not be entitled to an adjustment of Contract Time 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. If approved, the increase in time required to complete Work shall be added to the Contract Time.
 2. Concurrent Delay. In the event of Concurrent Delay, the Contract Time may be extended, as determined by City, however, such delay is non-compensable and the GMP shall not be adjusted.
 3. Inclement Weather. Design-Builder shall abide by City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the Critical Path of the applicable CPM Schedule.
 4. Utility-Related Delays. If a delay to the Critical Path results from acts of public utilities or delays caused by failure of a public agency or owner of a utility to provide for removal or relocation of existing main or trunkline utility facilities or other known utility facilities, Design-Builder will be entitled to a time extension, but will not receive an adjustment to the GMP or any other compensation.

5. Force Majeure. If a delay to the Critical Path results from a Force Majeure Event, Design-Builder will be entitled to a time extension, but will not receive an adjustment to the GMP or any other compensation. Such a non-compensable adjustment shall be Design-Builder's sole and exclusive remedy for a Force Majeure Event.

C. No Damages for Reasonable Delay.

1. City's liability to Design-Builder for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by Design-Builder in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
2. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages. This includes the following allowable costs:
 - a. Those actual necessary costs of idle time of construction equipment, idle time of workers, moving of construction equipment, and hauling of materials and equipment which are incurred solely by reason of the delay and which could not have been avoided by the judicious handling of forces, construction equipment and plant;
 - b. General Conditions Cost that are incurred solely by reason of the delay and extension of the Critical Path; and
 - c. Design-Builder's Self-Performance Fee and Design-Builder's Subcontractor Fee, as applicable, on the costs allowed above.

11.4 Liquidated Damages.

- A. Liquidated Damages. Time is of the essence. If the Work is not completed within Contract Time, it is understood that City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Design-Builder shall pay to City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract or the GMP Amendment for each calendar day of delay until the Work is fully completed. Design-Builder and its surety shall be liable for any liquidated damages. Any money due or to become due Design-Builder may be retained to cover liquidated damages.
- B. Guaranteed Completion Date. Design-Builder agrees that it shall be liable to City for liquidated damages in an amount determined in the GMP Amendment for each and every calendar day beyond the Guaranteed

Completion Date that Final Completion has not been achieved for the Project.

- C. Milestone Date. Design-Builder agrees that it shall be liable to City for liquidated damages in an amount determined in the GMP Amendment for each and every calendar day beyond a Milestone Date where Final Completion has not been achieved.

11.5 Schedule.

- A. General Requirements. Except as otherwise specifically stated in the Contract Documents, this Article will apply to a CPM Schedule for the Work. The CPM Schedule shall be prepared in an electronic scheduling program acceptable to City and as specified in the Contract Documents. Design-Builder shall deliver the CPM Schedule and all updates to City in both paper and electronic form. The electronic versions shall be in the format, and include all data used, to prepare the CPM Schedule.
- B. Schedule. The receipt or approval of any CPM Schedule by City shall not in any way relieve Design-Builder of its obligations under the Contract Documents. Design-Builder is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Design-Builder's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the CPM Schedule shall not excuse Design-Builder from performing Work required within the specified Contract Time. If the required CPM Schedule is not received by the time the first payment under the Contract is due, Design-Builder shall not be paid until the CPM Schedule is received, reviewed, and accepted by City.
- C. Schedule Contents. The CPM Schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The CPM Schedule shall include appropriate time allowances and constraints for Submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. CPM Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by City.
- D. Schedule Updates. Design-Builder shall continuously update its CPM Schedule. Design-Builder shall submit an updated and accurate CPM Schedule to City: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by City. City may withhold progress payments or other amounts due under the Contract Documents if Design-Builder fails to submit an updated and accurate CPM Schedule. Upon City's request, Design-

Builder shall submit any schedules or updates to City in the native electronic format of the software used to create the CPM Schedule.

- E. Three-Week Look-Ahead Schedules. Design-Builder shall submit a three-week detailed look-ahead schedule at weekly meetings conducted with City. The three-week look-ahead schedule shall clearly identify all staffing and other resources which in Design-Builder's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.
- F. Acceptance. Acceptance of the CPM Schedule by City will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Builder from Design-Builder's full responsibility therefor.

ARTICLE 12 - CHANGE IN CONTRACT PRICE; CHANGE IN CONTRACT TIMES

12.1 Phase 1 Changes.

- A. Additional Phase 1 Services. City may direct Design-Builder to perform additional Phase 1 Services that City determines to be necessary for the proper completion of Phase 1, which the Parties did not reasonably anticipate would be necessary at execution of the Contract. Additional Phase 1 Services will be compensated at the rates set forth in Design-Builder's Cost Proposal Form, subject to adjustment as allowed by the Contract Documents. Design-Builder shall not be entitled to a mark-up on the rates set forth in Design-Builder's Cost Proposal Form for additional Phase 1 Services. If rates (i.e. hourly or unit rates) for additional Phase 1 Services are not identified in Design-Builder's Cost Proposal Form, City will pay for additional Phase 1 Services at a mutually agreeable rate between the Parties based on current market rates.
- B. Excusable Delay. Design-Builder may request additional time to complete a task or submittal milestone only in the event of an excusable delay. For purposes of this Article, an excusable delay is a delay only to the completion of a Phase 1 Service and caused by the following: (i) the actions of City or its employees; (ii) the actions of those in direct contractual relationship with City, except for Design-Builder; (iii) the actions of any Governmental Body having jurisdiction over the Project acting in their role as an authority having jurisdiction that Design-Builder had no control over; (iv) the actions of any parties not within the reasonable control of Design-Builder; or (v) a Force Majeure Event. Design-Builder shall not be entitled to any damages or costs resulting from an excusable delay.
- C. Change Order Procedures.
1. An increase to the Phase 1 Fee and/or extensions of time for the performance of Phase 1 Services must be approved through a Change Order. If Design-Builder determines it is entitled to a Change Order, Design-Builder must request a Change Order within five (5) Days of a directive from City to perform additional Phase 1 Services or of the event otherwise giving rise to the change.
 2. To increase the Phase 1 Fee, Design-Builder's request for a Change Order shall include documentation supporting the need for the request and a cost proposal for the additional Phase 1 that shows the applicable rates and provides a fair estimate of the amount of work needed to complete the additional Phase 1 Services. City may request that Design-Builder propose other options or efficiencies, including de-scoping a portion of the additional Phase 1 Services.
 3. To receive an extension of time for the performance of Phase 1 Services, Design-Builder's request shall include documentation supporting the need

for the request, and a time impact analysis showing the impact of the extension on completion of the Phase 1 Services, as well as the impact on potential Work and on the Work as a whole. The time impact analysis shall include options to mitigate the impact to the Critical Path of the Phase 1 Services, including the commencement of Phase 2. The request shall be limited to only the amount of time that is reasonably necessary for Design-Builder to complete the additional Phase 1 Services. An extension of time shall be a last resort, and shall only be granted if, and to the extent that, Design-Builder cannot reasonably complete the Phase 1 Services on time, including by expediting the Phase 1 Services, at no additional cost to City.

4. If additional Phase 1 Services also result in an excusable delay, Design-Builder shall request an increase to the Phase 1 Fee and an extension of time concurrently.
- D. Exclusions from Additional Phase 1 Services. Additional Phase 1 Services shall not include work or services necessary because of negligent errors, omissions or conflicts of any type in Design-Builder's performance of Phase 1 Services. This includes, but is not limited to, any redesign or revisions to Drawings, Technical Specifications or other documents required to complete the original scope of work that are: (i) an ordinary part of the design development and review process, including constructability and value engineering review, or (ii) necessary in order to bring such documents into compliance with Applicable Law of which Design-Builder was aware or should have been aware. All such work or services shall constitute Phase 1 Services and shall be performed at no cost to City.
- E. Reduction of Phase 1 Services. Design-Builder shall have the right to reduce the scope of Phase 1 Services at any time by written notice to Design-Builder. Changes to Phase 1 Services that reduce the scope of Phase 1 Services shall be effective upon the delivery of the written notice by City pursuant to this Article. Any reduction in the scope of Phase 1 Services shall result in an appropriate reduction in the Phase 1 Fee, which shall be reflected in a Change Order.

12.2 Phase 2 Changes.

A. Change Orders Generally.

1. All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Design-Builder's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the

original Contract. Design-Builder shall not be entitled to a claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve Design-Builder from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of Design-Builder's surety or sureties.

2. Design-Builder agrees that one of the purposes of progressive design-build services is to minimize the risk for Change Orders and Change Orders shall be strictly limited. Change Order Requests shall be kept to a minimum. This Article shall continue to apply regardless of whether the Parties continue to utilize a GMP for Construction Work or agree to convert the GMP to a Lump Sum Price.
3. Subject to City approval, the GMP shall not be modified except in the event of the following circumstances: (a) City directs and authorizes a change which is related solely to discretionary changes by City (the foregoing excludes changes resulting from the acts, omissions or other conduct of Design-Builder); (b) Differing Site Conditions; (c) changes directed by a Governmental Body with jurisdiction over the Project, or portions thereof, which could not be reasonably foreseen or anticipated by Design-Builder at the execution of the GMP Amendment; (d) changes necessitated by amendment(s) to or enactment(s) of Applicable Laws which could not be reasonably anticipated or foreseen by Design-Builder at the at the execution of the GMP Amendment; (e) changes resulting from emergencies not caused, in whole or in part, by the acts, omissions or other conduct of Design-Builder or its Subcontractors, employees, agents or representatives; or (f) where expressly allowed by the Contract Documents.
4. Design-Builder has no right to a Change Order for a time extension, extra work, or other costs of any kind whatsoever (including, without limitation, direct and indirect costs, delay and disruption damages, overhead, profit or mark-up) resulting from issues related to, among other things, the following: costs that result from Phase 1 Services or that Design-Builder otherwise should have foreseen prior to proposing and agreeing to the GMP; design defects or ambiguities; Site conditions that Design-Builder could have foreseen or discovered prior to Construction Work; constructability issues, including but not limited to construction feasibility, schedule or cost; or where Design-Builder failed to recommend alternative solutions as part of their Phase 1 Services.
5. Design-Builder shall not be entitled to an increase to the GMP if it contains any contingency or allowances for the costs, which must be utilized and

exhausted prior to requesting a Change Order. Design-Builder may only increase the GMP through a duly requested and approved Change Order.

B. Contract Change Order Procedures.

1. City Written Directive. City may direct changes in the Work by delivering a written directive. To the extent the written directive results in a change to compensation or time, Design-Builder must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a written directive, Design-Builder's failure to timely request a Change Order shall constitute a waiver by Design-Builder of any adjustment to compensation or time extension for Work performed under the directive. City shall not be liable to Design-Builder for Work performed or omitted by Design-Builder in reliance on verbal orders. City shall have the right to order changes in the Work by a unilateral Change Order setting forth City's determination of the reasonable additions or savings in the GMP or Contract Time.
2. Design-Builder's Notice of Change or Delay.
 - a. If Design-Builder intends to initiate a Change Order Request, Design-Builder shall provide City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:
 - (i) If due to Differing Site Conditions, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.
 - (ii) If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, but in no case longer than three (3) Days from the date Design-Builder discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.
 - (iii) If due to any other matter that may involve an adjustment to the GMP or Contract Time, as soon as reasonably practicable under the conditions, but in no case longer than seven (7) Days from the early of the discovery date of the matter or when the matter should have been discovered.
 - b. To be considered valid and complete, the notice of change or delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs or time. If the circumstances give rise

to both a cost adjustment and time extension, Design-Builder shall submit the notice of change and notice of delay concurrently.

3. Change Order Request.

- a. Design-Builder shall submit a Change Order Request for any adjustment to a GMP or Contract Time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Design-Builder's notice of change or delay or City's written directive ordering the change. For any costs or information that cannot be determined at the time Design-Builder submits a Change Order Request, Design-Builder shall submit to City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination. The Change Order Request shall include all of the following information (unless inapplicable to the change or delay):
 - (i) A detailed description of the circumstances giving rise to the request;
 - (ii) A complete itemized cost proposal, including itemized pricing for Subcontractors;
 - (iii) Supporting documentation for all costs;
 - (iv) A time impact analysis showing the impact of the delay to the Critical Path of the Work;
 - (v) If any costs or information cannot be determined at the time of the Change Order Request, a rough order of magnitude of the Change Order costs and the reason the costs or information cannot be determined at the time; and
 - (vi) Certification to the accuracy of the Change Order Request under penalty of perjury
- b. The time impact analysis shall be in the Critical Path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. City may demand, and Design-Builder shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Design-Builder shall provide the requested additional information within five (5) Days of the request.

4. City's Final Decision on Change Order; Ordered Changes. If City denies the Change Order Request or disagrees with the proposal submitted by

Design-Builder, it will notify Design-Builder, and City will provide its opinion of the appropriate price or time extension. If no agreement can be reached, City shall have the right in its sole discretion to order the Work performed, to the extent permitted by law, on a time and materials basis or to issue a unilateral Change Order setting forth City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. City's determination shall become final and binding if Design-Builder fails to submit a claim in writing in accordance with the General Conditions to City within fourteen (14) Days of denying the Change Order Request, or for the issuance of a unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as City may reasonably require.

5. Design-Builder's Waiver of Further Relief.

a. Design-Builder recognizes and acknowledges that timely submission of a formal written notice of change or delay and Change Order Request, whether or not the circumstances of the change may be known to City or available to City through other means, is not a mere formality but is of crucial importance to the ability of City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

b. **DESIGN-BUILDER'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE OR DELAY, CHANGE ORDER REQUEST, NOTICE DISPUTING A UNILATERAL CHANGE ORDER, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY DESIGN-BUILDER OF THE RIGHT TO A GMP ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

C. Change Order Format. A Change Order signed by Design-Builder indicates Design-Builder's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order. City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Design-Builder may only use such forms.

Design-Builder shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Design-Builder may not change or modify City's Change Order form in an attempt to reserve additional rights.

D. Determining Adjustments to Compensation.

1. Pricing Generally. Design-Builder shall not be entitled to any compensation for Construction Work subject to a Change Order except as expressly set forth in this Article.
2. Unit Pricing. For the increasing or decreasing of Construction Work within a GMP that is paid for on a unit price basis, the Additional Work shall be paid according to the unit price established for such Construction Work and the GMP will be adjusted accordingly. An adjustment in compensation will be made for changes which require increases or decreases in the quantity of any unit price item in such a manner as to materially increase or decrease its unit cost, as determined by City, or which for any other reason cannot in the judgment of City be equitably paid for at the unit price. Design-Builder's Self-Performance Fee or Design-Builder's Subcontractor Fee shall not be applied to the unit price if the unit price includes such fees.
3. Lump Sum Pricing. Compensation for lump sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work. A lump sum Change Order shall be determined on an Open Book Basis and by the same method as establishing a GMP. If the Additional Work is performed by a Subcontractor providing Subcontracted Construction Work, the Subcontractor's pricing for a lump sum Change Order shall be determined on an Open Book Basis and by the same method for determining pricing from Design-Builder when establishing a GMP. Subcontractors will be entitled to a markup for home office overhead and profit on Subcontractor's Cost of Work in an amount not to exceed 10%.
4. T&M Pricing.
 - a. T&M Pricing Generally.
 - (i) City may direct Design-Builder to proceed with Additional Work with payment to be made on the basis of the actual verified Cost of Work in the proper performance of the Additional Work, with Design-Builder's Self-Performance Fee applied to the Cost of Work. Design-Builder will be entitled to any verified increased costs for insurance and bonds, which will not be subject to Design-Builder's Self-Performance Fee.

- (ii) If the Additional Work is performed by Subcontractors, payment will be made on the basis of the actual verified Subcontractor's Cost of Work in the proper performance of the Additional Work, with Design-Builder's Subcontractor Fee applied to the Cost of Work. Subcontractors will be entitled to a markup for home office overhead and profit on Subcontractor's Cost of Work in an amount not to exceed 10%. Design-Builder and Subcontractor will be entitled to any verified increased costs for insurance and bonds, which will not be subject to Design-Builder's Subcontractor Fee or Subcontractor's markup for home office overhead and profit.
 - (iii) If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order methodology is suitable and the Change Order shall include a ceiling price that Design-Builder exceeds at its own risk.
- b. T&M Daily Sheets. Design-Builder must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to City for an approval signature each day that Construction Work is performed on a time-and-material basis. The City's Representative's signature on time sheets only serves as verification that the Construction Work was performed and is not indicative of City's agreement to Design-Builder's entitlement to the cost.
 - c. T&M Summary Sheet. Design-Builder shall submit a T&M summary sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Design-Builder's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Design-Builder's failure to submit the T&M summary sheet within five (5) Days of completion of the Additional Work will result in Design-Builder's waiver for any reimbursement of any costs associated with the Additional Work.

12.3 Partnering.

- A. Dispute Resolution Ladder. At the discretion of City, the Parties will partner to create a dispute resolution ladder to facilitate open communication and close cooperation that involves both Design-Builder and City personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve Project objectives, resolve issues, and implement actions as required. The dispute resolution ladder will

provide the authority for both Design-Builder and City personnel at all levels with parameters and procedures for escalating disputes.

12.4 Procedure for Resolving Claims.

- A. Prerequisites. Design-Builder shall timely comply with any and all requirements of the Contract Documents pertaining to notices and requests for changes to a GMP or Contract Time, including but not limited to all requirements for a Change Order, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Design-Builder's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all Applicable Law, including but not limited to these statutes.
- C. Claims.
1. For purposes of this Article, "Claim" means a separate demand by Design-Builder for:
 - a. An adjustment to the Contract Time including, without limitation, for relief from damages or penalties for delay assessed by City;
 - b. Payment by City of money or damages arising from Services done by or on behalf of Design-Builder pursuant to the Contract, payment for which is not otherwise expressly provided or to which Design-Builder is not otherwise entitled; or
 - c. An amount the payment of which is disputed by City.
 2. A "Claim" does not include any demand for payment for which Design-Builder has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until Design-Builder completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to a GMP or Contract Time, and Design-Builder's Change Order Request has been denied in whole or in part.

Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to City and shall include on its first page the following words in 16-point capital font: "THIS IS A CLAIM." The Claim shall include all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

- E. Documentation. Design-Builder shall submit all Claims in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to Claim:
 - a. Technical Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of Contract Time is requested
- F. City's Response. Upon receipt of a Claim pursuant to this Article, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide Design-Builder a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after City issues its written statement.
1. If City needs approval from the City Council to provide Design-Builder a written statement identifying the disputed portion and the undisputed

portion of the Claim, and the City Council does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, City shall have up to three (3) Days following the next duly publicly noticed meeting of the City Council after the 45-Day period, or extension, expires to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, City may request in writing additional documentation supporting the Claim or relating to defenses or claims City may have against Design-Builder. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and Design-Builder. Design-Builder shall provide the requested documentation or information within 30 Days of the written request by City. City's written response to the Claim, as further documented, shall be submitted to Design-Builder within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by Design-Builder in producing the additional information or requested documentation, whichever is greater.

G. Meet and Confer. If Design-Builder disputes City's written response, or City fails to respond within the time prescribed, Design-Builder may so notify City, in writing, either within 15 Days of receipt of City's response or within 15 Days of City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

H. Mediation.

1. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, City shall provide Design-Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after City issues its written statement. Any disputed portion of the Claim, as identified by Design-Builder in writing, shall be submitted to nonbinding mediation, with City and Design-Builder sharing the associated costs equally. City and Design-Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
2. If the Parties cannot agree upon a mediator, each Party shall select a mediator, and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each Party shall

bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
 4. Unless otherwise agreed to by City and Design-Builder in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 5. The mediation shall be held no earlier than the date Design-Builder completes the applicable GMP Work Package or the date that Design-Builder last performs Work on the Project, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, Design-Builder must file a California Government Code claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a California Government Code claim must be filed shall be tolled from the time Design-Builder submits his or her written Claim pursuant to subdivision (a) until the time that mediation is completed.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with California Public Contract Code section 9204 and the terms of the Contract. The mediation process shall provide for the selection within 15 Days by both Parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, notwithstanding

Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the California Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

K. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the California Government Code.
2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, GMP or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, Design-Builder must comply with the claim procedures set forth in California Government Code section 900, *et seq.* prior to filing any lawsuit against City.
3. Such California Government Code claims and any subsequent lawsuit based upon the California Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or GMP for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Design-Builder. If Design-Builder does not comply with the California Government Code claim procedure or the prerequisite contractual requirements, Design-Builder may not file any action against City.
4. **A California Government Code claim shall be inclusive of all unresolved Claims known to Design-Builder or that should reasonably be known to Design-Builder excepting only new unrelated Claims that arise after the California Government Code claim is submitted.**

L. Non-Waiver. City's failure to respond to a Claim from Design-Builder within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety and shall not constitute a waiver of any rights under this Article.

M. Litigation. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance

with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

- N. Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform Work, pending the final resolution of any dispute or disagreement between Design-Builder and City.

ARTICLE 13 -COMPLETION; GUARANTEE OF WORK

13.1 Final Completion.

- A. Conditions for Final Completion of Work. The following conditions shall be satisfied by Design-Builder to constitute Final Completion of Work, each of which must be satisfied in all material respects by Design-Builder to terminate the Contract Time:
1. Governmental Approvals. All Governmental Approvals required under Applicable Law and the Contract to be obtained by Design-Builder shall be in full force and effect for the Work, and certified copies of all such Governmental Approvals shall have been delivered to City;
 2. Contract Documentation. Design-Builder has 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 Drawings, and other documents required by the Contract Documents for the Project.
 3. Conditions in Special Conditions or GMP Amendment. Any and all conditions required by the Special Conditions or the GMP Amendment have been satisfied by Design-Builder and approved by City; and
 4. Certification of Final Completion. City has approved in writing a Certificate of Final Completion that the Work is entirely complete and in all respects is in compliance with the Contract Documents, including, but not limited, to the Punch List for the Work;
- B. Certificate of Final Completion. The process for City issuing a Certificate of Final Completion consists of the following:
1. Design-Builder shall notify City in writing that Work is complete and request that City issue a Certificate of Final Completion.
 2. City will inspect the Work and determine if the Work is complete in accordance with the Contract Documents and any and all conditions required by the Special Conditions or GMP Amendment.
 3. If City determines that the Work is not complete, City will notify Design-Builder in writing of the Work to be completed and issue a Punch List.
 4. Design-Builder shall complete the Punch List and re-submit the request for Final Completion. Should the Punch List items be found not in compliance with the requirements of the Contract Documents, City will notify Design-Builder in writing of items of noncompliance. Design-Builder shall take such measures as necessary to complete such items of noncompliance. Failure

to include an item on the Punch List does not alter Design-Builder's responsibility to comply with the Contract Documents.

5. If City determines that the Work is entirely complete, a Certificate of Final Completion will be issued by City. The certificate shall establish the date of Final Completion for the Work.

C. Certificate of Final Completion. Issuance of a Certificate of Final Completion shall not discharge the duty of Design-Builder to complete the Work in accordance with the Contract Documents and shall not constitute a waiver of defects or missing or incomplete Work, whether or not identified in the Punch List.

13.2 Guarantee of Work.

A. Project Warranty.

1. Design-Builder warrants and guarantees in its Project Warranty, without limitation, the following:
 - a. Work shall: (i) be new, of recent manufacture and of good quality; (ii) conform to the requirements of the Contract Documents; and (iii) be free of material faults or defects.
 - b. All items having a manufacturer's warranty installed under the Contract shall be installed by or under the directive of the manufacturer or his certified agent in order to conform with the manufacturer's warranty requirements. All Work, including any repairs or replacements, involving manufacturer's products shall be performed in accordance with manufacturer's recommendations in order to maintain all warranties.
 - c. Neither final payment nor any provision in the Contract Documents shall relieve Design-Builder of responsibility for faulty materials or workmanship.
2. Design-Builder acknowledges and agrees that the Project Warranty is in addition to, and not in limitation of, any other warranties, rights and remedies available to City under the Contract or Applicable Law, and shall not limit Design-Builder's liability or responsibility imposed by the Contract or Applicable Law with respect to the Work, including to latent defects, gross mistakes, or fraud. Nothing in the Project Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

B. Project Warranty Period and Work.

1. Design-Builder hereby agrees to repair or replace, at the discretion of City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation, fail to conform to the Contract Document requirements or otherwise not in accordance with the requirements of the Project Warranty, together with any other Work which may be damaged or displaced by such defect(s) commencing on date of Final Completion for the Work and terminating after a period of two (2) years (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) without any expense whatever to City, ordinary wear and tear and unusual abuse and neglect excepted.
 2. Design-Builder shall remedy at its sole expense any damage to City-owned or controlled real or personal property. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Design-Builder.
 3. For any warranty Work so corrected, Design-Builder's obligation hereunder to correct the warranty Work shall be reinstated for a two (2) year period after the Work is corrected. This additional warranty period shall apply only to that portion of Work that was corrected. Design-Builder shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract Documents.
 4. In the event of Design-Builder's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Design-Builder's sole expense. Design-Builder shall be obligated to fully reimburse City for any expenses incurred hereunder immediately upon demand.
 5. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of Design-Builder not in accordance with the Contract requirements, City may undertake at Design-Builder's expense, and without prior notice, all Work necessary to correct such condition.
- C. Manufacturer's Warranties. Without limiting the Project Warranty or any guarantees of Design-Builder in the Contract Documents or at law, Design-Builder shall obtain for City all warranties that would be given in normal commercial practice and assign to City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Design-Builder and provided as part of the Work, to the extent that such third-party warranties are

assignable and extend beyond the warranty period set forth in this Article. Assignments will not relieve Design-Builder of its responsibility in the case of a manufacturer's or installer's failure to fulfill guarantee or warranty provisions. Design-Builder shall furnish City with all warranty and guarantee documents prior to final acceptance of the Project by City as required. Nothing in these Contract Documents is intended to limit any third-party warranty that provides City with greater warranty rights than those provided under the Project Warranty, as set forth in the Contract.

- D. City Furnished Materials and Equipment. When specifically indicated in the Contract Documents or when directed by City, City may furnish materials or equipment to Design-Builder for installation and incorporation into the Work. In the event any act or failure to act by Design-Builder shall cause a warranty applicable to any materials or products purchased by City for installation by Design-Builder to be voided or reduced, Design-Builder shall indemnify City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Design-Builder.

- E. No Limitation Period. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that Design-Builder has under the Contract or under Applicable Law with respect to the Work, including warranties, guarantees, and obligations with respect to latent defects. The warranty period for the Project Warranty relates only to the specific obligations of Design-Builder to respond to notices from City under the Project Warranty, and have no relationship to the time within which the obligation of Design-Builder to comply with the Contract may be enforced, nor the time within which proceedings may be commenced to establish Design-Builder's liability with respect to its obligations under the Contract.

ARTICLE 14 - TERMINATION; SUSPENSION

14.1 Termination of Phase 1 Services.

A. Termination Without Cause.

1. City may, at any time, with or without reason, terminate the Contract during Phase 1 and compensate Design-Builder only for the Phase 1 Services satisfactorily rendered to the date of termination. Written notice by City shall be sufficient to stop further performance of Phase 1 Services by Design-Builder. Notice shall be deemed given when received by Design-Builder or no later than three (3) Days after the day the notice was mailed, whichever is sooner. Design-Builder cannot terminate the Contract without cause.
2. All deliverables including, without limitation, Early Purchase Items, Early Construction Packages, Construction Documents, Work Product, drawings, documents, engineering, budget costs, preliminary design, schedule and data developed by Design-Builder during the Phase 1 shall become the exclusive property of City and shall be provided to City within ten (10) Days of City's notice to Design-Builder of termination.

B. Termination for Cause by City.

1. City may terminate the Contract during the Phase 1 upon giving of written notice of intention to terminate for cause. Cause shall include, without limitation, the following:
 - a. material violation of the Contract by Design-Builder;
 - b. any act by Design-Builder exposing City to liability to others for personal injury or property damage; or
 - c. Design-Builder is adjudged to be bankrupt, Design-Builder makes a general assignment for the benefit of creditors or a receiver is appointed on account of Design-Builder's insolvency.
2. Written notice by City shall contain the reasons for such intention to terminate and unless within three (3) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, the Contract shall upon the expiration of the three (3) Days cease and terminate. In the event of this termination, City may secure Phase 1 Services from another contractor. If the expense, fees, and/or costs to City exceeds the cost of providing Phase 1 Services pursuant to the Contract, Design-Builder shall immediately pay the excess expense, fees, and/or costs to City upon the receipt of City's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to City.

3. All deliverables including, without limitation, Early Purchase Items, Early Construction Packages, Work Product, documents, engineering support, budget costs, schedule and data developed by Design-Builder during the Preconstruction Phase shall become the exclusive property of City and shall be provided to City within ten (10) Days of City's notice to Design-Builder of termination.

14.2 Suspension of Phase 1 Services by City.

- A. City may, for any reason, through a written notice to Design-Builder, order Design-Builder to suspend performance of Phase 1 Services. Prior to any resumption of Phase 1 Services in the City's direction, Design-Builder shall notify City of any additional costs Design-Builder believes it is entitled to within 30 Days of its receipt of the request to resume suspended Phase 1 Services, or such claim shall conclusively be deemed to have been waived. City shall not be liable for any additional costs, damages or anticipated profits incurred by Design-Builder or its Subcontractors and the Phase 1 Fee shall not be increased during the period of suspension, except the actual costs incurred by Design-Builder, excluding overhead and profit, for reasonable and unavoidable costs of suspending Phase 1 Services. If Design-Builder establishes that the suspension of Phase 1 Services had a material and adverse effect on Design-Builder's costs for the performance of Phase 1 Services, Design-Builder shall be entitled to cost relief, as appropriate and determined by City acting reasonably and subject to Design-Builder's duty to mitigate damages.

14.3 Suspension of Work by City.

- A. City in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Work by giving not less than five (5) Days' written notice to Design-Builder. Such notice of suspension of Work will designate the amount and type of labor, material and equipment to be committed to the Project during the period of suspension. Design-Builder shall use its best efforts to utilize its labor, material, and equipment in such a manner as to minimize costs and/or Project schedule impacts associated with suspension.
- B. Upon receipt of any such notice, Design-Builder shall, unless the notice requires otherwise, do the following: (1) immediately discontinue Work on the date and to the extent specified in the notice; (2) place no further orders or subcontracts for material, services, equipment or facilities with respect to suspended Work other than to the extent required in the notice; (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to City of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and (4) continue to protect and maintain the Project including those portions on which Work have been suspended.

- C. City shall not be liable for any additional costs, damages or anticipated profits incurred by Design-Builder or its Subcontractors and the GMP shall not be increased during the period of suspension, except the actual costs incurred by Design-Builder, excluding overhead and profit, for (a) the purpose of safeguarding the Project and material and equipment in transit or at the Site during the period of suspension, (b) Design-Builder's or its Subcontractor's rented equipment which must be maintained at the Site and to the extent costs cannot be mitigated by Design-Builder, or (c) other reasonable and unavoidable costs of shutting down the Project, or reassembling personnel and equipment resulting directly from such suspension. Design-Builder shall be granted an extension of the Contract Time equal to the number of days performance of Work is suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from Design-Builder's non-compliance with the requirements of the Contract.

14.4 Termination of Work for Cause by City.

- A. In the sole estimation of City, if Design-Builder refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete Work within such time, or if Design-Builder should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Design-Builder or any of its Subcontractors should violate any of the provisions of the Contract, City may serve written notice upon Design-Builder and its surety of City's intention to terminate the Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate the Contract, and a statement to the effect that Design-Builder's right to perform the Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to City have been made for correction of said violations.
- B. After expiration of the ten (10) Day period, City may terminate the Contract by providing a notice of termination to Design-Builder. City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Performance Bond. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Design-Builder as may be on the Site.
- C. Design-Builder shall not be entitled to receive any further payment hereunder as a result of such termination. Design-Builder and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Work, including professional services and expenses, reasonable overhead, profit, and attorneys' fees. This payment obligation shall survive completion of the Project and termination or expiration of the Contract.

14.5 Termination of Work for Convenience by City.

- A. City may terminate performance of the Work in whole or, from time to time, in part, upon ten (10) Days written notice if City determines that termination is in City's interest. Design-Builder shall discontinue all or any part of the Work upon delivery to Design-Builder of a notice of termination specifying that the termination is for the convenience of City, the extent of termination, and the effective date of such termination.
- B. After receipt of notice of termination, and except as directed by City, Design-Builder shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations: (1) stop Work as specified in the notice of termination; (2) complete any Work specified in the notice of termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents; (3) leave the Site upon which Design-Builder was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety; (4) terminate all subcontracts to the extent that they relate to the portions of the Work terminated; and (5) place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
- C. In case of such termination for City's convenience, Design-Builder shall be entitled to receive payment for Work actually completed by Design-Builder in conformity with the Contract prior to Design-Builder's receipt of City's notice of termination and costs incurred by reason of such termination. Any documentation substantiating costs incurred by Design-Builder solely as a result of City's exercise of its right to terminate the Contract pursuant to this clause, which costs Design-Builder is authorized under the Contract documents to incur, shall: (1) be submitted to and received by City no later than 30 Days after the effective date of the notice of termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by City's Termination of Work for Convenience." If City rejects any costs, Design-Builder shall be deemed to waive the rejected costs unless Design-Builder files a claim within thirty (30) Days of the rejection pursuant to the dispute resolution procedures in these General Conditions.
- D. Design-Builder shall be entitled to receive only the amounts payable under this Article, and Design-Builder specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to City.
- E. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

- F. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order Design-Builder to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.

- G. If City terminates Design-Builder for cause, and it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Builder shall be entitled to receive only the amounts payable under this Article, and Design-Builder specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15 - MEASUREMENT; PAYMENT

15.1 Payment of Compensation for Phase 1 Services.

- A. Phase 1 Fee. City shall pay Design-Builder the Phase 1 Fee in the manner and subject to the terms and conditions set forth in the Contract. Design-Builder agrees that the Phase 1 Fee, when earned, shall be Design-Builder's entire compensation and reimbursement for the performance of Phase 1 Services, inclusive of all costs, expenses and disbursements paid or incurred by Design-Builder, as well as all overhead, administration, risk and profit, subject to adjustment in the Contract Documents.
- B. Invoicing. Design-Builder shall submit a monthly itemized statement of Phase 1 Services charges and expenses to City on the fifth (5th) day of each month. The itemized statement shall reflect the hours spent, or scope of work performed, by Design-Builder in performing its Phase 1 Services, and, if applicable, the statements shall reflect expenses and materials, and the hourly charges shall not exceed the rates set forth in the Contract Documents. The itemized statement shall show the days and hours worked each workday Design-Builder performs Phase 1 Services for the previous month.
- C. Payment. Payment for the Phase 1 Services shall be made for all undisputed amounts in monthly installment payments within thirty (30) Days after Design-Builder submits an itemized statement to City for Phase 1 Services actually completed by Design-Builder. Payment shall not constitute acceptance of any Phase 1 Services completed by Design-Builder.
- D. Payment Disputes. Nothing contained in the Contract shall require City to pay for any Phase 1 Services which are not performed in accordance with the terms and conditions of the Contract. If City disputes in good faith any payment request for Phase 1 Services, City shall pay all undisputed amounts when due but may withhold payment of the disputed amount and shall provide Design-Builder with a written objection indicating the amount being disputed and the reasons then known to City for the dispute. In the event that Design-Builder disputes any amounts offset by City, it shall provide City with a written objection indicating the amount being disputed and the reasons then known to Design-Builder. If Design-Builder is unable to reach agreement with City as to the payment dispute, Design-Builder may elect to initiate dispute resolution procedures in accordance with the Contract Documents.

15.2 Payment of Compensation for Phase 2 Work.

- A. Wavier and Releases. Each application for payment shall show each Subcontractor and Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. Each progress payment application shall be accompanied by:

1. A conditional waiver and release upon progress payment pursuant to Civil Code Section 8132 for each Subcontractor and Supplier participating in the Work completed during the previous progress period which shall be in an amount no less than the dollar amount of such participation; and
2. A conditional waiver and release upon progress payment pursuant to Civil Code Section 8132 on behalf of Design-Builder which shall be in an amount no less than the dollar amount of the total requested in the payment application.
3. Completed progress payment form, supplied by City, which includes a payment certification by the Design-Builder certifying that the Work for which payment is requested has been accomplished.

Design-Builder shall thereafter, within twenty (20) Days of receipt of the payment from City, complete an unconditional waiver and release upon progress payment pursuant to Civil Code Section 8134 for each Subcontractor and Supplier participating in the Work completed during the previous progress period and an unconditional waiver and release upon progress payment pursuant to Civil Code Section 8134 on behalf of Design-Builder in an amount no less than the amount received from City, and submit the same with Design-Builder's subsequent application for payment.

- B. Security for Money Withheld. Pursuant to Section 22300 of the California Public Contract Code, Design-Builder may request City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by City to ensure performance under the Contract. At the request and expense of Design-Builder, securities equivalent to the amount withheld shall be deposited with City or with a state or federally chartered bank as the escrow agent who shall return such securities to Design-Builder upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in Section 22300 of the California Public Contract Code.
- C. Cost Breakdown in Schedule of Values. Design-Builder shall furnish on forms approved by City within ten (10) Days of the Notice to Proceed for Phase 2 and prior to submitting its first application for payment, a schedule of values allocating the entire Phase 2 Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the City's Representative may require. This schedule of values, unless objected to by the City's Representative, shall be used as a basis for reviewing Design-Builder's applications for payment. City will not issue any payment until it receives and accepts the schedule of values.
- D. Progress Estimates and Payment.

1. Application for Payment Submittal. By the tenth (10th) Day of the following calendar month, Design-Builder shall submit to City's Representative on forms approved by City a written payment request for payment of the Work, together with such supporting data as City may request, which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Design-Builder shall include any amount earned for authorized Change Orders. Design-Builder shall certify under penalty of perjury that all cost breakdowns and periodic estimates accurately reflect the Construction Work performed pursuant to the Contract Documents.
2. Application for Payment Contents. Design-Builder shall submit with each application for payment:
 - a. An invoice that includes, without limitation, the total GMP, total of additive and deductive Change Orders, total retention, and total Phase 2 Price;
 - b. An updated schedule of values;
 - c. An updated Phase 2 CPM Schedule for the Work; and
 - d. Conditional and unconditional release of liens from Subcontractors and Suppliers.
3. Schedule of Values. Each application for payment shall be based on the most recent schedule of values submitted by Design-Builder in accordance with the Contract Documents. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the percentage of that portion of the Work which Design-Builder has actually been completed.
4. Open Book Basis. Design-Builder acknowledges that the GMP is to be administered on an Open Book Basis relative to the costs of the Construction Work. The payment request shall be supported by such data substantiating Design-Builder's right to payment as City may require including but not limited to payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, Subcontractor payment requests submitted to Design-Builder, documentation supporting the Subcontractor's payment requests, and any other evidence or documentation required by City.
5. Retention. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in

the Special Conditions. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of Design-Builder's payment request.

6. Withholdings. City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Design-Builder, as in its judgment may be necessary to cover:
 - a. Payments which may be past due and payable for just claims against Design-Builder or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under the Contract.
 - b. Defective Work not remedied.
 - c. Failure of Design-Builder to make proper payments to Subcontractors, Suppliers or for labor.
 - d. Completion of the Work if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 - e. Damage to another contractor or a third party.
 - f. Amounts which may be due City for claims against Design-Builder.
 - g. Failure of Design-Builder to keep the Record Drawings up to date.
 - h. Failure to provide an updated CPM Schedule as required herein.
 - i. Site cleanup.
 - j. Failure to comply with Contract Documents.
 - k. Liquidated damages.
 - l. Legally permitted penalties.
7. City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (6)(a), (c), and (e) of this Article, which must be retained or applied in accordance with Applicable Law. In so doing, City shall be deemed the agent of Design-Builder and any payment so made by City shall be considered as a payment made under contract by City to Design-Builder and City shall not be liable to Design-Builder for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. City will render Design-Builder a proper accounting of such funds disbursed on behalf of Design-Builder.

8. Upon receipt of an application for payment from Design-Builder, City's Representative shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Design-Builder as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. City will make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Design-Builder, provided that a release of liens and claims has been received from Design-Builder pursuant to Civil Code section 8132.
9. Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.
10. City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

15.3 Payments to Subcontractors.

- A. Design-Builder shall develop and implement procedures for submittal of applications for progress payments to Design-Builder by Subcontractors in accordance with these General Conditions and the review, processing and disbursement of progress payments to Subcontractors, along with associated forms and reporting systems. Design-Builder shall disburse progress payments due each Subcontractor within ten (10) Days of Design-Builder's receipt of payment from City, except to the extent that Design-Builder's payment of such amount or any portion thereof is subject to withholdings for a stop payment notice, prevailing wage rate violations or other withholdings of payment(s) due Subcontractors under the terms of the subcontracts or by operation of law. Design-Builder shall indemnify City against any and all claims arising from or related to the failure of Design-Builder to comply with the prompt payment requirements under the Public Contract Code.

15.4 Final Acceptance and Payment.

- A. During Project close-out of the Project, before Final Completion, Design-Builder shall submit to City a detailed Project accounting setting forth all additive Change Orders approved by City, and, if applicable, all savings generated by Design-Builder during the Project. City shall, within a reasonable amount of time after receipt, review Project accounting to determine its accuracy and reconcile the any potential savings and approved and unapproved Change Orders to determine the final cost to complete Phase 2. If City determines that there are savings due to either Party, or if City determines that the GMP needs to be adjusted upward because of unapproved Change Orders, City may issue a unilateral additive or deductive Change Order (as

applicable). Design-Builder's compliance with this Section is a material term of the Contract necessary for Final Completion of the Project, and Design-Builder acknowledges that City shall not be obligated to release retention until Design-Builder complies with this Section.

- B. Unless Design-Builder advises City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Contract Documents where City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to City of all claims and all liability to Design-Builder for all things done or furnished in connection with this Work and for every act of negligence of City and for all other claims relating to or arising out of this Work. If Design-Builder advises City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due Design-Builder, City may pay the undisputed amount contingent upon Design-Builder furnishing a release of all undisputed claims against City with the disputed claims in stated amounts being specifically excluded by Design-Builder from the operation of the release. No payment, however, final or otherwise, shall operate to release Design-Builder or its sureties from the faithful Performance Bond, Payment Bond, or from any other obligation under the Contract.
- C. In case of termination of the Contract any unpaid balance shall be and become the sole and absolute property of City to the extent necessary to repay City any excess in the cost of the Work above the GMP.
- D. Final payment of the five percent (5%) retention shall be made no later than 60 Days after the date of Final Completion, provided that a release of liens and claims has been received from Design-Builder pursuant to Civil Code section 8136. In the event of a dispute between City and Design-Builder, City may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- E. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Design-Builder, Design-Builder shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Design-Builder is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.
- F. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Builder against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

ARTICLE 16 -MISCELLANEOUS CONTRACT PROVISIONS

16.1 Separate Contracts.

- A. Design-Builder understands that this is not an exclusive contract and that City shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Design-Builder as City desires.

16.2 Notice.

- A. All notices shall be in writing and either served by personal delivery or mailed to the other Party. Written notice to Design-Builder shall be addressed to Design-Builder's principal place of business unless Design-Builder designates another address in writing for service of notice. Notice to City shall be addressed to City as designated in the Contract unless City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

16.3 Notice of Third Party Claims.

- A. Pursuant to Public Contract Code section 9201, City shall provide Design-Builder with timely notification of the receipt of any third-party claims relating to the Contract. City is entitled to recover reasonable costs incurred in providing such notification.

16.4 Cumulative Remedies.

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article 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.

16.5 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 Project or termination or completion of the Contract or termination of the services of Design-Builder.

16.6 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, the Contract shall be governed by the law of the State of California excluding any choice of law provisions.

16.7 Jurisdiction; Venue.

- A. Design-Builder and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Riverside County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

16.8 Prohibited Interests.

- A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Contract. Design-Builder warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining the Contract.

16.9 Severability.

- A. If any provision of the Contract is found by a court of competent jurisdiction to be void, invalid or unenforceable, then the Parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of the Contract.

16.10 Headings.

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

16.11 City's Right to Audit.

- A. Design-Builder shall make available to City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to City. If Design-Builder submits a Change Order Request or a Claim to City, City shall have the right to audit Design-Builder's books, records, documents, and other evidence to the extent they are relevant.

- B. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by Design-Builder's home office, and any and all other documentation relied upon by Design-Builder to obtain the Contract. City shall have the right to make and take copies of any records examined.
- C. The right to audit shall include the right to inspect Design-Builder's plans, or such parts thereof, as may be or have been engaged in the performance of the Project. Design-Builder further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The right to audit provided herein shall be exercisable through such representatives as City deems desirable during Design-Builder's normal business hours at Design-Builder's office.
- D. In accordance with Government Code Section 8546.7, records of both City and Design-Builder shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. Design-Builder shall make available to City any of Design-Builder's other documents related to the Project immediately upon request of City. In addition to the State Auditor's rights described above, City shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of Design-Builder (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

16.12 Assignment.

- A. Design-Builder shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or any part thereof including any claims, without prior written consent of City. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under the Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

16.13 Assignment of Antitrust Actions.

- A. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and

agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to the Design-Builder, without further acknowledgment by the Parties.

16.14 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.15 Change In Name or Nature of Design-Builder's Legal Entity.

- A. Should a change be contemplated in the name or nature of Design-Builder's legal entity, Design-Builder shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of Design-Builder's name or nature will affect City's rights under the Contract Documents, including but not limited to the bonds and insurance.

16.16 Other Legal Provisions.

- A. Notices. Design-Builder shall give all notices and comply with Applicable Laws bearing on conduct of Work as indicated and specified by their terms. References to specific laws, rules or regulations in the Contract are for reference purposes only and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Builder observes that Design Documents are at variance therewith, Design-Builder shall promptly notify City in writing, and any necessary changes shall be adjusted as provided for in the Contract for changes in Work. If Design-Builder performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, Design-Builder shall bear all costs arising therefrom.
- B. ADA. Design-Builder shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Builder shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

- C. Mined Material. Design-Builder acknowledges and understands that pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for the Contract.

- D. Other Laws. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in the GMP or extension of Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

END OF GENERAL CONDITIONS

**ATTACHMENT 2
PHASE 1 SCOPE OF SERVICES**

The Project includes two phases: (1) preconstruction design phase services and GMP negotiation (“Phase 1”); and (2) final design services, demolition and abatement of the existing site, and construction services to complete the Project (“Phase 2”), each of which are more fully described in the Contract Documents. The scope shall include, but will not be limited to the following:

PHASE 1: Design Advancement and GMP Development

Phase 1 includes but is not limited to a comprehensive suite of pre-construction services focused on refining the project’s design and preparing the site for future construction activities, culminating in a final negotiated Guaranteed Maximum Price (“GMP”) and demolition, abatement (if necessary), and site preparation. The Proposer will be responsible for advancing the fit and finish of the design while preserving the intent and integrity of the existing Schematic Design (“SD”) package. In addition, the Proposer shall assume full responsibility for ensuring code compliance, securing all necessary permits, and adhering to applicable state and federal regulations throughout the duration of this phase. The selected Proposer will be responsible for:

1. Project Management throughout:

Throughout the life of the Project, the Proposer shall be responsible for maintaining consistent and transparent communication with the City through a combination of written reports, scheduled meetings, and status updates. Proposer shall be expected to attend regular meetings with the City as requested and provide all necessary project management functions, including administrative duties such as timely submission monthly invoices and summaries of work completed.

- a. Design Phase: The Proposer shall provide weekly updates, including progress reports and meeting summaries, with frequency adjusted as needed based on project milestones and activity levels.
- b. Construction Phase: The Proposer shall continue to provide regular updates, including detailed status reports, issue tracking, and coordination meeting documentation, ensuring timely communication of progress, risks, and mitigation strategies.

2. Design Advancement – Design Development (“DD”) Phase

Conduct a comprehensive review of existing schematic design documentation to validate alignment with project objectives, regulatory requirements, and stakeholder expectations. This phase includes:

- a. Identification of opportunities for design optimization from the SD phase to the DD phase.
- b. Recommendations for potential refinements to improve operational efficiency, sustainability, or cost-efficiency, while maintaining the integrity of the SD work package.

- c. Coordination with relevant disciplines and City staff to ensure integrated and cohesive design progression.
3. **Constructability Review**

Evaluate the feasibility of the proposed design from a construction perspective to proactively identify and mitigate potential challenges. This includes:

 - a. Assessment of site conditions, phasing constraints, and logistical considerations.
 - b. Recommendations to improve construction sequencing, access, and safety.
4. **Value Engineering (“VE”)**

Facilitate a collaborative, structured value engineering process to identify cost-saving opportunities without compromising quality, performance, or regulatory compliance. Activities include:

 - a. Comparative analysis of alternative materials, systems, and methods.
 - b. Lifecycle cost assessments and performance evaluations.
 - c. Stakeholder workshops to review and prioritize VE options.
5. **Cost Estimating and Scheduling**

Develop detailed cost projections and a realistic project schedule to support informed decision-making and resource planning. These cost estimates shall be presented at the 60 and 90% completion phases of the DD and Construction Document for Independent Cost Estimate (“ICE”) reviews. This includes:

 - a. Itemized cost estimates based on current market data and design scope.
 - b. Development of a master schedule with key milestones, dependencies, and critical path analysis that illustrates how the Proposer will meet Substantial Completion by December 2027.
 - c. Identification of required services and deliverables from the City, including review of timelines, utility coordination, and public engagement.
 - d. Cost reconciliation between ICE and the Proposer supplied cost estimates.
6. **Permitting and Support**

Identifying all necessary permits and approvals required for project execution and supporting the preparation and submission of permit applications. This includes:

 - a. Regulatory pathway analysis and timeline development.
 - b. Coordination with permitting agencies to clarify requirements and expectations.
 - c. Preparation of supporting documentation and responses to agency comments.
7. **Construction Document (“CD”) Package Development**

Prepare comprehensive construction documentation to support bidding, procurement, and execution of early site work. This includes:

 - a. Finalization of drawings, specifications, and technical details.
 - b. Integration of approved VE items and constructability recommendations.

- c. Coordination with procurement and construction teams to ensure clarity and completeness.

8. Submission of a GMP & Construction Schedule

Delivery of a comprehensive GMP proposal for City review and approval, including detailed cost breakdowns, allowances, contingencies, and assumptions.

- a. The submission shall reflect coordination with the final design documents and incorporate all scope elements, value engineering outcomes, applicable regulatory requirements and a detailed construction schedule.

To mark the completion Phase 1 will be a final negotiated and mutually agreed upon GMP proposal for the full construction of the project. If the City accepts the GMP, the Contract will be amended to initiate Phase 2. It is important to note that **the City is not obligated to proceed with Phase 2**. If negotiations with the Proposer are unsuccessful, the City retains full ownership of all Phase 1 work products, including design documents, and may use them to complete the project through alternative means.

Key Milestones for Phase 1:

- I. Kickoff & Design Review Initiation, along with regular status check in meetings with the City
 - II. Completion of Design Validation Report for City review and Feedback
 - III. Constructability & Value Engineering Workshop to ensure budget and scope are aligned
 - IV. Preliminary Cost Estimate & Reconciliation & Schedule Submission for Independent Cost Estimator Review
 - A. Costs at 60 and 90 design for Independent Cost Estimate (“ICE”) review
 - V. Permit Matrix Finalization and Permit Submission
 - VI. Site Preparation Plan Approval
 - VII. Submission of GMP Proposal and GMP Acceptance
 - VIII. Notice to Proceed Given for Phase 2
- The completion milestone for Phase 1 is set for six (6) months from the issuance date of the Notice to Proceed

**ATTACHMENT 3
SPECIAL CONDITIONS**

ARTICLE 1 - DEFINITIONS; TERMINOLOGY

1.1. **NOT USED.**

ARTICLE 2 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

2.1. **NOT USED.**

ARTICLE 3 - INDEMNIFICATION; INSURANCE; BONDS

3.1. **NOT USED.**

ARTICLE 4 - CITY RESPONSIBILITIES GENERALLY

4.1. **NOT USED.**

ARTICLE 5 - DESIGN-BUILD ENTITY'S RESPONSIBILITIES

5.1. **STAFFING OF PROJECT**

ARTICLE 6 - COST OF THE CONSTRUCTION WORK

6.1. **CONSTRUCTION WORK PERFORMED BY DESIGN-BUILDER.**

6.2. **DESIGN-BUILDER'S FEE.**

6.3. **SELF-PERFORMED CONSTRUCTION WORK.**

6.4. **SUBCONTRACTED CONSTRUCTION WORK.**

6.5. **SHARED COST SAVINGS.**

6.6. **ESCALATION.**

ARTICLE 7 - SUBMITTALS; SHOP DRAWINGS

7.1. **NOT USED.**

ARTICLE 8 - MATERIALS; EQUIPMENT

8.1. **NOT USED.**

ARTICLE 9 - PROJECT SITE

9.1. **NOT USED.**

ARTICLE 10 - PROSECUTION OF THE WORK

10.1. **NOT USED.**

ARTICLE 11 - SCHEDULE; CONTRACT TIME

11.1. **NOT USED.**

ARTICLE 12 - CHANGE IN CONTRACT PRICE; CHANGE IN CONTRACT
TIMES

12.1. **NOT USED.**

ARTICLE 13 - COMPLETION; GUARANTEE OF WORK

13.1. **NOT USED.**

ARTICLE 14 - TERMINATION; SUSPENSION

14.1. **NOT USED.**

ARTICLE 15 - MEASUREMENT; PAYMENT

15.1. **NOT USED.**

ARTICLE 1 - DEFINITIONS; TERMINOLOGY

1.1. NOT USED.

ARTICLE 2 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

2.1. NOT USED.

ARTICLE 3 - INDEMNIFICATION; INSURANCE; BONDS

3.1. NOT USED.

ARTICLE 4 - CITY RESPONSIBILITIES GENERALLY

4.1. NOT USED.

ARTICLE 5 - DESIGN-BUILD ENTITY'S RESPONSIBILITIES

5.1. STAFFING OF PROJECT.

A. Design-Builder's Representative.

1. Design-Builder hereby designates **Bryant Ismerio, Project Executive**, or his or her designee, to act as Design-Builder's Representative. Design-Builder's Representative shall have full authority to represent and act on behalf of Design-Builder for all purposes under the Contract. Design-Builder's Representative shall supervise and direct all work on the Project, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work pursuant to the Contract. Design-Builder may designate new and/or different individuals to act as Design-Builder's Representative from time to time upon written notice to the City and the express written consent of City, which such consent may be withheld by City. If, for whatever reason, Design-Builder's Representative is replaced and this section is not revised, or no such representative is designated, Design-Builder's Representative shall be read as applying to Design-Builder.

B. City's Representative.

1. City hereby designates **Ryan Lamb, Sr. Project Manager**, or his or her designee, as the person to act as City's Representative. City's Representative shall be authorized to act as liaison between City and Design-Builder in the administration of the Contract and all work on the Project. City's Representative shall have the power to act on behalf of City for all purposes under the Contract. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to Design-Builder. If, for whatever reason, City's Representative is replaced and this section is not revised, or no such representative is designated, City's Representative shall be read as applying to City.

C. Designated Key Personnel.

1. Design-Builder has been selected to complete the Project in part because of the experience, expertise, training, education and skill of key individuals. The Key Personnel shall perform the roles and responsibilities of the applicable title. The following individuals are Design-Builder's Key Personnel, none of whom can be replaced unless approved by City as provided herein:

Key Personnel Role	Key Personnel Name
Project Executive	Bryant Ismerio
Project Manager	Molly McMillan
General Contractor Lead	Thomas Howell
Design Manager	Jeff Rae
Preconstruction Manager/Estimator	Jason Howarth
Superintendent	Jeff Rae
Safety Manager	Quann Kizer

D. Removal of Key Personnel.

1. Design-Builder acknowledges the quality and qualifications of the Key Personnel were important and material factors in City’s selection of Design-Builder for the Project. Design-Builder and City agree that the services of the Key Personnel are a material term of the Contract Documents. Design-Builder will not remove any of its Key Personnel from their respective role on this Project without the express written consent of City. If, for any reason except for death, disability, or voluntary departure by person from employment, an individual identified as Key Personnel ceases to perform the duties of a Key Personnel, City may terminate the Contract for material breach by Design-Builder.

E. Replacing Key Personnel.

1. Any Key Personnel change shall be proposed to City with reasonable advance notice for its review and approval. Upon written notice by City to Design-Builder, Design-Builder shall replace Key Personnel within 60 Days if Key Personnel fails to perform to the sole satisfaction of City. Any replacement of Key Personnel shall meet the qualifications in the RFP for the applicable role and City shall have the sole discretion to determine whether the Key Personnel replacement is qualified. If the Key Personnel replacement is not qualified, as determined in the sole discretion of City, Design-Builder shall propose a new Key Personnel replacement to City. Design-Builder shall be responsible for any and all costs related to replacing any Key Personnel, including any costs to acquaint themselves with the Project. Key Personnel for any Key Subcontractor are subject to all conditions in these Contract Documents.

ARTICLE 6 - COST OF THE CONSTRUCTION WORK

6.1. CONSTRUCTION WORK PERFORMED BY DESIGN-BUILDER.

- A. Self-Perform Amount. Design-Builder shall perform Construction Work on the Project accounting to at least fifteen percent (15%) of the Construction Work in the Phase 2 Price.

6.2. DESIGN-BUILDER'S FEE. [RESERVED]

- A. Design-Builder's Self-Performance Fee. Design-Builder's Self-Performance Fee shall be four and a half percent (4.5%).
- B. Design-Builder's Subcontractor Fee. Design-Builder's Subcontractor Fee shall be four and a half percent (4.5%).

6.3. SELF-PERFORMED CONSTRUCTION WORK.

- A. Independent Cost Estimate Percentage. The X value in Article 6.5(B) is five percent (5%).

6.4. SUBCONTRACTED CONSTRUCTION WORK.

- A. Non-Competitive Subcontracted Procurement. Article 6.7(C)(1) is replaced with the following:
 - 1. Design-Builder may procure Subcontractors without following the above competitive procurement procedures only if:
 - a. The Phase 2 Price is less than \$10,000,000; or
 - b. If the Phase 2 Price is equal to or greater than \$10,000,000, the Subcontracted Construction Work is equal to or less than one-half of one percent (0.5%) of the Phase 2 Price.

6.5. SHARED COST SAVINGS.

- A. If the final accounting of the GMP is less than the GMP as set forth in the GMP Amendment, including all adjustments to the GMP in accordance with the Contract Documents, the difference shall be considered "savings" and shall be shared as follows: twenty-five percent (25%) to Design-Builder and seventy-five percent (75%) to City.

6.6. ESCALATION.

- A. During Phase 1, Design-Builder shall identify materials and/or equipment incorporated into the Project that may be subject to significant price escalation during the Project and provide ways, such as Early Purchase Items, to mitigate such escalation. If Design-Builder identifies certain

materials and/or equipment required for the Project that may be subject to significant price escalation during the work, Design-Builder may request a material escalation clause in a GMP. City will evaluate whether or not a material escalation clause is appropriate for a GMP by evaluating such things as the Contract Time for the Work, whether the market for the materials and/or equipment is historically volatile and subject to sudden price increases, and City's tolerance for taking on escalation risk for the identified materials and/or equipment. If City decides, in its sole discretion, that a material price escalation provision is appropriate for the Project, City and Design-Builder will negotiate such a provision as part of the GMP. The material price escalation provision will include certain conditions that Design-Builder would have to demonstrate to receive escalation costs from City.

ARTICLE 7 - SUBMITTALS; SHOP DRAWINGS

7.1. NOT USED.

ARTICLE 8 - MATERIALS; EQUIPMENT

8.1. NOT USED.

ARTICLE 9 - PROJECT SITE

9.1. NOT USED.

ARTICLE 10 - PROSECUTION OF THE WORK

10.1. NOT USED.

ARTICLE 11 - SCHEDULE; CONTRACT TIME

11.1. NOT USED.

ARTICLE 12 - CHANGE IN CONTRACT PRICE; CHANGE IN CONTRACT TIMES

12.1. NOT USED.

ARTICLE 13 - COMPLETION; GUARANTEE OF WORK

13.1. NOT USED.

ARTICLE 14 - TERMINATION; SUSPENSION

14.1. NOT USED.

ARTICLE 15 - MEASUREMENT; PAYMENT

15.1. NOT USED.

**ATTACHMENT 4
DESIGN BUILDER’S COST PROPOSAL FORM**

Phase 1 Services

Task	Description	Unit of		Unit Cost	Total
		Quantity	Measure		
1	Architectural	1	LS	\$501,700	\$501,700
2	Interior Design	1	LS	\$111,300	\$111,300
3	FF&E Design	1	LS	\$40,000	\$40,000
4	Structural Engineering	1	LS	\$195,000	\$195,000
5	MEP Engineering	1	LS	\$347,000	\$347,000
6	Civil Engineering	1	LS	\$145,000	\$145,000
7	Landscape Design	1	LS	\$40,000	\$40,000
8	Project Management				
9	Other Design Services				
9.B	Project Diligence Topographic/Boundary Survey, GPR for Utilities, SWPPP, Geotechnical Consutling	1	LS	\$105,000	\$105,000
9.C	Reimbursables Budget	1	LS	\$50,000	\$50,000
10	Design-Builder's Preconstruction	1	LS	\$202,227	\$202,227
				TOTAL	\$1,737,227

Clarifications

1. The price above includes Design-Development through Construction Documents. Costs for construction administration shall to be included with the GMP.
2. The price above is based upon the budget and schedule objectives stated in the RFP and is subject to change should the project budget be increased or the schedule/scope. Design fees are based upon an assumed construction value of \$23 million.

**ATTACHMENT 5
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Palm Desert ("City") has awarded to _____, ("Design-Builder") an agreement for New Library Facility (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Builder is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Builder is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design-Builder and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of _____ Dollars, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Design-Builder, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the two (2) year guarantee of all materials and workmanship; and shall indemnify and save harmless City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of Design-Builder remains. Nothing herein shall limit City's rights or the Design-Builder or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Design-Builder shall be, and is declared by City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Design-Builder by City under the Contract and any modification thereto, less any amount previously paid by City to the Design-Builder and any other set offs pursuant to the Contract Documents.
- (3) Permit City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Design-Builder by City under the Contract and any modification thereto, less any amount previously paid by City to the Design-Builder and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Builder.

Surety shall not utilize Design-Builder in completing the Project nor shall Surety accept a Bid from Design-Builder for completion of the Project if City, when declaring the Design-Builder in default, notifies Surety of City's objection to Design-Builder's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Design-Builder

By: _____
Printed Name: _____
Title: _____

(Corporate Seal) Surety

By: _____
Printed name: _____
Attorney-in-Fact
(Attach Attorney-in-Fact Certificate)

Signatures of those signing for the Design-Builder and Surety must be notarized and evidence or corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

- | | |
|-------------------------------------|----------------------------------|
| | Title(s) |
| <input type="checkbox"/> Partner(s) | <input type="checkbox"/> Limited |
| | <input type="checkbox"/> General |

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Design-Builder

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT									
<input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer										
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">Title(s)</td> <td style="width: 50%; border-bottom: 1px solid black;">Title or Type of Document</td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General </td> <td style="border-bottom: 1px solid black; text-align: center;">Number of Pages</td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Attorney-In-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Other: </td> <td style="border-bottom: 1px solid black; text-align: center;">Date of Document</td> </tr> <tr> <td style="vertical-align: top;"> Signer is representing: Name Of Person(s) Or Entity(ies) </td> <td style="vertical-align: top; text-align: center;"> Signer(s) Other Than Named Above </td> </tr> <tr> <td style="border-top: 1px solid black;">_____</td> <td style="border-top: 1px solid black;">_____</td> </tr> </table>	Title(s)	Title or Type of Document	<input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General	Number of Pages	<input type="checkbox"/> Attorney-In-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Other:	Date of Document	Signer is representing: Name Of Person(s) Or Entity(ies)	Signer(s) Other Than Named Above	_____	_____
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Signer is representing: Name Of Person(s) Or Entity(ies)	Signer(s) Other Than Named Above									
_____	_____									

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer
- Partner(s)
 - Limited
 - General
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- Guardian/Conservator
- Other:

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

**ATTACHMENT 6
PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Palm Desert (“City”), by action taken or a resolution passed _____, has awarded to _____, hereinafter designated as the “Principal,” a contract for the work described as follows:

New Library Facility (“Project”); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____, (“Contract Documents”), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said Contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and
_____ as Surety, are held and firmly bound unto City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the Design-Builder and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such Work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by City in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner or City and original Design-Builder or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

SIGNATURES ON FOLLOWING PAGE

Contract No. _____

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____
day of _____, 20__.

(Corporate Seal)

Design-Builder

By: _____

Printed Name: _____

Title: _____

(Corporate Seal) Surety

By: _____

Printed Name: _____

Attorney-in-Fact

(Attached Attorney-In-Fact Certificate)

Signatures of those signing for the Design-Builder and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

- _____
Title(s)
- Partner(s)
 - Limited
 - General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

Contract No. _____

NOTE: This acknowledgment is to be completed for Design-Builder

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

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 - Guardian/Conservator
 - Other:

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

Contract No. _____

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power of Attorney to local representatives of the bonding company must also be attached

**ATTACHMENT 7
SAMPLE GMP AMENDMENT FOR PHASE 2 SERVICES**

GMP AMENDMENT FOR PHASE 2 SERVICES

Project: NEW LIBRARY FACILITY	Date of Contract: _____
Contract: _____	GMP Effective Date: _____

This Guaranteed Maximum Price Amendment (“GMP Amendment”) is made and entered into this ___ day of _____, 20__ (“GMP Effective Date”), in accordance with and subject to the terms and conditions set forth in the Progressive Design-Build Contract (“Contract”) entered into by and between the City of Palm Desert (“City”) and _____ (“Design-Builder”) for the Project. Capitalized terms not defined in this GMP Amendment shall have meanings given to them in the Contract.

RECITALS

WHEREAS, City and Design-Builder entered into the Contract with an Effective Date of _____ for the _____ (“Project”);

WHEREAS, the Contract permits City and Design-Builder to amend the Contract upon the mutual agreement of the Parties;

WHEREAS, City and Design-Builder now desire to amend the Contract to finalize and memorialize Phase 2 Work, a GMP for Phase 2, and other terms and conditions for Phase 2 of the Project as more particularly described herein; and

WHEREAS, amending the Contract pursuant to this GMP Amendment will allow the Project work described herein to commence in accordance with the terms and conditions the Parties have agreed to as set forth below.

AGREEMENT

NOW, THEREFORE, in good and valuable consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. CONTRACT DOCUMENTS FOR PHASE 2.

This GMP Amendment shall be a Contract Document and is subject to all terms and conditions of the Contract Documents. This GMP Amendment includes the following

documents attached hereto and incorporated by this reference:

- Exhibit “A” – Phase 2 Special Conditions
- Exhibit “B” – Phase 2 Scope of Work
- Exhibit “C” – Breakdown of Phase 2 GMP
- Exhibit “D” – GMP Schedule of Values
- Exhibit “E” – List of Allowances
- Exhibit “F” – Phase 2 CPM Schedule

2. PHASE 2 WORK AND GMP.

Design-Builder promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete Phase 2 of the Project, and all portions thereof, as set forth in the Contract Documents and this GMP, including, but not limited to, Exhibit “B”, for a GMP of _____. The components of the GMP are further described in Exhibit “C” of this GMP Amendment. Unless otherwise stated in the Contract Documents or any amendments thereto, including, but not limited, to Change Orders, the GMP shall pay for all costs and expenses required to design and construct Phase 2 of the Project.

The compensation to be paid shall be limited to the GMP established pursuant to this GMP Amendment, as the same may be adjusted under applicable provisions of the Contract Documents and this GMP Amendment. To the extent Design-Builder’s cost to complete the Phase 2 Work exceeds the GMP, as modified, Design-Builder shall bear such costs in excess of the GMP without reimbursement or additional compensation from City.

3. SCHEDULE OF VALUES.

The GMP shall be broken out in the Schedule of Values, attached hereto as Exhibit “D”, and shall reflect all requirements of the Contract Documents.

4. PHASE 2 SCHEDULE.

Design-builder has provided a Phase 2 CPM Schedule for Phase 2 of the Project, as accepted by City, which is attached hereto as Exhibit “F”. A monthly updated schedule will be provided to City in accordance with the Contract Documents.

5. PERIOD OF PERFORMANCE AND LIQUIDATED DAMAGES.

Design-Builder guarantees that it shall perform and complete all work necessary for Final Completion of Phase 2 of the Project by the Guaranteed Completion Date of _____.

The Parties also agree that time is of the essence for all work Design-Builder must perform to complete Phase 2 of the Project by the Guaranteed Completion Date. It is hereby understood and agreed that City will suffer damages if the Work is not completed by the Guaranteed Completion Date. It is further agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that City will sustain in the event of and by reason of Design-Builder's delay in completing the Work beyond the Guaranteed Completion Date. Accordingly, Design/Builder agrees that liquidated damages will apply in the amount of **One Thousand Four Hundred and 00/100 Dollars (\$1,400.00) for each and every calendar day beyond the Guaranteed Completion Date** that Final Completion of the Project has not been achieved. It is hereby understood and agreed that this amount is not a penalty. In the event any portion of the liquidated damages that may become due is not paid to City, City may deduct that amount from any money due or that may become due the Design-Builder under the Contract.

6. REQUIRED DOCUMENTATION FOR NOTICE TO PROCEED.

After the GMP Effective Date, City may issue a Notice to Proceed with the Phase 2 Work. Design-Builder shall provide all of the following prior to the issuance of such Notice to Proceed:

- If not already provided, fully executed Payment and Performance Bonds in the form required by the Contract.
- Evidence of Insurance for Construction Work as required by the Contract.
- Copies of all other certifications applicable to the Phase 2 Work as required by the Contract.

7. EFFECTIVENESS/COUNTERPARTS.

This GMP Amendment shall only be effective upon the execution by both City and Design-Builder. This GMP Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. SCOPE OF GMP AMENDMENT.

This GMP Amendment shall affect only the items specifically set forth herein, and all other terms and conditions of the Contract, as written shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO GMP AMENDMENT
BY AND BETWEEN CITY OF PALM DESERT
AND _____**

IN WITNESS WHEREOF, the Parties hereby execute this GMP Amendment as of the GMP Effective Date.

CITY OF PALM DESERT _____

By: _____
Chris Escobedo
City Manager

By: _____
Printed Name
Title

Attest:

By: _____
Anthony J. Mejia
City Clerk

By: _____
Printed Name
Title

Approved as to form:

By: _____
Israh Shah
City Attorney

Office Use:

Contract No. _____

City Clerk QC:	Contracts QC:
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EXHIBIT "A"
PHASE 2 SPECIAL CONDITIONS

EXHIBIT "B"
PHASE 2 SCOPE OF WORK

EXHIBIT “C”

SAMPLE BREAKDOWN OF PHASE 2 GMP

The GMP shall be calculated as follows, and shall include the following components, as further detailed below and in the Contract Documents:

A DETAILED GMP TABLE					
B	Item	C	Component	D Percentage	E Amount
FCOSTS TO PERFORM WORK & GENERAL CONDITIONS					
G	(A)	H	Completion of Design Work for Project		J
K	(B)	L	Direct Costs		N
O	(C)	P	General Conditions		R
S	(D)	T	Subcontractor Construction Cost		V
W(E)		X	SUBTOTAL OF COSTS TO PERFORM WORK & GENERAL CONDITIONS		Y
Z MARK-UPS					
AA(F)		BB	Bonds	CC	DD
EE	(G)	FF	Insurance	GG	HH
II(H)		JJ	Design-Builder’s Fee		
		KK	(Proposed & agreed-upon percentage multiplied by amount from (E))	LL	MM
NN(I)		OO	TOTAL MARK-UPS		PP
QQ CONTINGENCY / ALLOWANCES					
RR	(J)	SS	Contingency		VV

	TT (Only if agreed to and indicate as a set amount, not a percentage)	
WW (K)	XX Allowance(s) YY (Only if agreed to and indicate as a set amount, not a percentage)	AAA
BBB (L)	CCCTOTAL CONTINGENCIES & ALLOWANCES	DDD
EEE	FFFTOTAL GMP(E) + (I) + (L)	GGG

EXHIBIT "D"
GMP SCHEDULE OF VALUES

EXHIBIT "E"
LIST OF ALLOWANCES

EXHIBIT "F"

PHASE 2 CPM SCHEDULE