

**AGREEMENT FOR PROGRESSIVE DESIGN-BUILD
SERVICES BETWEEN THE CITY OF REDONDO BEACH
AND ***DESIGN-BUILDER*****

THIS AGREEMENT FOR PROJECT SERVICES ("Agreement") is made between the City of Redondo Beach, a Chartered Municipal Corporation ("City") and DESIGN-BUILDER, a California Corporation ("Consultant", "Contractor" or "Design-Builder").

The parties hereby agree as follows:

- A. Contract Documents. The "Request for Qualifications/Proposals", "Progressive Design-Build Agreement", and "General Conditions of Contract Agreement Between Owner and Design-Builder" are hereby incorporated into and made part of Exhibits to this Agreement as "Contract Documents". In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall take precedence. However, if this Agreement does not address a legal issue for this Project, the parties shall be governed by the provisions of the Contract Documents.
- B. Description of Project and Scope of Services. The project description and progressive design-build services to be provided by the Design-Builder, and any corresponding responsibilities of City or services required to be performed by City, are set forth in Exhibits "1", "A", and "B", respectively. By entry into this Agreement and upon City's issuance of a written "Notice to Proceed", City contracts for the services in Phase One (1) for design. Design-Builder shall not perform any other Phase of the Agreement, and this Agreement shall not be a contract for any other Phase, until further performance is authorized by City's issuance of a written "Notice to Proceed" for such additional phase(s). It shall, however, remain Design-Builder's offer to perform all remaining phases described herein. In the event Design-Builder performs without City's prior written authorization, Design-Builder will not be entitled to compensation for such services.
- C. Term and Time of Completion. Design-Builder shall commence and complete the project and services described in Exhibits "A" and "B" in accordance with the schedule set forth in Exhibit "1".
- D. Compensation. City agrees to pay Design-Builder for work performed at the times, in the amounts, and under the conditions specified in Exhibit "1".
- E. Insurance. Design-Builder shall adhere to the insurance requirements outlined in the Contract Documents.
- F. California Labor Law Requirements. Design-Builder shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations, including California Labor Law Requirements as set forth in the Contract Documents.

* * * * *

GENERAL PROVISIONS

1. Independent Contractor. Consultant acknowledges, represents and warrants that Consultant is not a regular or temporary employee, officer, agent, joint venturer or partner of the City, but rather an independent contractor. This Agreement shall not be construed as a contract of employment. Consultant shall have no rights to any benefits which accrue to City employees unless otherwise expressly provided in this Agreement. Due to the independent contractor relationship created by this Agreement, the City shall not withhold state or federal income taxes, the reporting of which shall be Consultant's sole responsibility.
2. Brokers. Consultant acknowledges, represents and warrants that Consultant has not hired, retained or agreed to pay any entity or person any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
3. City Property. All plans, drawings, reports, calculations, data, specifications, videos, graphics or other materials prepared for or obtained pursuant to this Agreement shall upon request be delivered to the City within a reasonable time, and the rights thereto shall be deemed assigned to the City. If applicable, Consultant shall prepare check prints upon request. Said plans, drawings, reports, calculations, data, specifications, videos, graphics, or other materials shall be specific for the project herein and shall not be used by the City for any other project without Consultant's consent. Notwithstanding the foregoing, Consultant shall not be obligated to assign any proprietary software or data developed by or at the direction of Consultant for Consultant's own use; provided, however, that Consultant shall, pursuant to Paragraph 14 below, indemnify, defend, and hold the City harmless from and against any discovery or Public Records Act request seeking the disclosure of any such proprietary software or data.
4. Inspection. If the services set forth in Exhibits "1", "A", and "B" shall be performed on City or other public property, the City shall have the right to inspect such work without notice. If such services shall not be performed on City or other public property, the City shall have the right to inspect such work upon reasonable notice. Inspections by the City shall not relieve or minimize the responsibility of Consultant to conduct any inspections Consultant has agreed to perform pursuant to the terms of this Agreement. Consultant shall be solely liable for said inspections performed by Consultant. Consultant shall certify in writing to the City as to the completeness and accuracy of each inspection required to be conducted by Consultant hereunder.
5. Services. The project or services set forth in Exhibits "1", "A", and "B" shall be performed to the full satisfaction and approval of the City. In the event that the project or services set forth in the Contract Documents are itemized by price, the City in its sole discretion may, upon notice to Consultant, delete certain items or services set forth in Exhibit "1", in which case there shall be a corresponding reduction in the amount of compensation paid to Consultant. City shall furnish Consultant, to the extent available, with any City standards, details, specifications,

and regulations applicable to the Project and necessary for the performance of Consultant's services hereunder. Notwithstanding the foregoing, any and all additional data necessary for design shall be the responsibility of Consultant.

6. Records. Consultant, including any of its subcontractors, shall maintain full and complete documents and records, including accounting records, employee time sheets, work papers, and correspondence pertaining to the project or services set forth in Exhibits "1", "A", and "B". Consultant, including any of its subcontractors, shall make such documents and records available for City review or audit upon request and reasonable notice, and shall keep such documents and records, for at least four (4) years after Consultant's completion of performance of this Agreement. Copies of all pertinent reports and correspondence shall be furnished to the City for its files.

7. Changes and Extra Work. All changes and/or extra work under this Agreement shall be performed and paid for in accordance with the following:

Only the City Council, City Manager, or the Department Head responsible for the administration of, or supervision of the scope of work under, this Agreement may authorize extra and/or changed work. Consultant expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Consultant to secure the written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Consultant thereafter shall be entitled to no compensation whatsoever for performance of such work.

If Consultant is of the opinion that any work which Consultant has been directed to perform is beyond the scope of this Agreement and constitutes extra work, Consultant shall promptly notify the City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, City shall provide extra compensation to Consultant on a fair and equitable basis. A written amendment providing for such compensation for extra work shall be executed by Consultant and the City.

8. Additional Assistance. If this Agreement requires Consultant to prepare plans and specifications, Consultant shall provide assistance as necessary to resolve any questions regarding such plans and specifications that may arise during the period of advertising for bids, and Consultant shall issue any necessary addenda to the plans and specifications as requested. In the event Consultant is of the opinion that City's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the changes and extra work provisions of this Agreement.

9. Professional Ability. Consultant acknowledges, represents and warrants that Consultant is skilled and able to competently provide the services hereunder, and possesses all professional licenses, certifications, and approvals necessary to

engage in its occupation. City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards of Consultant's profession.

10. Business License. Consultant shall obtain a Redondo Beach Business License before performing any services required under this Agreement. The failure to so obtain such license shall be a material breach of this Agreement and grounds for immediate termination by City; provided, however, that City may waive the business license requirement in writing under unusual circumstances without necessitating any modification of this Agreement to reflect such waiver.
11. Termination Without Default. Notwithstanding any provision herein to the contrary, the City may, in its sole and absolute discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the project or services hereunder, immediately upon written notice to Consultant. In the event of any such termination, Consultant shall be compensated for: (1) all authorized work satisfactorily performed prior to the effective date of termination; and (2) necessary materials or services of others ordered by Consultant for this Agreement prior to Consultant's receipt of notice of termination, irrespective of whether such materials or services of others have actually been delivered, and further provided that Consultant is not able to cancel such orders. Compensation for Consultant in such event shall be determined by the City in accordance with the percentage of the project or services completed by Consultant; and all of Consultant's finished or unfinished work product through the time of the City's last payment shall be transferred and assigned to the City. In conjunction with any termination of this Agreement, the City may, at its own expense, make copies or extract information from any notes, sketches, computations, drawings, and specifications or other data, whether complete or not.
12. Termination in the Event of Default. Should Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may immediately terminate this Agreement by giving written notice of such termination, stating the reasons for such termination. Consultant shall be compensated as provided immediately above, provided, however, there shall be deducted from such amount the amount of damages, if any, sustained by the City by virtue of Consultant's breach of this Agreement.
13. Conflict of Interest. Consultant acknowledges, represents and warrants that Consultant shall avoid all conflicts of interest (as defined under any federal, state or local statute, rule or regulation, or at common law) with respect to this Agreement. Consultant further acknowledges, represents and warrants that Consultant has no business relationship or arrangement of any kind with any City official or employee with respect to this Agreement. Consultant acknowledges that in the event that Consultant shall be found by any judicial or administrative body to have any conflict of interest (as defined above) with respect to this Agreement,

all consideration received under this Agreement shall be forfeited and returned to City forthwith. This provision shall survive the termination of this Agreement for one (1) year.

14. Indemnity Design Professional Services. In connection with its design professional services and to the maximum extent permitted by law, Consultant shall hold harmless and indemnify City, and its officials, officers, and employees (collectively, "Indemnitees"), with respect to any and all claims, demands, causes of action, damages, injuries, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the City.
 - a. Other Indemnities. In connection with any and all claims, demands, causes of action, damages, injuries, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) arising out of or related to the performance of this Agreement, excluding Consultant's design professional services, and to the maximum extent permitted by law, Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, to the extent that they arise out of, pertain to, or relate to the acts or omissions of Consultant or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the City. Consultant shall defend Indemnitees in any action or actions filed in connection with any such Damages. Notwithstanding the foregoing, nothing in this Section 14 shall be construed to encompass Indemnitees' active negligence to the limited extent that this Agreement is subject to Civil Code Section 2782(b). Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or Indemnitees. This indemnification obligation shall survive this Agreement and shall not be limited by any term of any insurance policy required under this Agreement.
 - b. Nonwaiver of Rights. Indemnitees do not and shall not waive any rights that they may possess against Consultant because the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.
 - c. Waiver of Right of Subrogation. Consultant, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees.
15. Insurance. Consultant shall comply with the insurance requirements set forth in Contract Documents.

16. Non-Liability of Officials and Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Agreement.
17. Compliance with Laws. Consultant shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, with respect to this Agreement, including without limitation all environmental laws, employment laws, and non-discrimination laws.
 - a. Acknowledgement. Consultant will comply with the provisions of this paragraph to the extent applicable to the Consultant. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one (1) and one-half (1/2) times the basic rate of pay. For every subcontractor who will perform work on the project, Consultant shall be responsible for such subcontractor's compliance with Labor Code Sections 1810, 1813 and 1815, and Consultant shall include in the written contract between it and each subcontractor copies of Labor Code Sections 1810, 1813 and 1815 and a requirement that each subcontractor shall comply with these aforementioned sections. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to comply with Labor Code Sections 1810, 1813 and 1815, Consultant shall diligently take corrective action to halt or rectify the failure.
 - b. Prevailing Wages. City and Consultant acknowledge that this project is a public work to which prevailing wages apply and Consultant shall comply with the Contract Documents pertaining to California Labor Law Requirements.
18. Non-Discrimination. Consultant shall comply with all applicable federal, state, and local laws, ordinances, regulations, and codes prohibiting discrimination, including but not limited to the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the California Fair Employment and Housing Act. Consultant shall not discriminate against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran

status. Consultant shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment. Consultant shall include a similar non-discrimination provision in all subcontracts related to the performance of this Agreement.

19. Limitations upon Subcontracting and Assignment. Consultant acknowledges that the services which Consultant shall provide under this Agreement are unique, personal services which, except as otherwise provided herein, Consultant shall not assign or sublet to any other party without the prior written approval of City, which approval may be withheld in the City's sole and absolute discretion. In the event that the City, in writing, approves any assignment or subletting of this Agreement or the retention of subcontractors by Consultant, Consultant shall provide to the City upon request copies of each and every subcontract prior to the execution thereof by Consultant and subcontractor. Any attempt by Consultant to assign any or all of its rights under this Agreement without first obtaining the City's prior written consent shall constitute a material default under this Agreement.

The sale, assignment, transfer or other disposition, on a cumulative basis, of twenty-five percent (25%) or more of the ownership interest in Consultant or twenty-five percent (25%) or more the voting control of Consultant (whether Consultant is a corporation, limited liability company, partnership, joint venture or otherwise) shall constitute an assignment for purposes of this Agreement. Further, the involvement of Consultant or its assets in any transaction or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Agreement or Consultant's assets occurs, which reduces Consultant's assets or net worth by twenty-five percent (25%) or more shall also constitute an assignment for purposes of this Agreement.

20. Subcontractors. Consultant shall provide properly skilled professional and technical personnel to perform any approved subcontracting duties. Consultant shall not engage the services of any person or persons now employed by the City without the prior written approval of City, which approval may be withheld in the City's sole and absolute discretion.
21. Integration. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any previous oral or written agreement; provided, however, that correspondence or documents exchanged between Consultant and City may be used to assist in the interpretation of the exhibits to this Agreement.
22. Amendment. This Agreement may be amended or modified only by a subsequent written amendment executed by both parties.
23. Conflicting Provisions. In the event of a conflict between the terms and conditions of this Agreement and those of any exhibit or attachment hereto, this Agreement proper shall prevail. In the event of a conflict between the terms and conditions of any two or more exhibits or attachments hereto, those prepared by the City shall

prevail over those prepared by Consultant.

24. Non-Exclusivity. Notwithstanding any provision herein to the contrary, the services provided by Consultant hereunder shall be non-exclusive, and City reserves the right to employ other contractors in connection with the project.
25. Exhibits. All exhibits hereto are made a part hereof and incorporated herein by reference; provided, however, that any language in Exhibits "1", "A", and "B" which do not pertain to the project description, proposal, or scope of services (as applicable) to be provided by Consultant, or any corresponding responsibilities of City, shall be deemed extraneous to, and not a part of, this Agreement.
26. Time of Essence. Time is of the essence of this Agreement.
27. Confidentiality. To the extent permissible under law, Consultant shall keep confidential its obligations hereunder and the information acquired during the performance of the project or services hereunder.
28. Third Parties. Nothing herein shall be interpreted as creating any rights or benefits in any third parties. For purposes hereof, transferees or assignees as permitted under this Agreement shall not be considered "third parties."
29. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Venue for any litigation or other action arising hereunder shall reside exclusively in the Superior Court of the County of Los Angeles, Southwest Judicial District.
30. Attorneys' Fees. In the event either party to this Agreement brings any action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees (including expert witness fees) and costs. This provision shall survive the termination of this Agreement.
31. Claims. Any claim by Consultant against City hereunder shall be subject to Government Code §§ 800 *et seq.* The claims presentation provisions of said Act are hereby modified such that the presentation of all claims hereunder to the City shall be waived if not made within six (6) months after accrual of the cause of action.
32. Interpretation. Consultant acknowledges that it has had ample opportunity to seek legal advice with respect to the negotiation of this Agreement. This Agreement shall be interpreted as if drafted by both parties.
33. Warranty. In the event that any product shall be provided to the City as part of this Agreement, Consultant warrants as follows: Consultant possesses good title to the product and the right to transfer the product to City; the product shall be delivered to the City free from any security interest or other lien; the product meets all specifications contained herein; the product shall be free from material defects in materials and workmanship under normal use for a period of one (1) year from the

date of delivery; and the product shall be fit for its intended purpose(s). Notwithstanding the foregoing, consumable and maintenance items (such as light bulbs and batteries) shall be warranted for a period of thirty (30) days from the date of delivery. All repairs during the warranty period shall be promptly performed by Consultant, at Consultant's expense, including shipping. Consultant shall not be liable under this warranty for an amount greater than the amount set forth in Exhibit "1" hereto.

34. Severance. Any provision of this Agreement that is found invalid or unenforceable shall be deemed severed and all remaining provisions of this Agreement shall remain enforceable to the fullest extent permitted by law.
35. Authority. City warrants and represents that upon City Council approval, the Mayor of the City of Redondo Beach is duly authorized to enter into and execute this Agreement on behalf of City. The party signing on behalf of Consultant warrants and represents that he or she is duly authorized to enter into and execute this Agreement on behalf of Consultant, and shall be personally liable to City if he or she is not duly authorized to enter into and execute this Agreement on behalf of Consultant.
36. Waiver. The waiver by the City of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement in Redondo Beach, California, as of this XX day of MONTH, 2026.

CITY OF REDONDO BEACH,
a chartered municipal corporation

DESIGN-BUILDER/CONTRACTOR,
a California corporation

James A. Light, Mayor

By: _____
Name: _____
Title: _____

ATTEST:

APPROVED:

Eleanor Manzano, City Clerk

Diane Strickfaden, Risk Manager

APPROVED AS TO FORM:

Joy A. Ford, City Attorney

EXHIBIT "1"

City of Redondo Beach

Progressive Design-Build Agreement

This **AGREEMENT** is made as of the _____ day of _____ in the year of 20_____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

DESIGN-BUILDER:

(Name and address)

PROJECT:

Measure FP - Public Safety General Obligation Bond Measure

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

- 1.1 Mutual Obligations. 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 afforded under the Contract Documents.
- 1.2 Basic Definitions. Exhibit 1.1 to this Agreement sets forth the definitions for defined terms in the Contract Documents; provided, any terms, words and phrases used in this Agreement that are not otherwise defined shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract").
- 1.3 Design Professional Services. Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, currently California licensed design professionals employed by Design-Builder, or procured from qualified, independent, currently California licensed Design Consultants, 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. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.
- 1.3.1 In accordance with California Civil Code Section 2782.8(b), "All contracts and all solicitation documents, including requests for proposal, invitations for bid, and other solicitation documents for design professional services are deemed to incorporate by reference the provisions of this section." Moreover, per Civil Code Section 2782.8(c), "design professional" includes all of the following:
- 1.3.1.1 An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.
- 1.3.1.2 An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.
- 1.3.1.3 An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.
- 1.3.1.4 An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.
- 1.3.2 Pursuant to Business and Professions Code Section 7059(b) and Public Contract Code Section 3300(a), a valid California Contractor's License Class "B" (General Building Contractor) issued by the California Contractors State License Board (CSLB) is required by the Design-Builder at the time the contract is awarded. Design-Builder shall maintain said license and obtain and maintain, at its sole cost and expense, such other license, permits, registrations, and approvals as may be required by applicable legal requirements. Design-Builder shall further ensure that all Design Consultants and Subcontractors obtain and maintain all licenses, permits, registrations, and approvals as may be required by the above statutes and any other applicable legal requirements.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.

2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.2 Phased Services.

2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.1 herein, including completion of design services for the Project pursuant to the Contract Price Amendment or, in the event that no such Contract Price Amendment is executed, upon the request of Owner pursuant to Section 5.3.2. The level of completion required for Phase 1 Services is defined in Exhibit B, Phase 1 Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of design support during construction, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as to be further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 2.3.

2.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Phase 2 Price Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

2.3.1 The Phase 2 Price Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 7.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
- iii. If applicable, any prices established under Section 7.1.3 hereof;

2.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Phase 2 Price Proposal;

2.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Phase 2 Price Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Phase 2 Price Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a project schedule for the Work (Project Schedule);

2.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Phase 2 Price Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Phase 2 Price Proposal.

2.3.2.1 After submission of the Phase 2 Price Proposal, Design-Builder and Owner shall meet to discuss and review the Phase 2 Price Proposal. If Owner has any comments regarding the Phase 2 Price Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 2 Price Proposal.

2.3.2.2 Acceptance of Phase 2 Price Proposal. If Owner accepts the Phase 2 Price Proposal, as may be amended by Design-Builder and Owner, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (interchangeably Contract Price Amendment or Phase 2 Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed

with Phase 2 Services, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

2.3.2.3 Failure to Accept the Phase 2 Price Proposal. If Owner rejects the Phase 2 Price Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Phase 2 Price Proposal that it accepts the Phase 2 Price Proposal, the Phase 2 Price Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i. Owner may suggest modifications to the Phase 2 Price Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Phase 2 Price Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.2 above;
- ii. [DBIA Document No. 544, 2024, option intentionally omitted]; or
- iii. Owner may exercise its rights to terminate this Agreement for convenience in accordance with Article 9 hereof.

2.3.2.4 If Owner fails to exercise any of its options under Section 2.3.2.3 within, as applicable, the Phase 2 Price Proposal acceptance period, as such period may be extended by mutual agreement of the parties, Design-Builder may, after giving Owner thirty (30) days written notice of intention to do so, declare the Phase 2 Price Proposal null and void. Additionally, Design-Builder may declare that Owner has constructively terminated the Agreement under Section 9.1.1 below, in which case Design-Builder's sole rights and remedies shall be as stated in Section 9.1.2 below.

Article 3

Contract Documents

3.1 The Contract Documents are comprised of the following, and shall be construed in the following order of priority:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the General Conditions of Contract Agreement Between Owner and Design-Builder ("General Conditions of Contract");

3.1.2 The Contract Price Amendment referenced in Section 2.3.2.2 herein or the Phase 2 Price Proposal accepted by Owner in accordance with Section 2.3 herein.

3.1.3 This Agreement, including all exhibits (including, but not limited to Exhibits A, Owner's Project Criteria, and B, Scope of Services) but excluding, if applicable, the Contract Price Amendment; provided, that in the event of conflict between the Agreement and any attachment or exhibit, the attachment or exhibit shall prevail.

3.1.4 The General Conditions of Contract;

3.1.5 Construction Documents (100% signed drawings and completed Project specifications) prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and

3.1.6 Any other documents (*specify here*).

Article 4

Interpretation and Intent

4.1 Design-Builder and Owner, at the time of acceptance of the Phase 2 Price Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Phase 2 Price Proposal pursuant to a Contract Price Amendment.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Phase 2 Price Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof.

4.3 Terms, words, and phrases used, and not otherwise defined in Exhibit 1.1 of this Agreement, in the Contract Documents, including this Agreement, shall have the meanings given them in the DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract").

4.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

4.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 5

Ownership of Work Product

5.1 Owner's Rights in Work Product. All drawings, specifications, and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement are deemed "Work Product". Design-Builder hereby assigns and conveys to Owner all right, title, and interest, including all copyrights, patents, or any other intellectual property rights (but excluding Pre-Existing Intellectual Property defined in Section 5.3 below) in all Work Product and all ideas or methods specifically developed for such Work Product. All Work Product will become the property of Owner on the earlier of: (a) Owner's payment to Design-Builder of monies due in accordance with this Agreement and not subject to a good faith dispute; (b) the date any Work Product is delivered to Owner; or (c) upon any termination of this Agreement. Owner's use of any Work Product for any purpose other than the Project, without the involvement of Design-Builder, shall be at its own risk, and Design-Builder shall have no liability to Owner for or relating to any such use.

5.2 Design-Builder and/or Design-Builder Related Entities' Rights in Work Product. Owner hereby grants Design-Builder and any respective Design-Builder related entity, to the extent to which Design-

Builder and/or Design-Builder related entity developed any Work Product, a perpetual, royalty-free, irrevocable, global, and unrestricted license to use the Work Product for any purposes whatsoever for itself and other clients or owners, including without limitation, the right to copy, develop derivative works, improve, alter, and to further sublicense the Work Product to any other entities, clients, owners, subconsultants and/or subcontractors of any tier. For the avoidance of doubt, Design-Builder may make and retain copies of the Work Product for information, reference and use by Design-Builder related entities with respect to the Work. Except as specifically provided in this Section 5.2 and in Section 5.3 below, no Design-Builder related entity will own or claim any copyright, patent, or any other intellectual property right in or with respect to any Work Product or ideas or methods specifically developed for such Work Product.

5.3 Pre-Existing Intellectual Property. Owner acknowledges and agrees that in the performance of services under this Agreement, a Design-Builder related entity may use proprietary algorithms, software, hardware, databases, other background technology, and other proprietary information that the Design-Builder related entity developed or licensed from third parties prior to the Agreement Date or, in the case of the performance of Phase 2 Services, prior to the date upon which the GMP Amendment is effective, or for any specific Early Work Package, prior to the date upon which the relevant Early Work Package amendment is effective ("Pre-Existing Intellectual Property"). Without limiting Owner's rights with respect to the Work Product or the Project, the Design-Builder related entity will retain all right, title, and interest in such Pre-Existing Intellectual Property. However, Owner shall have the irrevocable, perpetual, and unrestricted right from and after the Agreement Date to use (or permit use of) all Pre-Existing Intellectual Property incorporated in the Work Product or the Project, all oral information received by Owner in connection with the Work, and all ideas or methods represented by Pre-Existing Intellectual Property incorporated in the Work Product or the Project, and in each case without additional compensation. Design-Builder hereby licenses such irrevocable, perpetual, and limited rights to Owner for the sole purpose of designing, constructing, commissioning, operating, and maintaining the Project. Owner's use of such license rights for any purpose other than the Project shall be at its own risk, and neither Design-Builder nor any other Design-Builder related entity shall have liability to Owner for or relating to any such use. The parties acknowledge and agree that notwithstanding the foregoing, any third party software purchased or developed for use for the Project, regardless of the date of purchase or development, shall be deemed to be Pre-Existing Intellectual Property, *provided, however*, that any input or output data or other information obtained through such third party software shall be deemed Work Product and not Pre-Existing Intellectual Property, unless such data or other information obtained otherwise meets the definition of Pre-Existing Intellectual Property.

Article 6

Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 1 Services unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Phase 2 Price Proposal is accepted and the Contract Price Amendment is amended pursuant to this Agreement unless the parties mutually agree otherwise in writing. Phase 1 Services shall be completed no later than the date set forth in the milestone schedule as shown in 6.2.2 below.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

6.2.2 Interim Milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

- a. 50% Design within (_____) days of the Date of Commencement for Phase 1 Services.

- b. 100% Design within (_____) days of the Date of Commencement for Phase 1 Services.
- c. Substantial Completion within the earlier of (a) (_____) days of the Notice to Proceed for Phase 2 Services or (b) the Scheduled Substantial Completion Date.

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.17 of the General Conditions of Contract.

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

6.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if: (a) Phase 1 Services Completion is not attained by the Scheduled Phase 1 Services Completion Date (the "Phase 1 LD Date"), Design-Builder shall pay Owner (\$_____) dollars as liquidated damages for each day that Substantial Completion extends beyond the Phase 1 LD Date; and (b) Substantial Completion not attained by the Scheduled Completion Date (the "Phase 2 LD Date"), Design-Builder shall pay Owner (\$_____) dollars as liquidated damages for each day that Substantial Completion extends beyond the Phase 2 LD Date.

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any), or Final Completion; provided, that this limitation shall not apply to other extra costs, losses, expenses, claims, penalties, and any other damages arising for reasons caused by the Design-Builder that do not relate to delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

☐ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be (\$_____) dollars.

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the not-to-exceed sum of (\$_____) dollars for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract ("Phase 1 Services Contract Price"). Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis, as may be applicable and unless the parties agree otherwise.

7.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum as set forth in the Contract Price Amendment ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of the Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Article 9 of the General Conditions of Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders initiated by the Owner, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee equal to the percentage set forth in the Design-Builder's Fee of the additional costs incurred for that Change Order, plus any other markups set forth in the Contract Price Amendment, if any.

7.3.2 For deductive Change Orders initiated by the Owner, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only.]

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) (____%) percent applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit (____) hereto applied to the direct costs of the net reduction.

7.3.3 Any changes or extra work provided under any Change Order shall be a part of and subject to all the provisions of this Agreement and the Design-Builder, and its sureties shall be bound thereby and to the same extent as under the original Agreement.

7.4 Design-Builder's Fee.

7.4.1 Design-Builder's Fee for Phase 2 Services shall be:

☐ (____%) percent of the Cost of the Work.

7.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

7.4.2.1 For additive Change Orders initiated by the Owner, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of as equal to the percent set forth in Design-Builder's Fee of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in the Contract Price Amendment.

7.4.2.2 For deductive Change Orders initiated by the Owner, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only.]

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

- ☐ An amount equal to the percentage set forth in Section 7.4.1.

7.5 Cost of the Work.

7.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

7.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

7.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

7.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit (____) and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a (____%) percent markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

7.5.1.4 Pro rata costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

7.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

7.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes, inadvertence, and negligence of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

7.5.1.8 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

7.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery,

equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

7.5.1.10 Costs of removal of debris and waste from the Site.

7.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.

7.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work; provided, that any rental charges or costs from assets rented from Design-Builder shall not exceed the prevailing market cost (which shall not exceed the applicable rate set forth in the most current Labor Surcharge and Equipment Rental Rates (Cost of Equipment Ownership) published by the State of California, California State Transportation Agency, Department of Transportation, Division of Construction).

7.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

7.5.1.14 All fuel and utility costs incurred in the performance of the Work.

7.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

7.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from claims based on the Owner's negligence, wrongful acts, or breach of this Agreement, as determined by agreement or final judicial decision.

7.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

7.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent, except to the extent caused by Design-Builder's negligence.

7.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence or avoidable omissions.

7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property, except to the extent caused by Design-Builder's negligence.

7.5.1.21 Accounting and data processing costs related to the Work.

7.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

7.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

7.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.5.2.5 Any costs arising from the Design-Builder's negligence.

7.5.3 In the event that Design-Builder receives proceeds from third party sources for the Cost of Work, including, but not limited to insurance proceeds, such amounts shall reduce the City's obligation to make such payment for such Cost of Work.

7.6 The Guaranteed Maximum Price (GMP). If this option is used, the GMP and its basis shall be set forth in an amendment to this Agreement (Contract Price Amendment or Phase 2 Amendment) and may include any of the following unless the parties mutually agree otherwise.

7.6.1 Design-Builder guarantees that it shall not exceed the GMP of (\$_____) Dollars. Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

7.6.2 The GMP includes a Contingency in the amount of (\$_____) dollars, which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Article 8 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as

such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

[Choose one of the following.]

☐ (____%) percent to Design-Builder and (____%) percent to Owner.

or

☐ The first (\$ _____) dollars of Savings shall be provided to _____ (choose either Design-Builder or Owner), with the balance of Savings, if any, shared (____%) percent to Design-Builder and (____%) percent to Owner.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Phase 2 Price Proposal.

7.7.2 Design-Builder and Owner shall have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project Schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

Article 8

Procedure for Payment

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: The hourly rates set forth in Exhibit (____); provided, that in no event shall exceed the Phase 1 Contract Price.

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the (____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

8.2.3 If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

8.3 Retainage on Progress Payments.

8.3.1 Owner will retain five percent (5%) percent of each Application for Payment provided, however, that when seventy-five percent (75%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner may choose to not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

8.3.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.6 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within sixty (60) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.6 of the General Conditions of Contract.

8.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one percent (1%) per month until paid.

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of four (4) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of four (4) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 9

Termination for Convenience

9.1 Owner's Right to Terminate for Convenience Prior to Execution of Phase 2 Amendment

9.1.1 Prior to execution of the Phase 2 Amendment, Owner may terminate this Agreement for its convenience for any reason, including but not limited to the failure of Owner and Design-Builder to agree upon the terms of a Phase 2 Amendment. Owner's decision to terminate under this Section 9.1.1 shall be made in its sole and absolute judgment. The provisions of this Section 9.1 address Owner's rights to terminate this Agreement for its convenience prior to the execution of the Phase 2 Amendment. For the avoidance of doubt, the termination for convenience provisions of Section 11.6 of the General Conditions of Contract is not applicable to Owner's termination under this Section 9.1.

9.1.2 If Owner terminates this Agreement under Section 9.1.1 above, Design-Builder's sole and exclusive right and remedy shall be to be paid for all Phase 1 Services properly performed through the date of the termination notice. Design-Builder shall not be entitled to any overhead or profit on unperformed Work or services of any other kind. In no case shall Design-Builder or any other Design-Builder related entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of the termination.

9.1.3 Owner shall have the right, in its sole and absolute judgment, to determine whether to complete the Project and, if so, the delivery approach for the Project, including but not limited to the right to complete the design and use a design-bid-build or construction manager at-risk process, retain another design-builder, or any other delivery approach.

9.2 Furnishing of Documents

9.2.1 If Owner has exercised its rights under Section 9.1.1 above, Owner and Design-Builder shall promptly meet and confer about the documents and other materials prepared by Design-Builder, Design Consultants and, if applicable, Subcontractors as part of the Phase 1 Services. Design-Builder shall furnish, or cause to be furnished, to Owner all design documents and other materials, including but not limited to schedules, bid packages, cost estimates, and procurement documents, requested by Owner, which documents shall, to the extent they were not already Work Product, be deemed Work Product.

9.3 Owner's Right to Terminate for Convenience after Execution of Phase 2 Amendment

9.3.1 Upon execution of the Phase 2 Amendment, Owner's rights to terminate this Agreement for convenience shall be governed by Section 11.6 of the General Conditions of Contract.

9.4 Conditional Right of Owner to Contract with Design Consultants

9.4.1 Design-Builder acknowledges that Owner's ability to successfully complete the Project may be significantly impacted if Owner terminates Design-Builder for either cause or convenience and certain Design Consultants (including a Lead Designer) are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if Owner exercises its rights under Section 9.1.1 above, or exercises its rights to terminate under either Sections 11.2 or 11.6 of the General Conditions of Contract, Owner shall have the right, but not the obligation, to contract directly with any and all Design Consultants for services related to this Project. Design-Builder shall take such steps as are reasonably necessary to enable Owner to implement such relationships, including having a provision in its Subcontracts with Design Consultants that, in the event Design-Builder is terminated under this Agreement for any reason, the Design Consultant will in good faith negotiate with Owner the contractual terms (e.g., scope of work, compensation and other

requirements) associated with such Design Consultant continuing to work on the Project. For the avoidance of doubt, Design-Builder shall have no liability to Owner for those acts or omissions of a Design Consultant that take place after the termination of the Contract with Design-Builder and Design Consultant enters into a contract with Owner.

9.5 Design Consultant Liability

9.5.1 In accordance with California Public Contract Code Section 22172.2(c)(2), any Design Consultant responsible for performing design services on behalf of Design-Builder that has been replaced shall have sole liability for its design errors and omissions, provided Owner elects to use such Design Consultant's complete and stamped designs with subsequent design-build entities or licensed contractors.

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 10 of the General Conditions of Contract:

(Identify individual's name, title, address, and telephone numbers.)

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

(Identify individual's name, title, address, and telephone numbers.)

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions of Contract:

(Identify individual's name, title, address, and telephone numbers.)

10.1.1 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

(Identify individual's name, title, address, and telephone numbers.)

10.3 Design-Builder's Representations

10.3.1 Design-Builder reaffirms that all disclosures, representations, warranties, and certifications made in Design-Builder's Proposal remain true and correct as of the Agreement Date and shall remain binding and in effect throughout the term of this Agreement.

10.4 Representations in Submitting the Phase 2 Price Proposal and Executing the Phase 2 Amendment. Design-Builder shall be deemed to have made the following representations with its submission of the Phase 2 Price Proposal and execution of the Phase 2 Amendment (interchangeably the Contract Price Amendment):

10.4.1 Design-Builder has examined, carefully studied, and thoroughly understands the Contract Documents and the Owner-furnished information associated with the Work covered by the Phase 2 Price Proposal and Phase 2 Amendment.

10.4.2 Design-Builder has visited the Site and has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work covered by the Phase 2 Price Proposal and Phase 2 Amendment.

10.4.3 Design-Builder is familiar with and is satisfied as to all Legal Requirements that may affect cost, progress, or performance of the Work covered by the Phase 2 Price Proposal and Phase 2 Amendment.

10.4.4 Design-Builder has correlated the Contract Documents with the information known to Design-Builder, information obtained from the Owner-furnished information, and observations made during visits to the Site.

10.4.5 Design-Builder is aware of the nature of other work that will be undertaken by Owner's Separate Contractors, and of the relationship of such other work to the Work.

10.4.6 Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents and Owner-furnished information before submitting the Phase 2 Price Proposal and the written resolution thereof by Owner is acceptable to Design-Builder.

10.4.7 The Phase 2 Price Proposal Design Documents are based upon and comply with Owner's Project Criteria.

10.4.8 The Contract Documents are sufficiently complete to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work covered by the Phase 2 Price Proposal and Phase 2 Amendment, including having enabled Design-Builder to establish the GMP.

10.4.9 The GMP established by the Phase 2 Price Proposal contains sufficient monies to perform all Work associated with the Phase 2 Price Proposal, including Design-Builder's obligation to provide and construct any items that are not explicitly contained in the Phase 2 Price Proposal Documents but which are reasonably inferable from the Phase 2 Price Proposal Design Documents and necessary to provide a fully-functioning Project conforming to the Contract Documents.

10.4.10 Design-Builder shall be bound by and shall perform its obligations in full compliance with the Contract Documents.

Article 11

Bonds and Insurance

11.1 Insurance. Design-Builder shall procure, at its own cost and without reimbursement, the insurance coverages set forth in Appendix H - Insurance Requirements attached hereto.

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

Other Performance Security.

☐ Required ☒ Not Required

Article 12

Other Provisions

12.1 Other provisions, if any, are as follows: All Exhibits, Appendices, Attachments and documents specified in Section 12.2 below are incorporated by reference herein.

12.2 Listing of Exhibits, Appendices, Attachments and documents incorporated herein:

Exhibit 1.1 - General Conditions of Contract

Exhibit A - Owner's Project Criteria

Exhibit B - Scope of Services

Attachment 1 - Request for Qualifications/Proposals (RFQ/P)

Appendix A - Other Terms and Conditions

Appendix B - Design-Build Firm Questionnaire

Appendix C - Designation of Subcontractors List

Appendix D - Conflict of Interest Disclosure

Appendix E - Non-Collusion Declaration

Appendix F - Performance Bond

Appendix G - Labor and Material Payment Bond

Appendix H - Insurance Requirements

Contract Price Amendment (if any)

- ☒ Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

☒

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:
CITY OF REDONDO BEACH,
a Chartered Municipal Corporation

DESIGN-BUILDER:
[CORPORATE NAME],
a California Corporation

James A. Light, Mayor
City of Redondo Beach

By: _____
(Chairman/President/Vice President)

[Typed Name]

Date: _____

And: _____
(Secretary/Treasurer/Financial Officer)

[Typed Name]

ATTEST:

Eleanor Manzano, City Clerk

Date: _____

APPROVED AS TO LEGAL FORM:

Joy A. Ford, City Attorney

EXHIBIT “1.1”

GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS

Article 1	General.....	1
Article 2	Design-Builder’s Services and Responsibilities.....	5
Article 3	Owner’s Services and Responsibilities.....	12
Article 4	Hazardous Environmental Conditions and Differing Site Conditions.....	13
Article 5	Insurance and Bonds.....	16
Article 6	Payment.....	18
Article 7	Indemnification.....	21
Article 8	Time.....	24
Article 9	Changes to the Phase 1 Services Compensation, GMP & Contract Times....	29
Article 10	Disputes and Claims.....	32
Article 11	Stop Work and Termination Rights.....	35
Article 12	Electronic Data.....	40
Article 13	Miscellaneous.....	41
Article 14	California Labor Code Compliance.....	42
Article 15	Other Statutorily Required Terms.....	44

Based on Design-Build Institute of America (DBIA) Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (Third Edition, 2022), as Modified by the Agreement and City Attachments.

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.

The following defined terms shall have the same meaning as used throughout the Contract Documents, except where a separate and/or more specific definition is provided.

1.2.1 *Agreement* refers to the document titled "Progressive Design-Build Agreement" as part of the Contract Documents and means the Agreement between the City and the Design-Build Entity for Design-Build Entity's Work on the Project to which these General Conditions are attached.

1.2.2 *Allowance Item* is a scope of work for a designated portion of the Project that the parties agree to manage pursuant to Section 7.7 of the Agreement.

1.2.3 *Allowance Value* means an itemized budget value identified in the Contract Price Amendment for Allowance Items as determined pursuant to Section 7.7 of the Agreement.

1.2.4 *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.

1.2.5 *Basis of Design Documents* means the documentation that serve as the basis for the design document submitted under the Agreement, including complete drawings based on the Owner's Project Criteria and Scope of Work, in each case, as modified in accordance with the Agreement.

1.2.6 *Commercial Terms* are any terms that establish the Contract Price or Design-Builder's Compensation, including but not limited to the GMP, any Not-to-Exceed amount, any Lump Sum, any Allowance, or the Design-Builder's Contingency. The term "Commercial Terms" also includes any terms that establish the Contract Time(s), including but not limited to the Project Schedule, Substantial Completion, and Final Completion

1.2.7 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of the General Conditions.

1.2.8 *Contract Price Amendment or Phase 2 Amendment* has the meaning assigned to such term in Section 2.3.2.2 of the Agreement.

1.2.9 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.10 *Design-Builder or Design-Build Entity* means the corporation, limited liability company, partnership, joint venture, or other legal entity that is appropriately licensed and capable of providing, and has agreed to provide, all contracting, architectural, and engineering Work required to design and construct the Project consistent with the Contract Documents.

1.2.11 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.12 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.13 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties and supplements the Owner's Program and the Basis of Design Documents, as applicable.

1.2.14 *Design Materials, Submission or Submittal* means any and all documents, shop drawings, electronic information, including computer programs and computer-generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder to the Owner under the Contract Documents or developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.15 *Differing Site Conditions* has the meaning set forth in Section 4.3 below.

1.2.16 *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 Design-Builder 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.

1.2.17 *Final Completion* of the entire Project shall be deemed to have occurred when 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.

1.2.18 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, fires, floods, labor disputes, riot or similar civil disturbance, earthquakes, epidemics or pandemics, adverse weather conditions not reasonably anticipated, natural catastrophes which neither party can prevent, and other acts of God. Financial incapacity of Design-Builder shall be deemed to be a Force Majeure Event.

1.2.19 *General Conditions of Contract* refer to this *General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder*.

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

1.2.21 *Guaranteed Maximum Price (GMP)*, including all contingencies, shall mean the maximum price that the Owner will pay Design-Builder for all Construction Work.

1.2.22 *Hazardous Materials or Environmental Conditions* are any materials, wastes, substances

and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.23 *Indemnified Parties* has the meaning assigned to such term in Article 5 of the Agreement.

1.2.24 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.25 *Notice to Proceed* means a written notice provided by Owner to Design-Builder authorizing and directing Design-Builder to commence performance of the Work, or any Phase(s) of the Work, specified in such a notice.

1.2.26 *Open-Book Basis* means providing Owner all underlying assumptions, records, price quotes and other data associated with pricing or compensation or adjustments thereto, including assumptions as to the costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates and burdens, productivity allowance, estimating factors, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by Owner to satisfy itself as to the reasonableness and accuracy of the amount(s) proposed by Design-Builder.

1.2.27 *Owner's Project Criteria or Program* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.28 *Performance Criteria* means the requirements developed by or for the City to describe the City's program requirements and objectives for the Project, including, as appropriate, use, space, price, durability, production standards, ingress and egress requirements, expandability requirements, or other criteria for the intended design and use of the Project. Performance Criteria may include conceptual documents, performance-oriented preliminary drawings, design criteria, standards, outline specifications and/or other documents provided to Design-Builder establishing the Project's basic elements and their relationship to the Site.

1.2.29 *Preconstruction Services* shall mean the Work performed during the Design Work to calculate the cost of Construction Work, refine deliverables, review constructability and coordination of Design Materials, and to align Design Work with the target GMP, including, without limitation, value engineering, constructability reviews, procuring Subcontractors, and preparing the GMP pursuant to the Contract Documents.

1.2.30 *Project* means the total design, phasing and construction of the Owner's public safety facilities or buildings as set forth in the Contract Documents.

1.2.31 *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to Section 2.1.3 of the General Conditions and Section 2.3.1.4 of the Agreement.

1.2.32 *Punch List* means the list of Work that has been identified as incomplete by the parties as of the Substantial Completion Date and compiled as set forth under the General Conditions.

1.2.33 *Reliable Design Decision* is a decision, development, or election that refines the Basis of Design Documents, that is approved by the Owner and set forth in the Design Log, and with which all subsequent Design Submissions and Construction Documents shall be consistent.

1.2.34 *Schedule of Values* means the tabulation or breakdown of the entire GMP set forth in an

exhibit to the Contract Price Amendment, allocating such GMP to various components or 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 and consistent with the requirements of the Contract Documents.

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

1.2.36 *Specifications* means the written requirements that complement the Construction Drawings for materials, equipment, systems, standards, execution, and workmanship for the Construction Work, and performance of related services.

1.2.37 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen and suppliers.

1.2.38 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include but not be limited to Design Consultants, design subconsultants, design-build subcontractors, materialmen and suppliers.

1.2.39 *Substantial Completion* or *Substantially Complete* means that 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 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.

1.2.40 *Substitution* means a material and/or process offered by Design-Builder in lieu of the specified material and/or process and accepted by Owner in writing as being equal to the specified material and/or process.

1.2.41 *Supplier* means any person or entity retained by Design-Builder 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.

1.2.42 *Trend* is an issue identified in the *Trend Log*, which is a log of issues that have been identified by Design-Builder or Owner during the design process that may cause change to the Owner's Program or the Basis of Design Documents, as applicable and/or any Commercial Term and is further described in Section 2.4.1.7 of the General Conditions.

1.2.43 *Work* shall mean the services, design and construction to be completed by Design-Builder under the terms of the Contract Documents. Work specifically includes, without limitation, the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. The term Work may refer to the whole or a part of the Project, or any phase(s) of the Project or component thereof, and also includes all other obligations imposed on the Design-Builder by the Contract Documents.

1.2.44 *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's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with reports detailing the progress of the Work as set forth in Exhibit B, including but not limited to: (a) whether the Work is proceeding according to schedule; (b) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (c) whether health and safety issues exist in connection with the Work; (d) status of the contingency account(s) to the extent provided for in the Agreement; and (e) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). In addition to the manner and frequency set forth in Exhibit B, status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit B, including but not limited to the Project Schedule for the execution of the Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by Exhibit B and the conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule and other deliverables provided by Design-Builder 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.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any necessary procedures additional to Exhibit B, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 Representatives of the Design-Build Team, including at a minimum of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit B and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three (3) days of meeting.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide or furnish through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, 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. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Care.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Project Criteria, the Initial Project Scope and/or the Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents and in accordance with applicable Legal Requirements and Governmental Approvals.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. 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.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Commercial Terms, including but not limited to the Contract Price and Contract Time(s), and are consistent with the Owner's Project Criteria, the Design Log and Basis of Design Documents, as applicable. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or Contract Time(s); however, Design-Builder must provide notice thereof in accordance with Article 9 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions.

Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1 below, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time(s), Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time(s), including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions. Design-Builder shall not include any design that is inconsistent with a Commercial Term without the written Change Order.

2.4.1.5 The Design Builder shall provide an updated cost model for the Project periodically as set forth Exhibit B. The cost model will be based on a detailed labor and material cost estimate for the GMP and the other Commercial Terms as required in Contract Documents. The cost model will be supplemented pursuant to Contract Documents.

2.4.1.6 A Design Log, including a full listing of Reliable Design Decisions and all changes to the Basis of Design Documents, shall be maintained by the Design-Builder and provided to the Owner for review.

- a. Both parties must agree to include a Reliable Design Decision in the Decision Log.
- b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- c. The Design Log is for the sole purpose of tracking the development of the Design Submissions.
- d. Once a Reliable Design Decision is incorporated into the Design Log, it shall be binding on the Design-Builder as if set forth in the Initial Project Scope, Owner's Program and/or the Basis of Design Documents, as applicable.
- e. If a Reliable Design Decision will cause a change in the Owner's Project Criteria, Initial Project Scope or Basis of Design Decisions, or any of the other Commercial Terms, such changes must be processed pursuant to Articles 9 and 10 of the General Conditions.

2.4.1.7 If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

- a. The request to include a Trend in the Trend Log must include the following information:

- i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Initial Project Scope, Owner's Program or Basis of Design Documents as a result of the Trend.
- b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder shall track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
- c. The parties shall work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Trend Log is resolved and the resolution changes the Initial Project Scope, Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.2.1 The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality, including its phasing and subcontracting mode. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. To the extent not prohibited by the Contract Documents or applicable code requirements, and subject to written approval by the Owner, Design-Builder may prepare Construction Documents for approved Construction Packages for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.4.2.2 It is acknowledged by the parties hereto that inherent in a design-build project, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Builder will limit the Construction Packages for Owner's review to a reasonable number, unless approved in writing by the Owner. Contract Schedule shall include the times for the Owner to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner, and Owner's review shall not be deemed an approval or waiver by the Owner of any deviation from, or of the Design-Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been expressly identified as such in writing in the documents submitted by the Design-Builder and approved by the Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review

and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, and with the Owner's written permission, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction 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 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements that directly affect the Work that are enacted after the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner's Permit List either as an exhibit to the Agreement or as part of the Owner's Project Criteria or Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

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, 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 "responsible", as defined in Public Contract Code Section 1103, licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall coordinate the activities of all Subcontractors. At all times herein, Design-Builder shall comply with the provisions of Public Contract Code Sections 22172.2 and 22172.3 governing the use of subcontractors and which require Design-Builder and its subcontractors at every tier to use a skilled and trained workforce to perform all work on this Project that falls within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code Section 2600, et seq. and as referenced herein.

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, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

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 referenced in Article 8 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 California 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 California Code of Regulations, Title 13, Section 2249 (13 CCR Section 2249), Design-Builder shall obtain copies of the valid Certificates of Reported Compliance, as described in 13 CCR Section 2249(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 Section 2249.

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 government or quasi-government authorities 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: (a) 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; (b) the Project shall be fit for use for the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from this Contract; and (c) the Work shall meet all of the requirements of the Contract Documents. 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 manufacturer or Supplier warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or any Contract Document. Design-Builder will provide Owner with all manufacturer or Supplier warranties upon Substantial Completion and will perform the Work so as to maintain and preserve such Supplier warranties. Manufacturers' disclaimers and limitations on product warranties do not relieve Design-Builder of its warranty on Work that incorporates such products.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found not to be in conformance with the Contract Documents ("Nonconforming Work"), including that part of the Work subject to Section 2.9 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Nonconforming Work rejected by Owner shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Design-Builder's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The

fact that Owner may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconformance Work. Design-Builder shall, within seven (7) days of receipt of written notice from Owner of Nonconforming Work, 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 the correction of Nonconforming Work cannot be completed within such seven (7) day period, Design-Builder must: (a) provide a schedule for correcting the Nonconforming Work; and (b) commence and diligently prosecute such correction in accordance with the approved schedule to completion. 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.

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 of Design Submissions and Construction Documents consistent with the turnaround times set forth in the Contract, by agreement of the Owner and Design-Builder, or the approved Design-Builder’s scheduler, as applicable.

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, provided, however, Owner shall have no liability to the Design-Builder for failure to notify the Design-Builder or failure to discover such defects or noncompliant Work.

3.2 Furnishing of Services and Information.

3.2.1 The Owner's Project Criteria sets forth the information provided by the Owner.

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. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner shall designate a representative responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents ("Owner's Representative"). The 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.

3.5 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 Owner's 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 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 the 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, and in accordance with California Public Contract Code Section 7104, if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface:

- a. The contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:
 1. Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- b. The local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
- c. That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.1.3 Design-Builder, in consultation with Owner, shall take 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 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 Time(s) 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 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 Design-Builder 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 Design-Builder related entity. To the fullest extent permitted by Legal Requirements, Design-Builder shall indemnify, defend and hold harmless Owner, its Consultants, and their respective officers, directors, employees, and agents (collectively "Owner Indemnitees") 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.

4.1.6 Nothing contained in this Section 4.1 is intended to identify Design-Builder as the generator of any pre-existing Hazardous Material(s) or Hazardous Environmental Condition(s).

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 Time(s) to the extent the Cost of 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 immediately notify Owner thereof by telephone or in person, to be followed by written notification within five (5) days.

Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder shall immediately stop Work in and secure the area pending further instructions.

4.3.3 If directed by Owner, Design-Builder shall promptly conduct such further investigation. If Design-Builder continues to believe that the material or condition falls within the scope of Section 4.3.1, Design-Builder shall at that time also advise Owner or any action recommended to be taken regarding the situation. Owner then will determine whether Design-Builder's findings and proposed actions are acceptable and either approve, or require modification of, Design-Builder's proposed actions. If the condition involves discovery of Hazardous Materials or Hazardous Environmental Conditions that are Owner's responsibility under the Contract, Owner shall advise Design-Builder regarding its plans for Hazardous Materials Remediation and shall coordinate with Design-Builder in performance of such activities in accordance with Section 4.1 above.

4.3.4 Owner shall have the right to require Design-Builder to recommence work in the area at any time, even though an investigation or other work may still be ongoing, so long as recommencing work would not violate any Legal Requirements. Design-Builder shall promptly recommence Work in the area upon receipt of notification from Owner to do so. On recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such work, consistent with the Owner's determination or preliminary determination regarding the nature of the material or condition.

4.4 Historical Artifacts or Archaeological Resources.

4.4.1 In the event Design-Builder or any of its Subcontractors inadvertently discover any archaeological, paleontological, biological, cultural, or other unidentified historical resources or properties at any time during the project, 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 the 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 Time(s) 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.

4.4.3 "Historical Artifact" or "Archaeological Resource" shall mean any material remains of human life or activities which are of interest, and this shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and painting, and other implements and artifacts of any material or form.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining, at its own cost and expense, the insurance coverages set forth in Appendix H to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the State of California and in accordance with this Section 5.1.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to Owner, and in any event, prior to performing any Work under the Agreement, Design-Builder shall provide Owner with certificates and original endorsements evidencing that: (a) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (b) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.1.4 The Design-Builder's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of Design-Builder to the coverage provided by such insurance, or otherwise limit Owner's recourse to any remedy available at law or in equity. Design-Builder shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

5.1.5 If Design-Builder maintains higher insurance limits than the minimums required, Owner shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Design-Builder, irrespective of whether such limits maintained by Design-Builder are greater than those required by the Agreement or whether any certificate of insurance furnished to Owner evidences limits of liability lower than those maintained by Design-Builder.

5.1.6 Design-Builder's insurance coverage shall be primary insurance with respect to Owner. Any insurance, self-insurance, or insurance pool coverage maintained by Owner shall be excess of Design-Builder's insurance and shall not contribute with it.

5.1.7 Design-Builder shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of Design-Builder-provided insurance as set forth herein, except Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. Design-Builder shall ensure that the Owner is an additional insured on each Subcontractor's Commercial General Liability (CGL) insurance policy using an endorsement of at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

5.1.8 Failure on the part of Design-Builder to maintain the insurance as required shall constitute a material breach of contract, upon which Owner may, after giving at least five (5) business days' notice to Design-Builder to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to Owner on demand, or at the sole discretion of Owner, offset against funds due Design-Builder from Owner.

5.1.9 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, 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. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors 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) 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, including warranty obligations; and (b) 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 Appendices F and G, 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 No. 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 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a Schedules of Values for all of the Work as set forth in Exhibit B. The Schedule of Values will: (a) subdivide the Work into its respective parts based on the project's Work Breakdown Structure (WBS); (b) include values for all items comprising the Work; and (c) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation on an Open Book Basis so as to provide both Owner and Design-Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first Application for Payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

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 unconditional release from suppliers and subcontractors or release lien rights for all Work performed and materials provided (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. The Application for Payment shall be in a form acceptable to Owner, including but not limited to the following information:

6.2.1.1 An invoice cover sheet that includes the following items:

- a. Project name/title and invoice number;
- b. Period covered by the invoice (specific beginning and ending calendar days);
- c. Total amount authorized;
- d. Total amount invoiced through last period;
- e. Current invoice amount;
- f. Total invoiced to-date;
- g. Percent invoiced;
- h. Remaining Contract Price (exclusive of the Allowance amounts), GMP, and remaining Allowance amounts;
- i. Retainage withheld;
- j. Net amount due to Design-Builder for current period and earned to date;
- k. Authorized signature, title of signer and date of signature; and
- l. Signatures of Design-Builder and Design-Builder's Quality Control Manager.

6.2.1.2 An itemization of the costs incurred pursuant to the Contract Documents, including but not limited to:

- a. Detailed amounts spent for the Cost of the Work incurred during the period of the Application for Payment and the back-up documentation for the Cost of the Work, including but not limited to timesheets, invoices, purchase orders, or any other documentation that evidences the Cost of the Work or any other cost for which Design-Builder requests reimbursement;
- b. Design-Builder's Fee Percentage on the Cost of the Work;
- c. Any Contingency Items charged under Article 7 of the Agreement; and
- d. Any Lump Sums established pursuant to Article 7 of the Agreement.

6.2.1.3 Attachment of the monthly periodic deliverables for the relevant phase of Work per Exhibit B and inclusive of:

- a. Weekly progressed Project Schedule and monthly progress reports, and reference to any Critical Path Method (CPM) resource(s); and
- b. Updated cash flow for the Project, such as baseline (planned) monthly costs, actual monthly costs, earned (budgeted value of completed Work) monthly costs, forecasted costs to complete the Project, and with reference to all applicable Schedule of Values.

6.2.1.4 Certification by the Design-Builder's Quality Control Manager confirming that:

- a. The Work has been performed in accordance with the approved Quality Control Program; and

- b. The elements of the approved Quality Control Program and all the measures and procedures provided for therein are functioning properly and being followed.

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, and subject to all required retentions, 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 timely pay 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:

6.6.1.1 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;

6.6.1.2 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;

6.6.1.3 Consent of Design-Builder's surety to final payment;

6.6.1.4 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;

6.6.1.5 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 Section 6.6.1.2 above); and (b) evaluate or verify the right to receive payment of any amount requested for payment; and

6.6.1.6 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 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 acceptance of the Work.

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, shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine or tax assessment imposed by the applicable governmental unit or entity, 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 Design-Builder shall indemnify, defend and hold harmless Owner Indemnitees from any claims, stop notices or mechanic's liens brought against Owner Indemnitee or against the Project as a result of the failure of Design-Builder or any other Design-Builder related entity to pay for any services, Equipment and 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 stop notice or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said stop notice, claim or lien, including, if necessary, the furnishing of a 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 stop notice, 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 Other than in the performance of design professional services, 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 acts, omissions, breach of this Agreement, or willful misconduct of Design-Builder or any other Design-Builder 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 Design-Builder related entity has a claim against any Owner Indemnitee, Design-Builder's indemnity obligations 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 Design-Builder 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 Section 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 Indemnitees 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.

7.5.8 For design professional services and to the fullest extent permitted by law, Design-Builder shall, at its sole cost and expense, indemnify and hold harmless the Owner Indemnitees, and each of them, from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, whether actual, alleged or threatened, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of the Consultant, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual for whom Design-Builder shall bear legal liability) in the performance of design professional services under this Agreement. Notwithstanding the foregoing and as required by Civil Code Section 2782.8(a), in no event shall the cost to defend the Owner Indemnitees that is charged to Design-Builder, exceed Design-Builder's proportionate percentage of fault.

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 Time(s) in accordance with Article 6 of the Agreement.

8.1.2 Design-Builder shall perform the Work in accordance with the Project 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 Project Schedule, but such updates shall not be deemed to modify the Project Schedule or Contract Time(s), nor relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), 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:

8.2.3.1 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;

8.2.3.2 Design-Builder and Owner have agreed in writing upon the Punch List;

8.2.3.3 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;

8.2.3.4 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;

8.2.3.5 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;

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

8.2.3.7 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 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:

8.3.1.1 Design-Builder has achieved Substantial Completion in accordance with Section 8.2 above;

8.3.1.2 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 Documents;

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

8.3.1.4 Design-Builder's surety has consented to the release of final payment to Design-Builder;

8.3.1.5 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 6.6.1.2 above;

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

8.3.1.7 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 Design-Builder 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:

8.4.2.1 General market and economic conditions affecting the availability, supply or cost of labor, Equipment and Materials, construction equipment, supplies, or commodities;

8.4.2.2 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 Design-Builder related entity;

8.4.2.3 Delays in obtaining or delivery of Equipment and Materials, or any other goods or services, from any Design-Builder related entity, unless the Design-Builder related entity’s reason for delay arises from an event that would otherwise be excusable to Design-Builder under these General Conditions of Contract;

8.4.2.4 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;

8.4.2.5 Bankruptcy or insolvency of any Design-Builder related entity;

8.4.2.6 The inability of any Design-Builder related entity to perform, unless such inability would be otherwise excusable to Design-Builder under these General Conditions of Contract;

8.4.2.7 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 Design-Builder related entity; and

8.4.2.8 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 Time(s) 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 Design-Builder 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 Design-Builder related entities have in all respects used commercially reasonable efforts to obtain the Governmental Approval; and (c) Design-Builder and all other applicable Design-Builder 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 Time(s) 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 Design-Builder 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 Time(s) through a written time impact analysis ("TIA") establishing the influence of the event on the most current monthly updated Project Schedule. Each TIA shall include a fragmentary network ("fragnet") - that is a smaller, detailed portion of the overall Project timeline that focuses on a specific segment, group or sequence of activities within the overall Project Schedule - and for events that have yet to occur (such as an Owner proposed change), the fragnet shall demonstrate how Design-Builder proposes to incorporate such event into the most current monthly updated Project 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 Time(s), 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 Time(s) 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 Time(s). 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 Time(s) 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 or Owner's Representative may result in a change in the Work or require an adjustment to the Phase 1 Services Contract Price (interchangeably Amount or Compensation), GMP or the Contract Time(s), 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 Contract Price, GMP, Contract Time(s), 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 Contract Price, GMP and/or the Contract Time(s).

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 9.7.2.3 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 Contract Price, GMP and/or Contract Time(s) 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 Contract Price, GMP, Contract Time(s), 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 Proposed Change Order

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 Proposed Change Order, 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 Contract Price or the GMP; and (c) the scheduling information and analysis required under Section 8.5.2 above to support any request for adjustment to the Contract Time(s).

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 Proposed Change Order.

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 Proposed Change Order 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 Proposed Change Order. 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 Phase 1 Services Contract Price and GMP.

9.7.1 The increase or decrease in the Phase 1 Services Contract Price (interchangeably Amount or Compensation) resulting from a change in the Work shall be determined by the method as set forth in the "Phase 1 Services Contract Price" Exhibit of the Agreement.

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

9.7.2.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

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

9.7.2.3 If the parties have not reached agreement on the basis of 9.7.2.1 or 9.7.2.2 above, the GMP shall be adjusted based upon the Cost of the Work and Design-Builder's Fee as set forth in Article 7 of the Agreement, provided, however, that such Cost of the Work is: (a) reasonably and properly incurred by Design-Builder; (b) reasonably documented; and (c) comprised of those costs that would not have been incurred but for the change in the Work.

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 Phase 1 Services, GMP and/or Contract Time(s) under these General Conditions of Contract, Design-Builder shall submit a Design-Builder Proposed Change Order 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 Time(s).

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 Contract Price, GMP and/or Contract Time(s).

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 or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

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 representative 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 Design-Builder Proposed Change Order.

10.2 Claims Process.

10.2.1 California Public Contract Code (PCC) § 20104 et seq. 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. PCC § 9204 prescribes a process for negotiation and mediation to resolve disputes on construction claims. Therefore, this Section 10.2 is intended to implement and shall be construed as being 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 10.2 applies.

10.2.2.1 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.

10.2.2.2 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) Construction Documents; (2) clarifications and requests for information; (3) Project Schedule(s); and (4) any other relevant material or supporting documentation.
- (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.

10.2.3 Upon receipt of a Claim pursuant to Section 10.2.2 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.

10.2.3.1 If Owner needs approval from the Owner's City Council to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 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 City Council after the 45-day period, or extension, expires to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion.

10.2.3.2 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.

10.2.3.3 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.

10.2.4 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.

10.2.5 Within ten (10) business days following the conclusion of the meet and confer conference set forth in Section 10.2.4 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.

10.2.5.1 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.

10.2.5.2 For purposes of this Section 10.2.5, 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 herein.

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

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

10.2.6 Owner's failure to respond to a claim from Design-Builder within the time periods described in this Section 10.2, 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 10.2, 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.

10.2.7 If following the mediation, the claim or any portion remains in dispute, Design-Builder must comply with the claim procedures set forth in California Government Code § 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 California Government Code § 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 its 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.

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

10.2.8.1 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 PCC § 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 fifteen-day period, either party may petition the court to appoint the mediator.

10.2.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the 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.

10.2.8.3 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.

10.2.8.4 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 Notice to Proceed, shall not be deemed as 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 Price Proposal shall be measured separately and not deemed a suspension under Section 11.1.1, but, rather, subject to the terms of Article 2 of the Agreement.

11.1.2 Design-Builder is entitled to seek an adjustment of the GMP and/or Contract Time(s) 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 Time(s), 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 service 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 within 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 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 the Contract Documents.

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:

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

11.3.1.2 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 Time(s) 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 above.

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:

11.4.1.1 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 Government unit or entity, 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 Design-Builder related entity.

11.4.1.2 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.

11.4.13 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:

11.5.1.1 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

11.5.1.2 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:

11.6.2.1 Immediately discontinue the Work on the date specified in such notice and to the extent specified in such notice;

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

11.6.2.3 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;

11.6.2.4 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;

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

11.6.2.6 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

11.6.2.7 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 Design-Builder 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 9.4 of the Agreement if it terminates Design-Builder under either Sections 11.2 or 11.6 above.

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 5 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. Either party may disclose Confidential Information, following notice to the other party, when required by law, including the California Public Records Act, subpoena, or court order.

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

13.1.3 Unless a longer period is required by law, 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 of 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.

Article 14

California Labor Code Compliance

14.1 Public Work.

14.1.1 Design-Builder acknowledges that the Project is a "public work" as defined in Labor Code Section 1720 et seq. (Chapter 1), and that this Project is subject to: (a) Chapter 1, including without limitation Labor Code Section 1771; and (b) the rules and regulations established by California's Director of Industrial Relations implementing such statutes. Design-Builder shall perform all Work on the Project as a public work. Design-Builder shall comply with and be bound by all the terms, rules and regulations described in (a) and (b) as though set forth in full herein.

14.2 Prevailing Wage Rates.

14.2.1 Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file at City Hall and will be made available to any interested party on request. By initiating any Work, Design-Builder acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Design-Builder shall post such rates at each job site covered by these Contract Documents.

14.2.2 Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Design-Builder shall, as a penalty paid to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to these Contract Documents by Design-Builder or by any Subcontractor.

14.3 Payroll Records.

14.3.1 Design-Builder shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Design-Builder and each Subcontractor to: (1) keep accurate payroll records and verify such records in writing under penalty of perjury; (2) certify and make such payroll records available for inspection; and (3) inform the City of the location of the records. Design-Builder has ten (10) days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to the City, Design-Builder shall forfeit one hundred dollars (\$100) for each day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

14.3.2 Design-Builder and each Subcontractor shall comply with and be bound by the provisions of Labor Code Section 1771.4(a)(3), which requires that each Design-Builder and each Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner at least monthly, in a format prescribed by the Labor Commissioner.

14.4 Hours of Labor.

14.4.1 Design-Builder acknowledges that eight (8) hours labor constitutes a legal day's work. Design-Builder shall comply with and be bound by Labor Code Section 1810 and comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Design-Builder shall, as a penalty paid to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Project by Design-Builder or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Design-Builder in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

14.5 Apprentices.

14.5.1 Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations (CCR) Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Design-Builder shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, Design-Builder shall provide the City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding Work, Design-Builder and each of its Subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract. Design-Builder is also required to comply with the requirements of Public Contract Code Section 22164(c)(1) requiring the use of a skilled and trained workforce as defined in Public Contract Code Section 2600, et seq. (referenced below).

14.6 Debarment or Suspension.

14.6.1 Design-Builder shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. Design-Builder and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If Design-Builder or any Subcontractor becomes debarred or suspended during the duration of the Project, Design-Builder shall immediately notify the City.

14.7 Registration with DIR.

14.7.1 In accordance with Labor Code Sections 1725.5 and 1771.1, no Contractor or Subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered with the Department of Industrial Relations (DIR) and qualified to perform public work pursuant to Section 1725.5.

14.8 Compliance Monitoring and Posting Job Sites.

14.8.1 This Project is subject to compliance monitoring and enforcement by the DIR. Design-Builder shall post job site notices, as prescribed by regulation.

14.9 Subcontractors.

14.9.1 For every Subcontractor who will perform Work on the Project, Design-Builder shall be responsible for such Subcontractor's compliance with the requirements set forth above, and Labor Code Sections 1860 and 3700, and Design-Builder shall include in the written contract between it and each Subcontractor a copy of these provisions and a requirement that each Subcontractor shall comply with those provisions. Design-Builder shall be required to take all actions necessary to enforce such contractual provisions and ensure Subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the Subcontractor and upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing rate of wages, Design-Builder shall diligently take corrective action to halt or rectify any failure.

Article 15

Other Statutorily Required Terms

15.1 Public Contract Code.

15.1.1 Pursuant to Public Contract Code Section 7103.5, Design-Builder offers and agrees to assign to Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the Owner tenders final payment to Design-Builder without further acknowledgment by the parties.

15.1.2 Pursuant to Public Contract Code Section 9201, the Owner has full authority to compromise or otherwise settle any claim relating to this Contract at any time. The Owner shall timely notify Design-Builder of the receipt of any third-party claim relating to the Contract. The Owner shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).

15.2 California Government Code.

15.2.1 Pursuant to Government Code Section 8546.7, since this Contract involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), Design-Builder shall be subject to State Auditor examination and audit at the request of the Owner or as part of any audit of the Owner, for a period of three (3) years after final payment under this Contract.

15.2.2 The methods used and costs involved to locate existing elements, points of connection and all construction methods are Design-Builder's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed. Design-Builder, at its sole expense, must make all investigations necessary to determine locations of existing elements, which requires compliance with Government Code Section 4216, et seq., and includes, without limitation, contacting regional notification center(s) such as DigAlert, and other private underground locating firm(s), and/or utilizing potholes, specialized locating equipment and/or hand trenching.

15.2.3 Pursuant to Government Code Section 4215, the Owner acknowledges its responsibilities with respect to locating, relocating, removing or protecting utility facilities on the site of the Project, if it entails construction and such utilities are not identified by the Owner in writing prior to commencement of construction.

15.2.4 Design-Builder agrees not to accept any employment or representation during the term of this Contract or within twelve (12) months after completion of the work under this Contract which is or may likely make Design-Builder "financially interested," as provided in Government Code Sections 1090 and 87100, in any decisions made by Owner on any matter in connection with which Design-Builder has been retained pursuant to this Contract.