

ATTACHMENT 4
General Conditions to the Design-Build Agreement

Article 1
General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each Party to realize the benefits accorded under the Contract Documents.

1.2 Basic Definitions

1.2.1 For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical, or trade meanings are used in the Contract Documents in accordance with such recognized meanings), provided, however, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document. For convenience, this Section 1.2.1 includes an index of capitalized terms used in the Agreement and these General Conditions of the Contract.

Affiliate means, (a) any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding an interest in Design-Builder; and (b) any person or entity for which ten percent (10%) or more of the equity interest in such person or entity is held directly or indirectly, beneficially or of record by: (i) Design-Builder; (ii) any of Design-Builder's members, partners or shareholders that own ten percent (10%) or more of Design-Builder or Design-Builder's members, partners or shareholders; or (iii) any Affiliate of Design-Builder under clause (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a person and/or entity, whether through voting securities, by contract, family relationship or otherwise.

Agreement refers to the document titled "Design-Build Agreement," signed by both Parties.

Agreement Date means the date set forth on the first page of the Agreement.

Allowance Payment Item means an item or portion of the Work which has not been defined sufficiently, or for which Owner has yet to make certain decisions necessary, to permit pricing by Design-Builder.

Allowance Payment Value means the estimated dollar amount included in the Schedule of Values or other budget document as a placeholder value for an Allowance Payment Item, pending acceptance by Owner of pricing offered by Design-Builder and other applicable terms.

Application for Payment means a request for payment in form acceptable to Owner that is submitted by Design-Builder to Owner on a monthly basis, or other periodic basis acceptable to Owner, and which includes, without limitation, all supporting documentation and information required by Owner or the Contract Documents.

Bankrupt Party has the meaning set forth in Section 11.5.1 below.

Baseline Schedule is the schedule that will be set forth as an exhibit to the Phase 2 Amendment and identified as the “Baseline Schedule.”

Books and Records means all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, correspondence, receipts, vouchers, estimates, records, contracts, cost data, schedules, subcontracts, schedules, job cost reports, and other data, including computations and projections, of Design-Builder related to bidding, negotiating, pricing, or performing the Work.

Builder’s Risk Insurance means the policy of insurance required under Exhibit 14.1 (Insurance Requirements) of the Agreement identified as the Builder’s Risk policy, which policy is intended to provide property insurance for the Work in progress and other coverages.

Certificate of Final Completion means a certification issued by Owner to Design-Builder, stating that Design-Builder, to the best of Owner’s actual knowledge and belief, has achieved Final Completion, and confirming that date upon which such event occurred.

Certificate of Substantial Completion means a certification issued by Owner to Design-Builder, stating that Design-Builder, to the best of Owner’s actual knowledge and belief, has achieved Substantial Completion, and confirming that date upon which such event occurred.

Change Order has the meaning set forth in Section 9.1.3 below.

Claim has the meaning set forth in Section 10.2 below.

Confidential Information has the meaning set forth in Section 13.1 below.

Contingency has the meaning set forth in Section 5.7.1 of the Agreement.

Contract Documents means those documents specifically referenced and listed in the Section 2.1 of the Agreement.

Contract Price has the meaning set forth in Section 4.1.1 of the Agreement.

Contract Times has the meaning set forth in Section 3.3.3 of the Agreement.

Cost of the Work has the meaning set forth in Section 6.1 of the Agreement.

Day or day mean calendar days, unless specifically stated otherwise.

DB-Related Entity means Design-Builder, Design Consultants and Subcontractors of any tier, and anyone for whose acts any of them may be legally or contractually responsible.

Delay Liquidated Damages has the meaning set forth in Section 3.4 of the Agreement.

Design-Builder is XXX.

Design-Builder’s Fee has the meaning set forth in Section 4.3 of the Agreement.

Design-Builder’s General Conditions has the meaning set forth in Section 6.2 of the Agreement.

Design-Builder's Project Manager means that person designated by Design-Builder under Section 2.1.1 below, who will be the principal representative of Design-Builder with respect to the performance of the Work.

Design-Builder's Proposal means the proposal submitted by Design-Builder in response to the RFQ/RFP and referenced in the Preamble.

Design-Builder Proposed Change Order or Design-Builder PCO means a proposed change order submitted to Owner from Design-Builder in accordance with Section 9.5 below.

Design-Builder's Representative means that person designated by Design-Builder under Section 2.1.1 below, who shall be the principal representative of Design-Builder with respect to contractual matters and shall have full authority to act on behalf of Design-Builder and make binding decisions on behalf of Design-Builder with respect to any matter arising out of or relating to the Contract Documents.

Design-Builder's Safety Representative means that person designated by Design-Builder under Section 2.8.1 below, whose principal duty shall be the prevention of accidents and the protection of all persons and property located on or adjacent to the Site. Design-Builder's Safety Representative shall take such action as appropriate to ensure the proper implementation of, and compliance with, safety policies, precautions, procedures and plans.

Designated Owner-Furnished Information means that information described in Section 1.5.2 of the Agreement.

Design Consultant is a qualified, licensed design professional, eligible to provide, among other things, professional engineering, architectural and/or land surveying services, who is not an employee of Design-Builder, but is retained by Design-Builder or another DB-Related Entity, to furnish design services required under the Contract Documents. For the avoidance of doubt, Lead Designer is a Design Consultant.

Differing Site Conditions has the meaning set forth in Section 4.3.1 below.

Directive Letter has the meaning set forth in Section 9.6.1 below.

Early Work Packages has the meaning set forth in Section 1.4 of the Agreement.

Electronic Data has the meaning set forth in Section 12.1.1 below.

Equipment and Materials shall mean all of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the terms of the Contract Documents to complete the Work and to be incorporated into the Project or provided to Owner. The term "Equipment and Materials" shall not be construed to include any construction equipment, supplies, materials, apparatus or tools owned by Design-Builder or any other DB-Related Entity that are used to complete the Work but are not contemplated under the Contract Documents to become incorporated into the Project or to be provided to Owner.

Exhibits have the meaning set forth in Section 14.13 of the Agreement.

Excusable Delay has the meaning set forth in Section 8.4.1 below.

Final Application for Payment means the Application for Payment submitted by Design-Builder to Owner after Design-Builder has achieved Final Completion, requesting payment of the unpaid balance of the Contract Price (less any amounts properly withheld by Owner) plus any share of Savings earned by Design-Builder.

Final Completion means all Work, including that identified on the Punch List, is complete in accordance with the Contract Documents, and Design-Builder has satisfied all conditions for Final Completion set forth in the Contract Documents, including, without limitation, Section 8.3 below. Obligations which by their nature accrue or continue past Final Completion, such as warranty obligations, are not required to be complete in order to achieve Final Completion.

Final Completion Date means the date that Final Completion occurs, as confirmed by Owner and set forth in a Certificate of Final Completion.

Force Majeure Events are those events that are beyond the control of all DB-Related Entities and Owner, including the events of war, floods, labor disputes, earthquakes, pandemics, epidemics, unusually severe and abnormal weather conditions, wildfires, and other acts of God.

General Conditions of Contract refers to this document.

Geotechnical Baseline Report (GBR) is that document prepared by Design-Builder, approved by Owner and to be set forth as an exhibit to the Phase 2 Amendment.

Geotechnical Data Report (GDR) is that document prepared by Design-Builder, approved by Owner, and to be set forth as an exhibit to the Phase 2 Amendment.

Good Engineering and Construction Practices mean those methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good engineering, equipping, installation, construction, commissioning, and testing practices for the design, construction, and improvement of capital projects in the water treatment industry similar to the Project in scope and complexity using the design-build delivery method, as followed in the locality of the Project.

Governmental Approval means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

Governmental Unit means any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other person and/or entity having jurisdiction over the performance of the Work, the Project or the Parties.

Guaranteed Maximum Price (GMP) has the meaning set forth in Section 4.2 of the Agreement.

Hazardous Environmental Condition means the presence of Hazardous Materials in such quantities or circumstances that may be reasonably considered to present an imminent or substantial safety or health hazard for Owner, any DB-Related Entity, their respective employees, agents or representatives, the general public or the surrounding environment.

Hazardous Materials means any materials, waste, substances and chemicals deemed to be hazardous under applicable Legal Requirements.

Issued for Construction (IFC) Documents means those final, complete design documents that: (a) are to be used for performing the construction and in correlation with all applicable Governmental Approvals, (b) have been signed and sealed by a properly licensed Design Consultant; and (c) have been approved by Owner in accordance with Section 2.4 below.

Key Personnel means those individuals designated as such in Exhibit 14.3 (“Key Personnel and Organizational Chart”) to the Agreement.

Labor and Material Payment Bond has the meaning set forth in Section 5.2.1 below.

Lead Designer means XXX.

Legal Requirements mean all applicable federal, state and local laws, codes, ordinances, rules, statutes, regulations, orders and decrees, and other requirements of any Governmental Unit, including, without limitation, any interpretation of such items by the applicable Governmental Unit.

Minor Change has the meaning set forth in Section 9.3.1 below.

Non-Reimbursable Costs has the meaning set forth in Section 6.3 of the Agreement.

Notice of Design-Builder Proposed Change Order (PCO) has the meaning set forth in Section 9.5.1 below.

Notice of Termination for Convenience means a written notice from Owner to Design-Builder that terminates the right of Design-Builder to perform all or a portion of the Work, specifying the date upon which such notice shall be deemed effective and any other applicable terms.

Open-Book Basis means allowing Owner to review all underlying assumptions, records, stand-alone Subcontractor quotes, and other data associated with each element of pricing, or any adjustment thereto, including assumptions as to Costs of the Work, schedule, composition of equipment, equipment rates, labor rates and burdens, production rates, estimating factors, contingency and indirect costs, risk pricing, inflation and deflation rates, profit, home office overhead rates, fees, charges, levies, incentives, and other items reasonably required by Owner to satisfy itself as to the reasonableness and accuracy of the amounts proposed by Design-Builder.

Owner means the Orange County Mosquito and Vector Control District.

Owner-Furnished Information means that information described in Section 1.5.1 of the Agreement.

Owner Indemnitee means the Orange County Mosquito and Vector Control District, and Owner’s Advisor, and with respect to each of the foregoing, each of its respective representatives, officers, employees, members or other constituent entities, subconsultants, authorized agents, and other duly authorized representatives.

Owner’s Advisor means Griffin Structures and its subconsultants, or any other person or entity that is so designated by Owner.

Owner’s Project Criteria mean Owner’s programmatic requirements and objectives for the Project, and specific criteria and requirements, as set forth in Section 1.2.1 of the Agreement.

Party or Parties means, as applicable: (a) in the singular, Owner or Design-Builder; or (b) in the plural, Owner and Design-Builder.

Performance Bond has the meaning set forth in Section 5.2.1 below.

Phase 1 NTP means the Phase 1 Notice to Proceed described in Section 3.1.1 of the Agreement.

Phase 1 Services mean those services set forth in Section 1.2.1 of the Agreement.

Phase 1 Services Compensation has the meaning set forth in Section 4.1.1 of the Agreement.

Phase 1 Services Schedule means that schedule developed by Design-Builder and approved by Owner in accordance with Section 3.2.1 of the Agreement.

Phase 2 Amendment Date means the date designated as such in the Phase 2 Amendment.

Phase 2 NTP means the Phase 2 Notice to Proceed described in Section 3.1.2 of the Agreement.

Phase 2 Proposal means that proposal submitted by Design-Builder to Owner in accordance with Section 5.1 of the Agreement.

Phase 2 Proposal Acceptance Period means sixty (60) days from the date Owner receives the Phase 2 Proposal from Design-Builder.

Phase 2 Proposal Design Documents means those design documents identified in an exhibit to the Phase 2 Amendment.

Phase 2 Services mean those services set forth in Section 1.3 of the Agreement, including any work that is part of an Early Work Package.

Preamble means the introductory paragraphs of the Agreement that identifies, among other things, the Agreement Date, Parties and certain background information relative to the Project.

Pre-Existing Intellectual Property has the meaning set forth in Section 9.3 of the Agreement.

Project means the design, phasing and renovation of the Owner campus buildings, parking and operations.

Punch List means that list of Work that has been identified as incomplete by the Parties as of the Substantial Completion Date and compiled as set forth under Section 8.2.1 below.

RFQ/RFP means Owner's combined Request for Qualifications and Request for Proposals for the Project.

SOQ means Statement of Qualifications.

Savings has the meaning set forth in Section 4.8.1 of the Agreement.

Scheduled Final Completion Date means the date that is set forth in Section 3.3.2 of the Agreement.

Schedule of Values means the tabulation or breakdown of the entire GMP set forth in an exhibit to the Phase 2 Amendment, allocating such GMP to various portions of the Work and other line-items, prepared by Design-Builder in such form and detail, and supported by such data to substantiate its accuracy, as Owner may require.

Scheduled Substantial Completion Date means the date that is set forth in Section 3.3.1 of the Agreement.

Self-Perform Work means Work performed by employees of Design-Builder or any of its Affiliates.

Site is the parcels of land or premises on which the Project is located, as more specifically described in Owner's Project Criteria.

Startup, Commissioning, and Testing Plan means the testing protocols, procedures and processes, approved by Owner, for conducting commissioning, startup and testing activities in order to achieve Substantial Completion in accordance with the Contract Documents.

State means the State of California.

Subcontract means any contract entered into by Design-Builder and any other DB-Related Entity in connection with the carrying out a portion of the Work.

Subcontractor means any person or entity (other than Design Consultants) with whom Design-Builder has entered into any Subcontract for such person or entity to perform any portion of the Work, including Suppliers.

Sub-Subcontractor means any person or entity having a direct contract with a Subcontractor.

Substantial Completion means that (a) the Work is sufficiently complete in accordance with the Contract Documents so that Owner can beneficially use and occupy the Project for its intended purposes and with functionality intended, and (b) Design-Builder has satisfied or fulfilled all other requirements set forth in Section 8.2.3 below. Unless otherwise expressly stated, any reference to Substantial Completion applies to the entire Work as a whole, and not to only a portion of the Work.

Substantial Completion Date means the date on which Substantial Completion occurs, as confirmed by Owner and set forth in a Certificate of Substantial Completion.

Supplier means any person or entity retained by a DB-Related Entity to provide Equipment and Materials, or construction equipment, supplies or other goods to be used in the performance of the Work but not incorporated into the Work.

Time Impact Analysis (TIA) has the meaning set forth in Section 8.5.2 below.

Work means all work, services, activities and other obligations to be performed by Design-Builder under the Contract Documents, including without limitation, design, engineering, permitting, procurement of Equipment and Materials, project management, supervision,

construction, commissioning, start-up, testing and all other services and deliverables reasonably inferable from the Contract Documents as required for the proper and safe operation of the Project with the operating characteristics set forth in the Contract Documents and to otherwise achieve Final Completion.

Work Change Directive has the meaning set forth in Section 9.2.1 below.

Work Product means all drawings, specifications, calculations, data, models, images, materials, products, documents, and work developed or produced by or on behalf of Design-Builder in connection with the Project, including, without limitation all materials, products, and such items developed or produced by all Design Consultants and Subcontractors of any tier, in all forms, whether in hard-copy, digital or electronic data, or any other medium.

Article 2 **Design-Builder's Services and Responsibilities**

2.1 General Services.

2.1.1 Design-Builder shall designate a member of its Key Personnel as its Project manager ("Design-Builder's Project Manager"), who shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager will be present at the Site at all appropriate times. Design-Builder will have a representative at the Site authorized to act on its behalf when Design-Builder's Project Manager is not present. Design-Builder shall also designate a qualified member of its Key Personnel as its Project representative ("Design-Builder's Representative"), who shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Neither Design-Builder's Project Manager or Design-Builder's Representative may be replaced without prior written approval of Owner, with such approval not to be unreasonably withheld.

2.1.2 Design-Builder shall perform the Phase 1 Services in accordance with the Phase 1 Services Schedule, updated as required by Section 3.2.2 of the Agreement. Upon the Phase 2 Amendment Date, Design-Builder shall perform the Work in accordance with the Baseline Schedule. The Baseline Schedule, among other things, shall identify certain events that are critical to the orderly progress and timely completion of the Work and the dates by which such events are required to occur. The Baseline Schedule shall be in a critical path method format, and shall include all information, data, and detail required by the Contract Documents or Owner. Design-Builder shall provide Owner with monthly updates, or more frequently as required by conditions and progress of the Work, comparing actual progress to the Baseline Schedule, but such updates shall not be deemed to modify the Baseline Schedule or Contract Times, nor relieve Design-Builder of its obligations to complete the Work within the Contract Times, as may be adjusted in accordance with the Contract Documents. Owner's review and approval of the Baseline Schedule, in conjunction with its execution of the Phase 2 Amendment, and monthly schedule updates shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.3 Design-Builder shall provide management, supervision and professional staff for the Work in accordance with Exhibit 14.3 (Key Personnel and Organizational Chart) to the Agreement, and as modified and amended by the Phase 2 Amendment. Design-Builder acknowledges the importance of its Key Personnel in successfully performing the Project. Absent separation of employment, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner, with it being understood and agreed that Design-Builder will provide Owner with at least thirty (30) days written notice of any request to withdraw any Key Personnel. Any

replacement personnel shall have equivalent skill, experience and reputation. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Owner has a reasonable objection to such individual.

2.1.4 Design-Builder shall participate in monthly progress meetings with Owner. During such meetings, progress during the prior month shall be reviewed. These meetings shall be attended by, among other: (a) Design-Builder's Project Manager and other required Design-Builder personnel, as well as key Subcontractors and Design Consultants responsible for Work completed during the specified duration and Work scheduled during the upcoming reporting duration; and (b) Owner representatives and others as designated by Owner. Owner may direct that personnel from Design-Builder and any other DB-Related Entities attend any or all meetings if Owner believes, in its sole opinion, that such personnel are necessary to have at such meetings.

2.1.5 No DB-Related Entity is intended to be, nor shall any DB-Related Entity be deemed to be, a third-party beneficiary of the Agreement, *provided, however*, that this shall not be construed as affecting the rights of any DB-Related Entity to seek recovery under Builder's Risk Insurance as set forth in Exhibit 14.1 ("Insurance Requirements") to the Agreement. Owner is intended to be and shall be deemed a third-party beneficiary of the performance of all those DB-Related Entities having a direct contract with Design-Builder, including but not limited to Owner's rights under Section 11.4 of the Agreement.

2.1.6 Design-Builder assumes responsibility to Owner for the proper performance of the Work of all DB-Related Entities and any acts and omissions in connection with such performance.

2.1.7 Design-Builder shall pay all royalties and license fees in connection with the Work.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide or furnish through Design Consultants or qualified, licensed design professionals employed by Design-Builder, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents.

2.2.2 Design-Builder shall: (a) incorporate all applicable obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant and Subcontractors; and (b) require that its Design Consultants and Subcontractors flow such obligations down to lower-tiered Design Consultants and Sub-Subcontractors, including but not limited to the obligations relative to ownership and use of the Work Product set forth in the Agreement.

2.3 Standard of Care.

2.3.1 Design-Builder shall perform the Work in accordance with: (a) the Contract Documents; (b) applicable Legal Requirements and Governmental Approvals; and (c) Good Engineering and Construction Practice. Notwithstanding the above, if any of (a), (b) or (c) in the preceding sentence conflict, Design-Builder shall be obligated to perform the Work in accordance with the more stringent standard.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the design services included in the Phase 1 Services in accordance with the requirements set forth in Exhibit 1.2.1(a) (“Scope of Phase 1 Services”) of the Agreement.

2.4.2 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with previously approved interim design submissions, as may have been revised in accordance with the design process set forth in this Section 2.4. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes that are inconsistent with any previously approved interim design submission, including, without limitation, the Phase 2 Proposal Design Documents. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Changes to previously approved design submissions, including changes to the Phase 2 Proposal Design Documents and Minor Changes, shall be processed in accordance with Article 9. Following the design review meetings, Owner shall review and approve the interim design submissions and meeting minutes within twenty-one (21) days after receipt of the required submissions, with the understanding that the Parties may agree to a reduction in such 21-day period for time-sensitive critical path submittals. Design-Builder shall promptly revise and modify all such submittals so as to fully reflect all comments and shall deliver to Owner revised submittals for review and approval.

2.4.3 Design-Builder shall submit to Owner the IFC Documents, including drawings and specifications, which shall set forth and describe in detail the requirements for construction of the Work. The IFC Documents shall be consistent with the latest set of approved interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The Parties shall have a design review meeting to discuss, and Owner shall review and approve, the IFC Documents in accordance with the procedures set forth in Section 2.4.2 above. Design-Builder shall proceed with construction in accordance with the approved IFC Documents and shall submit one reproducible set of approved IFC Documents to Owner prior to commencement of construction.

2.4.4 Notwithstanding anything to the contrary in the Contract Documents: (a) Design-Builder assumes and shall have exclusive responsibility for the accuracy and efficacy of the IFC Documents; and (b) Owner’s review and/or approval of the Basis of Design Documents, Phase 2 Proposal Design Documents, IFC Documents, or any interim design submissions or meeting minutes, shall not be deemed to transfer any design liability from Design-Builder to Owner or relieve Design-Builder of any of its obligations under the Contract Documents or liability for any design services that were performed under the Agreement or are part of the Work. Accordingly, in no event shall Design-Builder be entitled to any price, schedule or performance relief associated with any error, omission or deficiency in the IFC Documents, and shall bear full responsibility for the consequences of such errors, omissions or deficiencies.

2.4.5 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and IFC Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the IFC Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 Design-Builder will be entitled to an adjustment in the Phase 1 Services Compensation, GMP and/or Contract Times to the extent the Cost of the Work incurred by Design-Builder and/or its time of performance are adversely impacted by any changes in the Legal Requirements enacted after the Agreement Date, provided Design-Builder satisfies the requirements of Articles 8 and 9 below. Such impacts may include, without limitation, revisions Design-Builder is required to make to the IFC Documents because of such changes in Legal Requirements. Notwithstanding the above, the relief accorded by this Section 2.5.2 shall not apply to changes in Legal Requirements relating to: (a) Design-Builder's or any other DB-Related Entity's corporate existence or the maintenance of its business; (b) changes in Legal Requirements affecting payroll taxes or other taxes associated with labor; or (c) changes in Legal Requirements affecting taxes imposed on an entity's gross revenue, income or profits.

2.6 Government Approvals.

2.6.1 The Parties will, during Design-Builder's performance of the Phase 1 Services, develop a coordinated plan and responsibility matrix for interfacing with Governmental Units and obtaining Governmental Approvals. This plan shall include an agreement by the Parties as to the reasonable date that such Governmental Approvals will be obtained, which agreement shall be reflected in the Phase 2 Amendment.

2.6.2 Except for those Governmental Approvals specifically identified in Section 3.5 below as being the responsibility of Owner, Design-Builder shall be responsible for obtaining, maintaining and paying for all Governmental Approvals that may be required for the proper prosecution and execution of the Work, including but not limited to those Governmental Approvals identified in the Phase 2 Amendment as being the responsibility of Design-Builder. If any such Governmental Approval is required to be formally issued in the name of Owner, Design-Builder shall undertake all efforts to obtain such Governmental Approvals with Owner's reasonable support and cooperation. Design-Builder shall develop all data and technical documents for Governmental Approval submittals, prepare and submit all applications, participate in meetings with Governmental Units and Owner as required, and expedite all Governmental Approvals to meet Project schedule requirements.

2.6.3 Governmental Approval applications and other documentation required in connection with a Governmental Approval shall be subject to approval by Owner. Design-Builder shall deliver to Owner, promptly after Design-Builder's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by the Contract Documents.

2.6.4 Design-Builder shall provide all commercially reasonable assistance to Owner to obtain those Governmental Approvals that are the responsibility of Owner under Section 3.5 below.

2.6.5 No construction activity will commence until: (a) all Governmental Approvals required for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (b) Owner has been notified that such Governmental Approvals have been obtained; and (c) Owner has, after reviewing the validity and scope of the Governmental Approval within the time periods set forth in Section 3.1.2 below, authorized Design-Builder to proceed.

2.6.6 Design-Builder shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals. Design-Builder shall not be entitled to an adjustment in the GMP and/or Contract Times for any events arising from or related to Design-Builder or any other DB-

Related Entity violating or failing to comply with any Governmental Approval, including but not limited to suspensions arising therefrom. Such violations and failures to comply shall be at the sole risk of Design-Builder, and shall not be a basis for granting an adjustment in the GMP and/or Contract Times.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a Separate Contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, commissioning, start-up, testing, Equipment and Materials, construction equipment, supplies, temporary utilities and other temporary facilities and other related services to permit Design-Builder to achieve Substantial Completion and Final Completion of the Project consistent with the Contract Documents. Design-Builder retains all market risk, whether or not foreseeable, pertaining to cost and availability of labor, Equipment and Materials, and all other items required or used in connection with the performance of the Work.

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall coordinate the activities of all Subcontractors.

2.7.4 If any Separate Contractor performs work on, adjacent, or in proximity to the Project or the Site, or has any element of work that interfaces or affects the Work, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Design-Builder specifically agrees to attend and participate in any coordination meetings that are held by Owner to manage and coordinate the work of Design-Builder and Separate Contractors.

2.7.5 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work. It shall also be Design-Builder's duty to dust-palliate all working areas and access routes, if applicable. All operations shall be conducted by Design-Builder so that no fire hazards are created.

2.7.6 Except as may be explicitly set forth in the Phase 2 Amendment, Design-Builder shall have care, custody, and control of the Project (including but not limited to having responsibility for the security of the Site and risk of loss), until the Substantial Completion Date.

2.7.7 Design-Builder shall be responsible for performing and paying for all utility relocations necessary or convenient to its performance of the Work. For all such relocations, Design-Builder will meet all requirements, procedures and standards set forth in the Contract Documents and/or required by the applicable utility.

2.7.8 Design-Builder shall be responsible for making arrangements to obtain, provide and pay for all temporary and permanent utilities, including but not limited to gas and electric, associated

with the Work, except for those utilities specifically identified in the Contract Documents as being provided by Owner and furnished without cost to Design-Builder.

2.7.9 During any adverse weather (including but not limited to unusually severe and abnormal weather conditions as set referenced in Section 8.4.3 below), Design-Builder shall take necessary precautions so that the Work may progress properly and is satisfactory in all respects.

2.7.10 Pursuant to Labor Code Section 6705, Design-Builder shall submit, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be deemed to be included in the GMP.

2.7.11 For a project involving the use of in-use off-road diesel-fueled vehicles, as defined by 13 CCR 2449, Design-Builder shall obtain copies of the valid Certificates of Reported Compliance, as described in 13 CCR 2449(n), for the fleet performing services pursuant to this Agreement and all listed subcontractors, if applicable, prior to commencing any work pursuant to this Agreement or any renewed contract with that fleet. Design-Builder shall indemnify, defend and hold harmless the Owner, its officers, agents, employees and directors from any liability imposed arising from Design-Builder's violation of any regulation set forth in 13 CCR 2449.

2.7.12 Design-Builder shall at all times ensure that the Work is conducted in a manner that does not interfere with ongoing operations at the Site not immediately under any Phase 2 Work. Design-Builder and each of its subcontractors shall cooperate with Owner to ensure security, access, parking, utilities and other operation needs of Owner are not interrupted during Owner's hours of operation.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (a) all individuals at the Site, whether working or visiting; (b) the Work, including Equipment and Materials incorporated into the Work or stored on-Site or off-Site; and (c) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a member of its Key Personnel with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work ("Design-Builder's Safety Representative"). Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. Design-Builder's Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors of any tier, and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all Governmental Units having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors of any tier of their own contractual and legal obligations and

responsibility for: (a) complying with all Legal Requirements, including those related to health and safety matters; and (b) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all Equipment and Materials, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any Supplier warranty which provides Owner with greater warranty rights than set forth in this Section 2.9.1 or any Contract Document. Design-Builder will provide Owner with all Supplier warranties upon Substantial Completion and will perform the Work so as to maintain and preserve such Supplier warranties.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 above, within a period of one year from the Substantial Completion Date, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable. Design-Builder shall perform or cause to be performed all corrective work in a manner that will minimize interference with the ongoing operations of the Project.

2.10.3 Owner may, based on good cause, direct Design-Builder to perform a "root cause" analysis of any alleged defect in the Work. If Design-Builder fails to perform such analysis as directed by Owner, or if Owner concludes that the "root cause" analysis is flawed, Owner may elect to conduct an independent analysis of the alleged defect, whereupon Design-Builder shall cooperate with Owner and provide such information relevant to the alleged defect as Owner may request. If the "root cause" or independent analysis reveals a defect or defects in any part of the Work, Design-Builder shall be responsible for the costs and expenses of remedying such defects, including the costs of the "root cause" or independent analysis. If the "root cause" or independent analysis demonstrates that there is no defect, then Owner shall bear the reasonable costs and expenses of such analyses. All remedial measures related to defects revealed by any "root cause" or independent analysis must be approved by Owner prior to implementation by Design-Builder.

2.10.4 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations

for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents, at law, or in equity.

2.11 Uncovering Work.

2.11.1 If any Work is covered contrary to the written request of Owner, then Design-Builder shall, if requested by Owner, uncover such Work for Owner's observation, and then replace the covering, all at Design-Builder's expense.

2.11.2 If Owner considers it necessary or advisable that covered Work be observed by Owner, or inspected or tested by others, then Owner will so advise Design-Builder and Design-Builder shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question. If it is found that the uncovered Work is defective, Design-Builder shall be responsible for the costs and expenses relating to such uncovering and correction of the defective Work. If it found that the uncovered Work is not defective, Design-Builder will be entitled to an adjustment in the GMP and/or Contract Times for the impact of such uncovering, provided Design-Builder satisfies the requirements of Articles 8 and 9 below.

2.12 Punch List Requirements.

2.12.1 Design-Builder shall submit a proposed Punch List in accordance with Section 8.2.1 below when it believes that it has achieved Substantial Completion. Design-Builder shall promptly complete all items on the Punch List. Owner shall have the option to correct or otherwise resolve any and all Punch List items not promptly completed by Design-Builder by using its own forces or by hiring others. The cost of such correction or resolution of remaining punch list items by Owner or others shall be borne by Design-Builder.

2.13 Training Plan.

2.13.1 Design-Builder shall prepare and submit to Owner a plan for training of Owner's supervision, operations and maintenance employees in accordance with the Contract Documents. Owner approval of the training plan is a condition precedent to certain performance testing required for the achievement of Substantial Completion, which approval will not be unreasonably withheld. Consequently, Design-Builder shall complete training of designated Owner employees in accordance with the approved training plan prior to commencement of performance testing in order to enable such Owner employees to assume operation and maintenance responsibility for the Project upon the Substantial Completion Date.

2.14 Startup, Commissioning, and Testing.

2.14.1 Design-Builder shall prepare and submit to Owner for its review and approval a detailed Startup, Commissioning, and Testing Plan in accordance with the Contract Documents. Owner's approval of the Startup, Commissioning, and Testing Plan is a condition precedent to commencement of performance testing required for the achievement of Substantial Completion. Design-Builder shall remain responsible for supervision of the Work, including for any operation and maintenance required of the Equipment and Materials, throughout startup, commissioning, and conducting all testing until the Substantial Completion Date.

2.14.2 Design-Builder will participate in such meetings as are required to develop a coordinated plan for startup, commissioning, testing and confirming Substantial Completion.

2.15 Extended Technical Support Services

2.15.1 Following the Substantial Completion Date, Design-Builder may be required to provide extended technical support services, which generally consist of monitoring and advising on Owner's operations and maintenance of the Project, assisting Owner in training its staff, and other technical services that Owner may require. During the Phase 1 Services, Owner and Design-Builder will discuss and agree upon the precise scope and duration of such support services, and commercial terms associated with such services.

2.15.2 For the avoidance of doubt, the Work to be completed as of Final Completion will not include any extended technical support services.

Article 3 **Owner's Services and Responsibilities**

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals (where required) of interim design submissions, the IFC Documents consistent with the turnaround times set forth in the Contract Documents, Phase 1 Services Schedule, and the Baseline Schedule, *provided, however*, that, unless stated otherwise in the Contract Documents, Owner shall have twenty-one (21) days after receipt of such submissions to act upon such submissions, unless: (a) a shorter review period is specifically stated in the Contract Documents; or (b) Design-Builder and Owner mutually agree upon a shorter review period for a specific submission. Design-Builder may, for more complex or time-sensitive submittals, request joint review meetings with Owner in the interest of expediting such reviews, and Owner will, to the extent it is reasonably able to do so, attempt to satisfy such requests. Owner approval, or narrative indicating approval by Owner or indication that Owner is approving, means that Owner is reviewing for conformance with the Contract Documents and indicating its belief at a specific time that submittals being reviewed are in conformance. In providing such approval, Owner is not accepting any responsibility or liability for itself or relieving responsibility for performance of the Design-Builder under the Contract Documents, for which the Design-Builder remains wholly responsible.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Owner shall provide to Design-Builder, at its own cost and expense, Owner-Furnished Information.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work; *provided, however*, that: (a) Design-Builder provides Owner with reasonable advance written notice of the need for such agreement; and (b) Design-Builder retains all responsibility to obtain any such agreement to the extent pertaining to construction means, methods, techniques, sequences and procedures. Owner is further responsible for all costs, including attorneys' fees, incurred in securing those necessary agreements for which it is responsible under this Section 3.2.2.

3.3 Financial Information.

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 below or exercise any other right permitted under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner shall designate a representative responsible for providing Owner-Furnished Information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents ("Owner's Representative"). Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.4.2 Owner's Representative shall have full authority to act on behalf of Owner with respect to matters requiring Owner's approval or authorization. Owner's Representative may delegate all or a portion of its authority to others by written notice to Design-Builder, which delegated authority may be revoked or modified at any time by written notice to Design-Builder.

3.5 Government Approvals.

3.5.1 Owner shall obtain and pay for only the Governmental Approvals expressly set forth in the Phase 2 Amendment as being the sole responsibility of Owner.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those Governmental Approvals that are Design-Builder's responsibility.

3.6 Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by Separate Contractors with whom Owner has contracted. Owner shall contractually require its Separate Contractors to cooperate with Design-Builder, and coordinate their activities so as not to interfere with Design-Builder, in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents. Owner shall also contractually require its Separate Contractors to attend and participate in any coordination meetings that are held by Owner to manage and coordinate the work of Design-Builder and Separate Contractors.

Article 4

Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions.

4.1.1 Where Owner has advised Design-Builder of known Hazardous Materials or Hazardous Environmental Conditions at the Site, or where Design-Builder has identified Hazardous Materials or Hazardous Environmental Conditions at the Site during its performance of the Phase 1 Services, these Hazardous Materials and Hazardous Environmental Conditions are part of the Work and Design-Builder shall take such action as is necessary, in accordance with applicable Legal Requirements, to plan for and to remediate and render harmless all such Hazardous Materials and Hazardous Environmental Conditions. Remediation plans for such known Hazardous Materials and Hazardous Environmental Conditions shall be provided to Owner for approval prior to undertaking the remediation.

4.1.2 If Design-Builder encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with Public Contract Code Section 7104, to protect the interests of any affected party. Design-Builder shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify Owner and, if required by Legal Requirements, assist Owner in providing notifications to all Governmental Units having jurisdiction over the Project or Site.

4.1.3 Design-Builder, in consultation with Owner, shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Legal Requirements. Design-Builder shall, as may be directed by Owner and prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain on Owner's behalf all applicable Governmental Approvals to implement such plans. During the period of any investigation and remediation efforts, Design-Builder shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

4.1.4 Except for those Hazardous Materials and Hazardous Environmental Conditions set forth in Section 4.1.6 below, Design-Builder will be entitled to an adjustment in the GMP and/or Contract Times to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of unknown Hazardous Environmental Conditions, provided Design-Builder satisfies the requirements of Articles 8 and 9 below.

4.1.5 To the fullest extent permitted by Legal Requirements, Owner shall indemnify and hold harmless Design-Builder from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from unknown Hazardous Environmental Conditions. Nothing in this Section 4.1.5 shall obligate Owner to indemnify or hold harmless Design-Builder from and against the consequences of the breach of contract, negligence, gross negligence, or willful misconduct of Design-Builder or any other DB-Related Entity.

4.1.6 Notwithstanding anything to the contrary in this Section 4.1, Design-Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Material or Hazardous Environmental Condition present at, on, in or under, or migrating and/or emanating to or from the Site, to the extent brought or caused to be brought on the Site by any act or omission of Design-Builder or any other DB-Related Entity; (b) Hazardous Materials or Hazardous Environmental Conditions that are part of the Work pursuant to Section 4.1.1 above; and (c) the creation or exacerbation of any known or unknown Hazardous Environmental Condition due to the breach of contract, negligence, gross negligence, or willful misconduct of Design-Builder or any other DB-Related Entity. To the fullest extent permitted by Legal Requirements, Design-Builder shall indemnify, defend and hold harmless each Owner Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Items (a), (b) and/or (c) above.

4.1.7 Nothing contained in this Section 4.1 is intended to identify Design-Builder as the generator of any pre-existing Hazardous Materials or Hazardous Environmental Condition.

4.2 Inspection of Site Conditions.

4.2.1 Design-Builder represents and warrants that it has, as of the Phase 2 Amendment Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction which are ascertainable or visible upon a thorough investigation of the Site, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface conditions, and other general and local conditions (including labor) which might affect its performance or cost of the Work.

4.2.2 If Design-Builder undertakes any additional testing, inspections or investigations, all reports or analyses generated thereby shall be furnished to Owner promptly after such reports or analyses are generated.

4.3 Differing Site Conditions.

4.3.1 Concealed or latent physical conditions or subsurface conditions at the Site that: (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the GMP and/or Contract Times to the extent the Cost of the Work incurred by Design-Builder and/or time of performance are adversely impacted by the Differing Site Condition, provided Design-Builder satisfies the requirements of Articles 8 and 9 below. The term “Differing Site Conditions” excludes: (a) conditions of which Design-Builder had actual or constructive knowledge as of the Phase 2 Amendment Date; and (b) conditions that should have been discovered through a reasonable Site investigation performed during the Phase 1 Services and under Section 4.2.1 above. For the avoidance of doubt, Hazardous Environmental Conditions are not deemed Differing Site Conditions, and shall be treated as set forth under Section 4.1 above.

4.3.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.3.3 The Geotechnical Baseline Report (GBR) sets forth and establishes the contractual geotechnical baseline for the assumed geotechnical conditions for those areas of the Project that have been baselined. Whenever there is an inconsistency between conditions indicated in the GBR and either: (a) conditions indicated in the Geotechnical Data Report (GDR); or (b) conditions indicated elsewhere in the Contract Documents, then the conditions indicated in the GBR shall take precedence, and shall be the conditions against which actual conditions encountered are compared for the purpose of determining if a Differing Site Condition exists.

4.4 Historical Artifacts.

4.4.1 If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction, including any buried structural remains (e.g., wall foundations, wells, privies, cisterns), Design-Builder shall immediately halt all activity within the immediate area of the discovery and in any adjacent areas where additional or related resources may reasonably be expected to be present, and notify Owner of the discovery by telephone or in person, which notice shall be given within twenty-four (24) hours of Design-Builder making such discovery. Owner will thereafter provide instructions to Design-Builder as to how to address such discoveries, including the protocol for recovery and/or documentation associated with such discoveries. Design-Builder shall take interim measures to protect the discovery from looting and

vandalism. Work in all areas not subject of the discovery may continue. All items discovered by Design-Builder belong to the property owner.

4.4.2 If Design-Builder has been adversely impacted by the presence, removal or remediation of a discovery under Section 4.4.1 above, Design-Builder will be entitled to an adjustment in the GMP and/or Contract Times to the extent the Cost of the Work incurred by Design-Builder and/or time of performance are adversely impacted by such discovery, provided Design-Builder satisfies the requirements of Articles 8 and 9 below.

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall obtain and maintain, at its own cost and expense, the insurance coverages specified in Exhibit 14.1 ("Insurance Requirements") of the Agreement, which insurance shall be in accordance with this Section 5.1.

5.1.2 All insurance required by Exhibit 14.1 ("Insurance Requirements") of the Agreement must be obtained and maintained from insurance companies currently authorized by the Insurance Commissioner to transact business of insurance or on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by Owner.

5.1.3 Design-Builder shall deliver to Owner, with copies to each additional insured, the following:

(a) Certificates of insurance and endorsements establishing that Design-Builder has obtained and is maintaining the policies and coverages required hereunder, with the understanding that updated, compliant certificates of insurance and endorsements shall be delivered annually, at least ten (10) days prior to the expiration of any policy, to evidence renewal of the required insurance coverages.

(b) Upon request by Owner or any additional insured, evidence of such required insurance, including documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant endorsements, exclusions, and evidence of insurance required to be purchased and maintained by Design-Builder, Design Consultants, or Subcontractors. In any documentation furnished under this provision, Design-Builder, Design Consultants, and Subcontractors may block out (redact) any confidential premium or pricing information or other information not applicable to this Project or Agreement.

(c) Failure of Owner or any additional insured to demand the documents required by this Section 5.1.3, or failure of Owner identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the obligation of the relevant party (i.e., Design-Builder, Design Consultant, or Subcontractor) to obtain and maintain such insurance.

5.1.4 Design-Builder shall require its first-tier Design Consultants and Subcontractors to purchase and maintain the insurance coverages specified under Exhibit 14.1 ("Insurance Requirements") to the Agreement.

5.1.5 Owner does not represent that insurance coverage and limits established in Exhibit 14.1 ("Insurance Requirements") of the Agreement will be adequate to protect the interests of Design-

Builder, Design Consultants, or Subcontractors. Each such party is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Design-Builder deems necessary.

5.1.6 The insurance and insurance limits required under Exhibit 14.1 (“Insurance Requirements”) of the Agreement are minimums and shall not be deemed as a limitation on Design-Builder’s liability, or that of any other DB-Related Entity, under the indemnities granted to Owner, additional insureds and other individuals and entities in the Contract Documents or otherwise.

5.1.7 If in any instance Design-Builder has not performed its obligations respecting obtaining and maintaining insurance coverage required hereunder, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies, then for purposes of determining Design-Builder’s liability and the limits thereon or determining reductions in compensation due from Owner to Design-Builder on account of available insurance, Design-Builder shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Design-Builder performed such obligations and not committed such failure.

5.1.8 Except as set forth in Section 4.7.1 of the Agreement relative to the Contingency, Design-Builder and all other DB-Related Entities shall be solely responsible for any and all deductibles or self-insured retentions that shall apply under any required, or otherwise purchased, insurances and shall have no recourse against Owner for any such costs.

5.1.9 All policies of insurance that Design-Builder is required to purchase and maintain under the Agreement shall:

(a) Contain a provision requiring the insurer to give not less than thirty (30) days’ prior notice to Owner whenever the insurer gives Design-Builder a notice of cancellation or non-renewal with respect to the policy (except in the case of any non-premium payment, not less than ten (10) days’ prior notice, which the insurer shall be obligated to give to Owner simultaneously with providing such notice to Design-Builder). The provision required by the preceding sentence shall not be deemed to infer a right of cancellation that would otherwise not exist in the absence of such provision.

(b) Delete any specific design-build or similar exclusions that could compromise coverage because of Design-Builder’s involvement in the design-build process.

(c) Contain coverage terms and conditions that reflect the industry standard for projects of a similar size, scope, and nature of this Project that the commercial market will provide and support as of the date of such insurance procurement and any subsequent renewals.

(d) Other than for professional liability insurance, workers compensation/employer’s liability insurance and Builder’s Risk Insurance, where additional insured coverage is required include cross-liability clauses allowing one insured to bring a claim against another insured party. With regard to pollution liability insurance, a cross-liability clause will be allowed as long as it does not impact Owner’s ability to sue another insured party and collect under the policy.

(e) Other than for professional liability insurance and workers compensation/employer’s liability insurance, be endorsed so that the insurer agrees to waive, to the extent permitted by law, all rights of subrogation or action that it may have or acquire against Owner, Owner Indemnitees, or any additional insured.

(f) Other than for professional liability insurance, workers compensation/employer's liability insurance, automobile liability insurance, and contractor pollution liability insurance, contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds.

(g) With regard to Builder's Risk Insurance, have each policy endorsed to contain: (i) a standard mortgagee clause to the effect that Owner and other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured, or failure to comply with a statutory requirement; and (ii) provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against any Owner Indemnitee, DB-Related Entity, or Separate Contractor.

(h) For commercial general liability and umbrella/excess liability insurance, not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs.

(i) Design-Builder's commercial general liability, automobile liability, umbrella/excess, and pollution liability must:

(1) Include and list as additional insureds Owner and Owner Indemnitees, and include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

(2) Afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

(3) Not seek contribution from insurance maintained by the additional insured; and

(4) As to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Design-Builder's acts or omissions, or the acts and omissions of DB-Related Entities, in the performance of Design-Builder's operations.

5.1.10 Owner waives all rights against the DB-Related Entities, and Design-Builder waives all rights against the Owner Indemnitees and Separate Contractors, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by the Builder's Risk Insurance. Owner and Design-Builder shall, where appropriate, require similar waivers of subrogation from Owner Indemnitees, DB-Related Entities and Separate Contractors, and shall require each of them to include similar waivers in their contracts. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

5.2 Performance and Labor and Material Payment Bonds.

5.2.1 Design-Builder shall, no later than ten (10) days after the Phase 2 Amendment Date, provide Owner with: (a) a Performance Bond in the penal amount equal to one hundred percent (100%) of the GMP, which bond shall cover the faithful performance of all the Design-Builder's obligations under the Contract Documents; and (b) a Labor and Material Payment Bond in the penal

amount equal to one hundred percent (100%) of the GMP. The forms of the Performance Bond and Labor and Material Payment Bond are those set forth in Exhibits 14.2(a) (“Form of Performance Bond”) and 14.2(b) (“Form of Labor and Material Payment Bond”) respectively to the Agreement. The Performance Bond shall remain valid for a period of two (2) years after Final Completion. If Design-Builder fails to provide such bonds, Design-Builder may be found in material default of the Agreement.

5.2.2 The Performance Bond and Labor and Material Payment Bond shall be provided by a surety (or sureties) authorized by applicable Legal Requirements to do business in the State of California, with an A.M. Best Company Financial Strength Rating of A- or better. Sureties must also be listed in the U.S. Department of Treasury’s Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies (U.S. Department of the Treasury 2022).

Article 6 **Payment**

6.1 General.

6.1.1 Owner shall pay Design-Builder for the Phase 1 Services in accordance with Section 7.1 of the Agreement and this Article 6.

6.1.2 Owner shall pay Design-Builder for Phase 2 Services through monthly progress payments described in Section 6.2 below, with payments to be based upon the Schedule of Values. In making such progress payments, Owner shall retain the amounts set forth in Section 7.2.3 of the Agreement, as well as other amounts permitted under the Contract Documents or at law.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner’s review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, including, without limitation, such documents, information and data as Owner may require to: (a) waive or release lien rights for all Work performed (other than with respect to any retainage then withheld); and (b) evaluate or verify the right to receive payment of any amount requested for payment.

6.2.2 The Application for Payment may request payment for Equipment and Materials not yet incorporated into the Project, provided that: (a) Owner is satisfied that the Equipment and Materials are suitably stored at either the Site or another acceptable location; (b) the Equipment and Materials are protected by suitable insurance; and (c) upon the earlier of incorporation into the Project or payment, Owner will receive the Equipment and Materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder’s representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder’s receipt of payment, whichever occurs earlier. The passage of title shall not be construed as relieving Design-Builder from the sole responsibility for all Work upon which payments have been made (including but not limited to risk of loss or the restoration of any damaged Work), or as waiving the right of Owner to require the fulfillment of all of the terms of the Contract Documents.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will so notify Design-Builder in writing within twenty (20) days after Owner's receipt of the Application for Payment. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the Parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 below.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement. Payments which Owner disputes in good faith shall not be deemed due.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due and is not subject to a good faith dispute, then Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 below. All payments due and unpaid, other than those subject to a good faith dispute, shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay its Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 below.

6.6 Final Payment.

6.6.1 Upon achieving Final Completion in accordance with Section 8.3 below, Design-Builder shall provide Owner with a Final Application for Payment. The Final Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, including, without limitation the following:

(a) An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, Equipment and Materials, construction equipment, supplies, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

(b) A general release executed by Design-Builder waiving all claims, except for receipt of final payment by Design-Builder and those claims previously made in writing to Owner and remaining unsettled at the time of final payment, which previously made claims shall be specifically listed in an attachment to the general release;

(c) Consent of Design-Builder's surety to final payment;

(d) All record information, operating manuals, warranties and other deliverables required by the Contract Documents, to the extent they have not been previously provided to Owner;

(e) All documents, information and data as Owner may require to: (a) unconditionally waive or release lien rights in connection with all Work performed (other than with respect to claims for Work not waived under the general release provided under (b) above); and (b) evaluate or verify the right to receive payment of any amount requested for payment; and

(f) Certificates of insurance, or other evidence reasonably required by Owner, confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.6.2 After receipt of a proper Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement.

Article 7 **Indemnification**

7.1 Intellectual Property Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against any Owner Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement or unauthorized use of any patent, trademark, copyright, or trade secret now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep all Owner Indemnitees regularly informed of all developments in the defense of such actions.

7.1.2 If any Owner Indemnitee is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent, trademark, copyright or trade secret suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense: (a) modify the Work so as to avoid infringement of any such patent, trademark copyright, or trade secret; or (b) replace said Work with Work that does not infringe or violate any such patent, trademark, copyright or trade secret; *provided, however*, that any such modification or replacement shall not adversely affect the performance, use, operation, or any material characteristic of the Project, and shall be subject to the approval of Owner Indemnitees.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent, trademark, copyright or trade secret: (a) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (b) arising from modifications to the Work by Owner or its agents after the Substantial Completion Date. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall, to the fullest extent permitted by Legal Requirements, defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner, to the fullest extent permitted by Legal Requirements, indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, or tax assessment imposed by the applicable Governmental Unit, and reasonable attorneys' fees or other expenses or costs incurred by Design-Builder as a result of defending a claim caused by any action taken by Design-Builder in accordance with Owner's directive with respect to such claimed tax exemption. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner Indemnitees from any claims or mechanic's liens brought against any Owner Indemnitee or against the Project as a result of the failure of Design-Builder or any other DB-Related Entity to pay for any services, Equipment and Materials, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from any Owner Indemnitee that such a claim has been asserted or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond that will remove such claim or lien from title. If Design-Builder fails to do so, Owner Indemnitees will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and third party property damage or destruction (other than to the Work itself) to the extent resulting from the gross negligence, willful misconduct or negligent acts or omissions of Design-Builder or any other DB-Related Entity. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 7.4.

7.4.2 If an employee of any Design-Builder or any other DB-Related Entity has a claim against any Owner Indemnitee, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder or any other DB-Related Entity under any employee benefit acts, including workers' compensation or disability acts.

7.4.3 Pursuant to the full language of California Civil Code §2782, and only to the extent related to the work of a qualified Design Professional, Design-Builder agrees to indemnify, including the cost to defend, Owner and its officers, officials, employees, and volunteers from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of said Design Professional in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the Owner; and does not apply to any passive negligence of the Owner unless caused at least in part by the Design Professional. Owner agrees that in no event shall the cost to defend charged to the Design-Builder exceed the Design Professional's proportionate percentage of fault.

7.5 Defense and Indemnification Procedures.

7.5.1 If any Owner Indemnitee receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of Design-Builder's indemnification under the Contract Documents, it shall by writing as soon as practicable: (a) inform Design-Builder of such claim; (b) send to Design-Builder a copy of all written materials Owner Indemnitee has received asserting such claim; and (c) notify Design-Builder that either: (i) the defense of such claim is being tendered to Design-Builder; or (ii) Owner Indemnitee has elected to conduct its own defense for a reason set forth below.

7.5.2 If the insurer under any applicable insurance policy accepts tender of defense, Design-Builder and Owner Indemnitee shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then the following provisions shall apply.

7.5.3 If the defense is tendered to Design-Builder, it shall within forty-five (45) days of said tender deliver to Owner Indemnitee a written notice stating that Design-Builder: (a) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (b) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (c) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claim under the Contract Documents. If such notice is not delivered within such forty-five (45) days, the tender of defense shall be deemed rejected.

7.5.4 If Design-Builder accepts the tender of defense, Design-Builder shall have the right to select legal counsel for Owner Indemnitee, subject to reasonable approval of Owner Indemnitee, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (a) Design-Builder shall, at Design-Builder's expense, fully and regularly inform Owner Indemnitee of the progress of the defense and of any settlement discussions; and (b) Owner Indemnitee shall, at Design-Builder's expense for all of Owner Indemnitee's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Owner Indemnitee and maintain the confidentiality of all communications between it and Design-Builder concerning such defense to the extent allowed by law.

7.5.5 Owner Indemnitee shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (a) the defense is tendered to Design-Builder and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (b) Owner Indemnitee, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (i) a conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (ii) Design-Builder is otherwise not providing an effective defense in connection with the claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. Owner Indemnitee may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons thereof.

7.5.6 If Owner Indemnitee is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting there from) shall be reimbursed by Design-Builder after completion of the proceeding.

7.5.7 If Owner Indemnitee is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Design-Builder's indemnity. Notwithstanding the foregoing, if Owner Indemnitee elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, Owner Indemnitee shall pay its own costs and expenses relating thereto. In addition, if Owner Indemnitee elects to conduct its own defense because it perceives a conflict of interest, Owner Indemnitee shall pay its own costs and expenses relating thereto.

7.6 Survival.

7.6.1 All of Design-Builder's obligations under this Article 7 shall survive any termination of the Agreement, whether for cause or convenience.

Article 8 **Time**

8.1 General.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve completion of the Work within the Contract Times in accordance with Article 3 of the Agreement.

8.1.2 Design-Builder shall perform the Work in accordance with the Baseline Schedule. Design-Builder shall provide Owner with monthly updates, or more frequently as required by conditions and progress of the Work, comparing actual progress to the Baseline Schedule, but such updates shall not be deemed to modify the Baseline Schedule or Contract Times, nor relieve Design-Builder of its obligations to complete the Work within the Contract Times, as may be adjusted in accordance with this Article 8.

8.2 Substantial Completion.

8.2.1 Design-Builder shall notify Owner when it believes the Work has achieved Substantial Completion and is ready for Owner to prepare and execute a Certificate of Substantial Completion. As a condition to such notice, Design-Builder shall have prepared and submitted to Owner a proposed Punch List, including planned dates for completion for each Punch List item. In no event shall the Punch List contain any incomplete items that would impact the ability of Owner to operate and maintain the Project as intended, safely, and in compliance with Legal Requirements. By submitting the Punch List to Owner, Design-Builder represents that work on the Punch List will be completed by the Scheduled Final Completion Date. Owner shall have the right to approve the Punch List in its reasonable discretion. The failure to include any items on such list does not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents.

8.2.2 Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect the Work to assess the Punch List and verify that the Work has achieved progress required for Substantial Completion in accordance with the requirements of the Contract Documents.

8.2.3 Substantial Completion shall be deemed to have occurred only when all of the following conditions have been satisfied:

(a) Design-Builder has submitted, and Owner has approved in writing (such approval not to be unreasonably withheld or delayed) a certification by Design-Builder to Owner that the

Work, excepting only items on the approved Punch List, is complete in accordance with the Contract Documents;

(b) Design-Builder and Owner have agreed in writing upon the Punch List;

(c) Design-Builder has delivered to Owner copies of the warranties of all Equipment and Materials, together with copies of all related operating manuals supplied by, or required from, Suppliers;

(d) Design-Builder has successfully completed all performance tests required under the Contract Documents and provided Owner with copies of all test results and any required certification;

(e) All Governmental Approvals required for the occupancy and continued operations and maintenance of the Project by Owner or others have been obtained and are in full force and effect;

(f) Design-Builder has completed all Owner training and provided Owner all training materials required under the training plan; and

(g) All Delay Liquidated Damages due Owner, if any, have been paid in full by Design-Builder or otherwise satisfied.

8.2.4 Owner will inspect the Work following notice from Design-Builder, evaluate Design-Builder's submissions under Section 8.2.3 above, and determine whether Substantial Completion has been achieved. If Owner determines that Substantial Completion has not yet been achieved, it shall so notify Design-Builder in writing of the reasons for such determination. Design-Builder shall expeditiously remedy the issues and, when completed, re-request in writing that Owner perform a Substantial Completion inspection.

8.2.5 When Owner agrees that Design-Builder has satisfied all other requirements for Substantial Completion, Owner will prepare a Certificate of Substantial Completion that will set forth: (a) the Substantial Completion Date; (b) the approved Punch List; (c) provisions (to the extent not already provided in the Contract Documents or requiring modification) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities, insurance, and damage to Work; and (d) an acknowledgment that warranties commence to run on Substantial Completion Date, except as may otherwise be noted in the Certificate of Substantial Completion.

8.2.6 The Substantial Completion Date shall be the day on which Owner has executed the Certificate of Substantial Completion, *provided, however*, that if Owner has executed the Certificate of Substantial Completion, then Substantial Completion shall be deemed effective as of the date Design-Builder has executed the Certificate of Substantial Completion for the sole purposes of determining: (a) Design-Builder's liability to Owner for Delay Liquidated Damages for failure to achieve Substantial Completion on or before the Scheduled Substantial Completion Date; and (b) Design-Builder's obligation to correct Work under Section 2.10.1 above.

8.3 Final Completion.

8.3.1 Final Completion shall be deemed to have occurred when all of the following conditions have been satisfied:

(a) Design-Builder has achieved Substantial Completion in accordance with Section 8.2 above;

(b) All Work, including all clean-up and removal of construction materials, demolition debris and temporary facilities, is complete, and in all respects is in compliance with the Contract Document;

(c) Design-Builder shall have delivered to Owner all closeout documents and other deliverables required by the Contract Documents;

(d) Design-Builder's surety has consented to the release of final payment to Design-Builder; and

(e) Design-Builder has certified to Owner that all of its claims against Owner have been resolved, except for those set forth in the attachment to the general release described in Section 6.6.1(b) above;

(f) All Delay Liquidated Damages due under the Agreement have been paid or otherwise satisfied; and

(g) Design-Builder and Owner have executed a Certification of Final Completion that all of the foregoing conditions have been satisfied.

8.3.2 Design-Builder shall notify Owner when it believes the Work has achieved Final Completion and is ready for Owner to prepare and execute a Certificate of Final Completion. Owner shall determine, within twenty-one (21) days following its receipt of such notice, whether it concurs that Final Completion has been achieved. If Owner disagrees, it shall promptly send written notice to Design-Builder of the basis for its disagreement. Design-Builder shall expeditiously correct the conditions raised by Owner in order to achieve Final Completion. The preceding process will continue until Owner determines that Final Completion has been achieved.

8.3.3 The Final Completion Date shall be the day on which Owner has executed the Certificate of Final Completion. However, for the sole purpose of determining Design-Builder's liability to Owner for Delay Liquidated Damages for failure to achieve Final Completion on or before the Scheduled Final Completion Date, Final Completion shall be deemed effective as of the date Design-Builder has executed the Certificate of Final Completion.

8.4 Excusable Delays.

8.4.1 The term "Excusable Delay" shall refer to delays in the performance of the Work to the extent caused directly by acts, omissions, conditions, events, or circumstances beyond the reasonable control of Design-Builder and all other DB-Related Entities, including, by way of example, acts or omissions of Owner or anyone under Owner's control (including Owner's Separate Contractors), changes in the Work, Differing Site Conditions, unknown Hazardous Environmental Conditions, and Force Majeure Events.

8.4.2 Notwithstanding Section 8.4.1 above, all cost, time, and other risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be deemed Excusable Delays, and shall not be the basis for any relief, monetary, schedule, or otherwise, to Design-Builder:

(a) general market and economic conditions affecting the availability, supply or cost of labor, Equipment and Materials, construction equipment, supplies, or commodities;

(b) strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect

a specific trade on a national or regional level and were not caused by the improper acts or omissions of Design-Builder or any other DB-Related Entity;

(c) delays in obtaining or delivery of Equipment and Materials, or any other goods or services, from any DB-Related Entity, unless the DB-Related Entity's reason for delay arises from an event that would otherwise be excusable to Design-Builder under these General Conditions of Contract;

(d) delays of common carriers, unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Design-Builder under these General Conditions of Contract;

(e) bankruptcy or insolvency of any DB-Related Entity;

(f) the inability of any DB-Related Entity to perform, unless such inability would be otherwise excusable to Design-Builder under these General Conditions of Contract;

(g) any acts, omissions, conditions, events, or circumstances that were caused by or arose from the negligent acts, omissions, fault, gross negligence, willful misconduct, breach of contract, or violation of law by Design-Builder or any other DB-Related Entity; and

(h) the exercise of any right or any act by Owner permitted under the Contract Documents, except to the extent the Contract Documents expressly require an adjustment in the GMP and/or Contract Times as a result of such exercise or act (e.g., a change in the Work that will delay performance).

8.4.3 If Design-Builder intends to seek Excusable Delay classification for any weather condition, it shall demonstrate, as a condition to qualifying for an Excusable Delay, that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Site.

8.4.4 If Design-Builder intends to seek Excusable Delay classification for a delay in the issuance of a Governmental Approval, it shall demonstrate that: (a) Design-Builder and all other applicable DB-Related Entities have submitted all applications, data, studies, reports, responses and other information required under Legal Requirements in order to obtain the Governmental Approval; (b) Design-Builder and all other applicable DB-Related Entities have in all respects used commercially reasonable efforts to obtain the Governmental Approval; and (c) Design-Builder and all other applicable DB-Related Entities have consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Unit in a manner that, while not expressly required under Legal Requirements, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar Governmental Approvals in a timely manner in light of the discretion accorded to Governmental Units under Legal Requirements.

8.5 Adjustment of Contract Times.

8.5.1 Design-Builder shall be entitled to request a Change Order adjusting the Contract Times to reflect not more than the amount of time Design-Builder is actually delayed by an Excusable Delay, expressly conditioned upon Design-Builder demonstrating that: (a) Design-Builder has demonstrated that the delay event qualifies as an Excusable Delay; (b) Design-Builder has complied with the requirements of Section 9.5 below; (c) the delay impacts the critical path of the Work as demonstrated by Section 8.5.2 below; (d) the delay was not foreseeable as of the Phase 2

Amendment Date by Design-Builder, and would not have been foreseen as of the Phase 2 Amendment Date by a reasonably experienced design-builder; and (e) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid and mitigate the delay and did not, through itself or any other DB-Related Entity, cause the delay.

8.5.2 Design-Builder shall demonstrate the critical path impact of an Excusable Delay and the impact on the Contract Times through a written time impact analysis (“TIA”) establishing the influence of the event on the most current monthly updated Baseline Schedule. Each TIA shall include a fragmentary network, and for events that have yet to occur (such as an Owner proposed change), the fragmentary network shall demonstrate how Design-Builder proposes to incorporate such event into the most current monthly updated Baseline Schedule. The TIA shall demonstrate: (a) the time impact based on the date the event occurred, or, in the instance of an Owner-proposed change, the date such proposed change was given to Design-Builder; (b) the status of the Work at such point in time; and (c) the time computation of all affected activities.

8.6 Compensation for Delays

8.6.1 Design-Builder shall be entitled to request an adjustment of the GMP pursuant to the provisions of Article 9 for all Excusable Delays for which Design-Builder is entitled to a time extension pursuant to Section 8.5 above; *provided, however*, that such adjustment shall be no more than the increase in the Cost of the Work incurred by Design-Builder, plus the applicable Design-Builder’s Fee, resulting directly from the time extension allowed under Section 8.5 above. Notwithstanding anything to the contrary, Design-Builder shall not be entitled to an adjustment of the GMP for Excusable Delays where Design-Builder’s performance was or would have been concurrently delayed or interrupted by any event that does not otherwise qualify as an Excusable Delay, with the understanding that Design-Builder’s sole remedy for such concurrent delays is an extension of the Contract Times, provided that Design-Builder has complied with the requirements of Section 8.5 above.

8.7 Recovery Schedules

8.7.1 Notwithstanding the right of Design-Builder to request a time extension for an Excusable Delay pursuant to this Article 8, Design-Builder agrees that it will, if directed by Owner, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay. Should Owner have a reasonable belief that the Contract Times will not be met, then Owner has the right, but not the obligation, to so notify Design-Builder and direct Design-Builder to overcome such delay by working additional overtime, engaging additional personnel and taking such other measures as necessary to complete the Work within the Contract Times. If such delay is not an Excusable Delay, Design-Builder shall bear all costs related to such overtime, additional personnel and other measures. If such delay is an Excusable Delay, and Design-Builder has met the requirements of this Article 8 for an adjustment to the Contract Times for such delay, then Design-Builder may request an adjustment to the GMP in accordance with the requirements of Article 9 for the increase in the Cost of the Work incurred by Design-Builder directly related to such overtime, additional personnel and other measures.

Article 9

Changes to the Phase 1 Services Compensation, GMP and Contract Times

9.1 Right of Owner to Make Changes.

9.1.1 Without invalidating the Agreement, Owner may by written order, at any time and from time-to-time, authorize and/or request changes in, additions to, or deletions in the Work, including but not limited to those involving: (a) changes in, additions to, or deletions in the Contract

Documents; (b) changes in the method, manner, sequence and time of performance of the Work (provided that Design-Builder retains and accepts full responsibility for all associated construction means, methods, techniques, sequences, and procedures); (c) changes in Owner-furnished services or deliverables, or (d) a direction to accelerate performance of the Work. If Owner proposes making a change in the Work, Owner shall advise Design-Builder and Design-Builder shall follow the processes set forth in Section 9.2 below.

9.1.2 No oral instruction, order or statement by Owner or Owner's Representative shall constitute a change under this Article 9. If Design-Builder believes that any oral instruction, order or statement by Owner may result in a change in the Work or require an adjustment to the Phase 1 Services Compensation, GMP or the Contract Times, Design-Builder shall request that the oral instruction, order or statement be given in writing and shall thereafter comply with the provisions of this Article 9.

9.1.3 A "Change Order" is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon the scope of a change in the Work, and the agreed adjustment, if any, to the Phase 1 Services Compensation, GMP, Contract Times, or any other requirement of the Contract Documents. Unless specifically stated to the contrary in the Change Order, an executed Change Order shall constitute the final and complete compensation and satisfaction for all costs and schedule impacts related to: (a) the implementation of the changes that are the subject of the Change Order; and (b) the cumulative impact of effects resulting from such changes on all prior Work and changes in the Work to be performed as scheduled.

9.1.4 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.2 Work Change Directives.

9.2.1 A "Work Change Directive" is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Phase 1 Services Compensation, GMP and/or the Contract Times.

9.2.2 Upon receipt of a Work Change Directive, Design-Builder shall promptly proceed with the change in the Work involved, unless Owner directs otherwise. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the Parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.2.3 If the Parties are not able to agree on the method for adjusting the GMP for a Work Change Directive within a reasonable time, then Owner shall pay Design-Builder for such Work on a cost reimbursable basis as set forth in Section 9.7.1(c) below.

9.3 Minor Changes in the Work.

9.3.1 A "Minor Change" is a change in the Work that does not involve an adjustment in the Phase 1 Services Compensation, GMP and/or Contract Times and does not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.

9.3.2 Owner may request Minor Changes. If Design-Builder disputes that such order is a Minor Change, Design-Builder shall notify Owner in accordance with Section 9.4 below.

9.3.3 Design-Builder may make Minor Changes consistent with the intent of the Contract Documents, *provided, however*, that Design-Builder shall promptly inform Owner, in writing, prior to making such change. If Owner disputes that such a change is a Minor Change, Owner shall promptly notify Design-Builder of its position. If Design-Builder nevertheless desires to make such change, it shall notify Owner in accordance with Section 9.4 below. All Minor Changes shall be recorded on the documents maintained by Design-Builder.

9.4 Procedures Following Owner's Notice of Proposed Change.

9.4.1 Design-Builder shall, within twenty-one (21) days after receipt of notice of an Owner-proposed change, prepare and submit to Owner in writing the information set forth in Section 9.5.2 below as if such change were the subject of a Design-Builder Proposed Change Order, and such other information and data as Owner may reasonably request. Owner shall endeavor to review Design-Builder's submittal with Design-Builder within twenty-one (21) days of its receipt of such submittal. If the Parties reach agreement on the terms of Owner's proposed change and Owner elects to proceed with such change, a Change Order shall be executed by the Parties. If the Parties are unable to reach agreement on the terms of the proposed change, Owner shall have the right, in its sole discretion, to direct Design-Builder to proceed with the change by issuing a Work Change Directive to Design-Builder.

9.4.2 Owner shall have the right, at any time and at its sole discretion, not to undertake any proposed change. If Owner elects not to undertake a proposed change for which Design-Builder performed design services in developing its submittal under Section 9.4.1 above, Design-Builder shall be paid its reasonable design costs incurred for such submittal.

9.5 Design-Builder Proposed Change Orders.

9.5.1 If Design-Builder believes that it is entitled under the Contract Documents to an adjustment to the Phase 1 Services Compensation, GMP, Contract Times, or other relief due to any event or situation arising out of or related to the Work (including but not limited to alleged Excusable Delays, disputes over Owner's instructions or interpretation of the Contract Documents), Design-Builder shall, within ten (10) days after Design-Builder knows, or should have reasonably known, of such event or situation giving rise to the requested relief, submit to Owner a written notice labeled "Notice of Design-Builder Proposed Change Order." The Notice of Design-Builder PCO shall describe the general nature of the event or situation and, if such Notice involves an Excusable Delay, the probable duration thereof.

9.5.2 Design-Builder shall, within fourteen (14) days after providing Owner with a Notice of Design-Builder PCO, submit to Owner in writing: (a) a description of the facts, circumstances and contractual basis for the relief sought, with sufficient specificity for Owner to assess the matter; (b) the cost data supporting any proposed adjustments to the Phase 1 Services Compensation, GMP; and (c) the scheduling information and analysis required under Section 8.5.2 above to support any request for adjustment to the Contract Times.

9.5.3 Owner shall endeavor to review Design-Builder's submittal under Section 9.5.2 above within fourteen (14) days of its receipt of such submittal. If Owner believes that Design-Builder's request is justified, in whole or in part, Owner shall advise Design-Builder and an appropriate Change Order shall be executed. If Owner disputes Design-Builder's request, and the Parties are unable to resolve the dispute, such dispute shall be resolved in accordance with Article 10 below. Owner may request clarifications and/or additional information to assist with its decision on such Design-Builder PCO.

9.5.4 Design-Builder's failure to provide the written statements in the manner and time required by this Section 9.5 shall constitute a conclusive presumption that no price or time adjustment, or other relief, is claimed or warranted for the event or situation giving rise to the relief, and Design-Builder waives its rights to seek relief for any such event or situation.

9.6 Owner Directive Letters.

9.6.1 If the Parties are unable to reach agreement on the terms of a Design-Builder PCO under the processes set forth in Section 9.5 above, then Owner may, in its sole discretion, issue to Design-Builder a written notice ("Directive Letter") that directs Design-Builder to proceed in accordance with the terms of such notice notwithstanding the inability of the Parties to reach agreement on the terms of the Design-Builder PCO. Design-Builder shall fully comply with all Directive Letters and shall have the right to pursue its remedies under Article 10 below.

9.7 Adjustments to the GMP and Phase 1 Services Compensation.

9.7.1 The increase or decrease in GMP resulting from a change in the Work shall be determined by one or more of the following methods:

(a) Unit prices set forth in the Agreement or as subsequently agreed to between the Parties;

(b) A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner; or

(c) If the Parties have not reached agreement on the basis of (a) or (b) above, the GMP shall be adjusted based upon the Cost of the Work and Design-Builder's Fee as set forth in Section 4.3.3 of the Agreement, *provided, however*, that such Cost of the Work is: (i) reasonably and properly incurred by Design-Builder; (ii) reasonably documented; and (iii) comprised of those costs that would not have been incurred but for the change in the Work.

9.7.2 The increase or decrease in the Phase 1 Services Compensation resulting from a change in the Work shall be determined as set forth in Exhibit 4.1.1 ("Phase 1 Services Compensation") of the Agreement.

9.8 Emergencies.

9.8.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. If the cause of the emergency would justify a change in the GMP and/or Contract Times under these General Conditions of Contract, Design-Builder shall submit a Design-Builder Proposed Change in accordance with Section 9.5 above.

9.9 Duty to Proceed.

9.9.1 No dispute between Design-Builder and Owner, including but not limited to those relating to the entitlement, cost or time associated with a notice of Owner-proposed change or Design-Builder Notice of Proposed Change Order, shall interfere with the progress of the Work. Design-Builder shall have the duty to diligently proceed with the Work in accordance with Owner's instructions despite any dispute, including but not limited to those events where the Parties are in disagreement as to whether instructions from Owner constitute a change to the Work and justify adjustments to the GMP and/or Contract Times.

9.9.2 Design-Builder's sole recourse in the event of such a dispute will be to pursue its rights under Article 10 below. Design-Builder shall retain any and all rights provided that pertain to the resolution of disputes. The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined in Article 10 below. Design-Builder shall keep accurate, detailed records of all disputed work, claims and other disputed matters.

9.10 Burden of Proof.

9.10.1 Design-Builder shall bear the burden of proof in establishing its entitlement to relief under this Article 9, including but not limited to adjustments in the Phase 1 Services Compensation, GMP and Contract Times.

Article 10
Disputes and Claims

10.1 Dispute Avoidance and Resolution.

10.1.1 The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. If any disputes do arise, Design-Builder and Owner each commit to resolving such disputes in an amicable, professional and expeditious manner.

10.1.2 Owner and Design-Builder shall first attempt to resolve disputes at the field level through discussions between Design-Builder's Representative and Owner's Representative. If, after the passage of a reasonable period of time, the dispute is not resolved at the field level, then, upon the written request of either party, the dispute shall be elevated to senior representatives of the parties. The senior representatives shall meet as soon as conveniently possible to attempt to resolve such dispute. If the dispute is not resolved at the senior representative level, then Design-Builder shall have the right to make a Claim under Section 10.2 below, *provided, however*, that before doing so Design-Builder shall have satisfied its obligations under the process set forth in Section 9.5 above to file a Notice of Proposed Change Order.

10.2 Claims Process.

10.2.1 Section 20104 *et seq.* of the California Public Contract Code prescribes a process using informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section 10.2 is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section 10.2 shall be construed to be consistent with said statutes.

10.2.2 For purposes of these procedures, "claim" means a separate demand by Design-Builder, after Owner has denied Design-Builder's timely and duly made request for payment for extra work and/or a time extension, for : (a) a time extension; (b) payment of money or damages arising from work done by or on behalf of Design-Builder pursuant to the Agreement and payment of which is not otherwise expressly provided for or Design-Builder is not otherwise entitled to; or (c) an amount the payment of which is disputed by Owner. The following requirements apply to all claims to which this section applies:

10.2.3 The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of Final Payment. Nothing in this Section 10.2 is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to

compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

10.2.4 Design-Builder shall submit all claims in the following format:

- (a) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.
- (b) List of documents relating to the claim, including: (1) IFC Documents; (2) clarifications and requests for information; (3) schedules; and (4) other.
- (c) Chronology of events and correspondence related to the claim.
- (d) Statement of grounds for the claim.
- (e) Analysis of the claim's cost, if any.
- (f) Analysis of the claim's time/schedule impact, if any.

10.2.5 Upon receipt of a claim pursuant to Section 10.2.4 above, Owner shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) calendar 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 sixty (60) calendar days after Owner issues its written statement.

(a) If Owner needs approval from the Owner's Board of Directors to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board of Directors does not meet within the forty-five (45) calendar 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, Owner shall have up to three (3) days following the next duly publicly noticed meeting of the Board of Directors after the 45-day period, or extension, expires to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion.

(b) Within thirty (30) calendar days of receipt of a claim, Owner may request in writing additional documentation supporting the claim or relating to defenses or claims Owner 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 Owner and Design-Builder.

(c) Owner's written response to the claim, as further documented, shall be submitted to Design-Builder within thirty (30) calendar days (if the claim is less than \$50,000, within fifteen (15) calendar 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.

10.2.6 If Design-Builder disputes Owner's written response, or Owner fails to respond within the time prescribed, Design-Builder may so notify Owner, in writing, either within fifteen (15) calendar days of receipt of Owner's response or within fifteen (15) calendar days of Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, Owner shall schedule a meet and confer conference within thirty (30) calendar days for settlement of the dispute.

10.2.7 Within ten (10) business days following the conclusion of the meet and confer conference set forth in Section 10.2.6 above, if the claim or any portion of the claim remains in dispute, Owner 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 sixty (60) calendar days after Owner issues its written statement. Any disputed portion of the claim, as identified by Design-Builder in writing, shall be submitted to nonbinding mediation, with Owner and Design-Builder sharing the associated costs equally. Owner and Contractor shall mutually agree to a mediator within ten (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.

(a) 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.

(b) For purposes of this section, 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 used shall conform to the timeframes in this section.

(c) Unless otherwise agreed to by Owner and Design-Builder in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(d) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

10.2.8 Owner's failure to respond to a claim from Design-Builder within the time periods described in this section or to otherwise meet the time requirements of this Section 10.2 shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of Owner's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of Design-Builder. Owner's failure to respond shall not waive Owner's rights to any subsequent procedures for the resolution of disputed claims.

10.2.9 If following the mediation, the claim or any portion remains in dispute, Design-Builder must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Design-Builder. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against Owner may be filed. A Government Code claim must be filed no earlier than the date that Design-Builder completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time Design-Builder submits his or her written claim to Owner until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolution of all claims.

10.2.10 The following procedures are established for all civil actions filed to resolve claims totaling \$375,000 or less:

(a) Within sixty (60) calendar days, but no earlier than thirty (30) calendar 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 Public Contract Code Section 9204 and the procedures in this Section 10.2. The mediation process shall provide for the selection within fifteen (15) calendar days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) calendar days of the submittal, and shall be concluded within fifteen (15) calendar days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both Parties. If the Parties fail to select a mediator within the 15-day period, either Party may petition the court to appoint the mediator.

(b) 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 Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(c) Upon stipulation of the Parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the Parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the Parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(d) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any Party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other Party arising out of the trial de novo

Article 11 **Stop Work and Termination Rights**

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, at any time, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed either sixty (60) consecutive days or in the aggregate more than one hundred twenty (120) days. Notwithstanding the preceding sentence, the Parties agree that: (a) days during which the Work is suspended prior to the Phase 2 Amendment Date shall not be allocable to or considered in the aggregate with days during which the Work is suspended after the Phase 2 Amendment Date; (b) the time occurring from the Phase 2 Amendment Date through and including the date upon which Owner issues the Phase 2 NTP, shall not be deemed a suspension in the Work or allocable to any aggregate period of suspension under this Section 11.1.1; and (c) any period of suspension pending evaluation and discussion of the Phase 2 Proposal shall be measured separately and not deemed a suspension under this Section 11.1.1, but, rather, subject to the terms of Article 5 of the Agreement.

11.1.2 Design-Builder is entitled to seek an adjustment of the GMP and/or Contract Times if the Cost of the Work it incurs or time to perform the Work has been adversely impacted by any suspension of the Work by Owner, provided Design-Builder satisfies the requirements of Articles 8 and 9 above.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder, at any time, fails to: (a) provide a sufficient number of skilled workers; (b) supply the Equipment and Materials required by the Contract Documents; (c) comply with applicable Legal Requirements; (d) timely pay, without cause, Design Consultants or Subcontractors; (e) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Times, as such times may be adjusted pursuant to Article 8 above; or (f) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents, by Legal Requirements, or at law or in equity, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below, and as provided at law.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be promptly cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence and diligently continue to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence and diligently continue to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration. Notwithstanding anything to the contrary, if Owner has provided Design-Builder with three (3) initial notices of Owner's intent to terminate the Agreement for any of the reasons set forth in Section 11.2.1 above, then Owner shall have no further obligation to provide Design-Builder with an opportunity to cure, and may terminate the Agreement for cause as set forth in a written notice from Owner.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the Site and take possession, for the purpose of completing the Work, of all Work Product, Equipment and Materials, construction equipment, supplies, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, Equipment and Materials, construction equipment, supplies, and other items; *provided, however,* that Owner shall not take possession of any construction equipment, supplies, scaffolds, tools, appliances and other similar items owned or rented by Design-Builder.

11.2.4 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. If the unpaid balance of the GMP exceeds the costs of finishing the Work, including Delay Liquidated Damages and other amounts due under the Agreement, Design-Builder will only be entitled to be paid for Work performed prior to its default, and the balance will be for the account of and retained by Owner. If the costs of finishing the Work exceed the unpaid balance, Design-Builder shall, within thirty (30) days of receipt of written notice setting out the amount of the excess costs, pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work (including costs to accelerate the Work as necessary to achieve Substantial Completion as near as possible to the Scheduled Substantial Completion Date), but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the liability limitations set forth in Article 13 of the Agreement.

11.2.5 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted automatically to and treated as a termination for convenience under the provisions of Section 11.6 below.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights accorded under the Contract Documents or at law, stop the Work for the following reasons:

(a) Owner's failure to provide financial assurances as required under Section 3.3 above; or

(b) Owner's failure to make any undisputed payment due under Design-Builder's Application for Payment within forty-five (45) days after receipt of an acceptable Application for Payment, *provided, however*, that amounts subject to a good faith dispute shall not be deemed properly due.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the GMP and/or Contract Times to the extent it incurs additional Costs of the Work, or the progress of the Work has been adversely impacted by such stoppage, provided Design-Builder satisfies the requirements of Articles 8 and 9 below.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents, may terminate the Agreement for cause for the following reasons:

(a) The Work has been stopped for sixty (60) consecutive days, or more than one hundred twenty (120) days in the aggregate either entirely before the Phase 2 Amendment Date or entirely after the Phase 2 Amendment Date, because of court order, any Governmental Unit, failure of Owner to obtain Governmental Approvals that are Owner's responsibility under the Contract Documents, or orders by Owner under Section 11.1.1 above, provided that such stoppages are not due to the acts or omissions of Design-Builder or any other DB-Related Entity.

(b) Owner's failure to provide Design-Builder with any information that is Owner's responsibility under the Contract Documents which results in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days in the aggregate during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 above.

(c) Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Section 11.6 below.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such Party being referred to as the “Bankrupt Party”), such event may impair or frustrate the Bankrupt Party’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

(a) The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

(b) The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.6 Owner’s Right to Terminate for Convenience.

11.6.1 Design-Builder’s performance of Work under the Agreement may be terminated by Owner in accordance with this Section 11.6 in whole or in part, without cause or whenever Owner shall determine that such termination is in the best interest of Owner. Any such termination shall be effected by delivery to Design-Builder of a Notice of Termination for Convenience, specifying the extent to which performance of Work under the Agreement is terminated, and the date upon which such termination becomes effective.

11.6.2 Design-Builder shall comply with instructions in the Notice of Termination for Convenience and, unless such notice directs otherwise:

(a) Immediately discontinue the Work on the date specified in such notice and to the extent specified in such notice;

(b) Place no further orders or Subcontracts except as may be necessary for completion or such portion of the Work as is not discontinued;

(c) Assign to Owner any Subcontract relating to the performance of Work that is discontinued that Owner elects in writing, at its sole election and without obligation, to have assigned to it, with Owner assuming, and Design-Builder being relieved of, all obligations under the Subcontract accruing from the date of the assignment;

(d) Promptly cancel or terminate, on terms reasonably and commercially appropriate, all Subcontracts that Owner does not elect to have assigned to Owner to the extent that such Subcontracts relate to the performance of Work that is discontinued;

(e) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination for Convenience;

(f) Take such action as may be necessary, or as Owner may direct, for the protection and preservation of the property related to the Agreement which is in the possession of Design-Builder and in which Owner has or may acquire an interest; and

(g) Deliver to Owner all Work Product produced during the period commencing on the Agreement Date to the date of the termination, which Work Product shall, for the avoidance of doubt, become the property of Owner, to the extent that it may not have been the property of Owner before the date of termination.

Design-Builder shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Section 11.6.

11.6.3 In the event of a termination for convenience, Design-Builder shall be entitled to receive only the following with respect to the terminated portion of the Project (to the extent not previously paid or subject to a good faith dispute) as its sole and exclusive remedy for such termination: (a) Cost of Work and Design-Builder's General Conditions performed through the date of termination in accordance with the schedule of values; (b) the reasonable costs incurred by Design-Builder in the performance of its obligations under Section 11.6.2 above resulting directly from such termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts; and (c) a fair and reasonable portion of Design-Builder's Fee attributable to the Work performed on the terminated portion of the Work up to the time of termination. Design-Builder shall not be entitled to recover Design-Builder's Fee, Design-Builder's General Conditions, or any other overhead or profit on unperformed portions of the Work. In no case shall Design-Builder or any other DB-Related Entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section 11.6.

11.6.4 The obligation of Owner to pay amounts due in settlement of Subcontracts under Section 11.6.3 above shall be limited to the reasonable costs incurred by Design-Builder in settling and closing out Subcontracts that Owner does not elect to have assigned to it under Section 11.6.3 above and shall be subject to cost substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in Section 11.6.3 above with respect to the convenience termination settlement payment to Design-Builder.

11.6.5 The total sum to be paid to Design-Builder under Section 11.6.3 above shall not exceed the total GMP as reduced by the amount of payments otherwise made and as further reduced by the price of Work not terminated.

11.7 Right to Contract with Design Consultants.

11.7.1 In addition to any other rights available to Owner under the Contract Documents, Owner shall have the right to contract with Design Consultants in accordance with Section 11.4 of the Agreement if it terminates Design-Builder under either Sections 11.2 or 11.6 above.

11.8 Termination for Non-Appropriation of Funds.

11.8.1 The Agreement is conditioned upon an annual appropriation made by Owner's Board of Directors of funds sufficient to pay the compensation due Design-Builder under the Agreement. If such an appropriation is not made in any fiscal year, and Owner lacks funds from other sources to pay the compensation due under the Agreement, Owner will be entitled, at the beginning of or during such fiscal year, to terminate the Agreement. In that event, Owner will not be obligated to make any payments under the Agreement beyond the amount properly appropriated for Agreement payments in the immediately prior fiscal year. Owner will provide Design-Builder written notice of termination of the Agreement due to the non-appropriation of funds at least fifteen (15) calendar days before the effective date of the termination. However, Owner's failure to provide such notice will not extend the Agreement into a fiscal year in which funds for Agreement payments have not been appropriated.

Article 12 **Electronic Data**

12.1 Electronic Data.

12.1.1 The Parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each Party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither Party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting Party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 7 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting Party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The Parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the Parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the Parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting Party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving Party, and the transmitting Party did not participate in such change or alteration.

Article 13 **Miscellaneous**

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting Party to be of a confidential or proprietary nature and: (a) the transmitting Party identifies as either confidential or proprietary; (b) the transmitting Party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain. The receiving Party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.1.2 Design-Builder may share Confidential Information with the other DB-Related Entities as appropriate for the procurement and execution of the Work.

13.1.3 The confidentiality obligations herein shall expire within three (3) years of the Final Completion Date.

13.2 Assignment.

13.2.1 Neither the Agreement nor any right, privilege, delegation, or interest thereunder may be assigned or transferred in whole or in part by Owner or Design-Builder without the prior written consent of the other Party, and any attempted assignment or transfer without such written consent shall be void, except as set forth in Section 13.2.2 below.

13.2.2 Notwithstanding the above, Design-Builder's consent of Owner's assignment or transference shall not be required for assignments relating in any way to the financing of the Agreement, Work or Project. Design-Builder shall execute such assignments, consents, and other documents as may be reasonably requested to give effect to or implement any assignment or conveyance of the Agreement or any right, privilege, delegation, or interest thereunder.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the Parties, their employees, agents, heirs, successors and permitted assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the State of California, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Sovereign Immunity.

13.7.1 Notwithstanding any other provision of the Contract Documents to the contrary, nothing in the Contract Documents nor any action taken by Owner pursuant to the Contract Documents nor any document which arises out of the Contract Documents shall constitute or be construed as a waiver of the sovereign immunity of Owner, or of its elected and appointed officials, officers and employees.

13.8 Headings.

13.8.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party.

13.10 Notice of Labor Disputes.

13.10.1 Whenever Design-Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Agreement, Design-Builder shall immediately give notice thereof, including all relevant information with respect thereto, to Owner.

END OF GENERAL CONDITIONS OF CONTRACT