



**R E Q U E S T F O R  
Q U A L I F I C A T I O N S**

**NORTH SAN JOAQUIN WATER  
CONSERVATION DISTRICT**

**NORTH PUMP STATION IMPROVEMENTS  
PROJECT**

November 3, 2023



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## Section 1. Background

### 1.1 Introduction

This Request for Qualifications (RFQ) for the **North San Joaquin Water Conservation District (NSJWCD or District) North Pump Station Improvements Project** invites Statements of Qualifications (SOQs) according to the requirements set forth in this RFQ, including the format and content guidelines in Section 5. The SOQs will be reviewed and evaluated to select the most qualified Design-Build team to enter into a progressive design-build agreement with the District. The capitalized terms in this RFQ have the meanings as first used in the text of this RFQ and as defined in Attachment A (Definition of Terms).

The Project is to be designed and constructed in two phases using the progressive design-build delivery method:

- Phase One: Preparation of the Basis of Design Document (BODD), as defined in Attachment B (Scope of Services), and a lump sum price proposal
- Phase Two: Complete design, construction, and post-construction tasks, including performance testing, startup, and commissioning through a contract amendment

At completion of the SOQ evaluation process, the District intends to negotiate for Phase 1 services, and if successful, recommend a Progressive Design-Build Agreement (Agreement) [see Attachment C (Draft Agreement Between Owner and Design-Builder for Progressive Design-Build)] to the District Board of Directors.

**This RFQ is subject to revision after the date of issuance via written addenda.** Any such addenda will be posted on Public|Purchase™ and the District's web site [www.nsigroundwater.com](http://www.nsigroundwater.com) (not distributed directly to potential Respondents). It is each Respondent's responsibility to obtain all RFQ addenda prior to submitting its SOQ.

In no event will the District be liable for any costs incurred by any Respondent or any other party in developing or submitting an SOQ.

### 1.2 RFQ Organization

This RFQ consists of seven Sections and five Attachments:

- Section 1: Background
- Section 2: Project Overview
- Section 3: Progressive Design-Build Services
- Section 4: Procurement Process
- Section 5: SOQ Submission Requirements
- Section 6: SOQ Evaluation and Selection
- Section 7: Conditions for Respondents
- Attachment A: Definition of Terms
- Attachment B: Scope of Services

- Attachment C: Draft Agreement Between Owner and Design-Builder for Progressive Design-Build
- Attachment D: Project Background Documents
- Attachment E: SOQ Forms

The contents of the RFQ Attachments take priority over any conflicting statements in the RFQ Sections.

Certain project background documents are being made available as Attachment D (Project Background Documents) for the purpose of preparing SOQs. The District is providing these documents only for the purpose of obtaining SOQs for the Project and does not confer a license or grant for any other use. The extent to which the Design-Builder may rely on such background documents is set forth in the draft Agreement.

### 1.3 District's Objectives

The District's objectives for delivery of the Project are as follows:

- **Functionality:** The diversion and pumping facilities must be capable of diverting and delivering the maximum amount of surface water available under the District's water right.
- **Quality:** Provide diversion and pumping facilities and equipment that will be reliable for diverting and pumping required quantities of available surface water in compliance with federal and state regulations and contractual requirements that must be easily operated and maintained.
- **Cost:** Minimize life-cycle cost defined as the capital cost plus the present value of operation and maintenance of the project.
- **Schedule:** Achieve the scheduled completion date of December 31, 2026 for design, construction and performance testing (commissioning) of the Project.
- **Risk:** Achieve an optimal balance of risk allocation between the District and the Design-Builder.
- **Safety:** Implement an effective safety program incorporating best industry practices.

District staff have experience with progressive design-build project delivery and are committed to working in close collaboration with the Design-Builder during Phase I to develop the project design to achieve the project objectives and to obtain a mutually agreed lump sum price proposal for delivery of the project.

## Section 2. Project Overview

### 2.1 Project Need

The North Station Improvements Project (Project) is located on the Mokelumne River, approximately four miles northeast of the City of Lodi. The North Pump Station was constructed in the late 1960's to divert surface water for flood irrigation of agricultural fields. In 2010, a fish screen was added as the river intake. In 2021, the District adopted a Strategic Plan with a mission to sustainably manage water to benefit the local environment, community and the region's economy. Seven (7) goals were established to achieve the District's mission. Three (3) of those goals are specifically directed towards the following:

- Goal 4: Protecting the Mokelumne River Water Right
- Goal 5: Building Facilities to Deliver Surface Water
- Goal 7: Increasing the Total Water Supply Available to the District

Continued pressure on the already overdrafted groundwater basin has hastened the need for this project to proceed into design and construction and is partially funded by a Sustainable Groundwater Management Act grant administered through the State Department of Water Resources.

This SOQ is intended to solicit qualifications from Respondents that are skilled in progressive design-build project delivery, have the resources to deliver a quality project to satisfy the Project's goals, and be a partner with the District in achieving a successful outcome. The Respondent must be able to conceptualize a new river intake type and location that best meets the District's need to maximize its water right, and any future water availability on the Mokelumne River, in a cost effective and environmentally protective manner. The Project scope, design standards and performance requirements are described in more detail in Exhibit A to the Draft Design-Build Agreement.

### 2.2 Project Budget and Funding

The anticipated cost for design and construction of the Project is estimated in the range of **\$5 to \$10** million. Budget adequacy will be confirmed during Phase 1 and may result in project phasing considerations. This estimate also includes District's other Project costs, such as professional advisory services, site investigations, environmental studies, etc. and is provided here to encourage project interest. The District intends to use a combination of property taxes, groundwater assessments, grants, loans, and cash on hand to provide the capital funding needed for the Project.

### 2.3 Project Schedule

As indicated in Section 4.3, it is anticipated that the Progressive Design-Build Contract will be

executed on or about February 25, 2024. The design, permitting, construction and performance testing of the completed Project are expected no later than December 31, 2026.

## **Section 3. Progressive Design-Build Services**

### **3.1 General**

As noted in Section 1.1 and more fully described in Exhibit A to the Agreement (Scope of Services), the Design-Builder will provide services in two distinct phases.

Phase 1 services (Preliminary Stage) generally consist of project concept development, validation, design, and preparation of a Phase 2 (Completion Stage) proposal.

Phase 2 services (Completion Stage) generally encompass completing design elements, project construction, startup, testing and commissioning of the completed project facilities.

### **3.2 Phase 1 Services (Preliminary Stage)**

The preliminary stage is the time for the Design-Builder to work collaboratively with the District to develop the project definition beginning with Project concepts and technical documents, and construction planning to facilitate the preparation of a Phase 2 (Completion Stage) proposal.

Preliminary Stage services include:

- Study and Report Phase
- Preliminary Technical Documents
- Construction Planning
- Initial Equipment and Materials Procurement
- Risk Register Development/Strategies
- Project execution plan, including Project schedule
- Engineering studies to support design and cost estimating
- Project permitting requirements and initiate permitting activities
- Engineering design (including preparing and submitting intermediate design review packages) and value-engineering activities in conjunction with District
- Project cost model for detailed cost estimates as the design is advanced
- Basis of Design Report
- Submittal and negotiation of a stipulated (lump sum) price proposal to complete Phase 2 (Completion Stage) services

More detailed descriptions of Phase 1 services are included in Exhibit A to the Agreement.

### **3.3 Phase 1 Off-ramp**



If the District and Design-Builder fail to reach an agreement for an amendment to the Agreement for Phase 2, the District may negotiate for the completion of unified sets of plans and specifications for use by the District to solicit competitive bids for traditional construction of the Project. In such circumstances, it is assumed the Design-Builder will be retained as the Engineer of Record, including the provision of engineering services during construction, and provide other traditional engineering services.

### 3.4 Phase 2 services (Completion Stage)

Phase 1 services will conclude upon Design-Builder meeting to discuss the Phase 2 proposal, revising the Phase 2 proposal, if necessary, and submitting the final Phase 2 proposal within thirty (30) days of the initial Phase 2 proposal meeting. The final Phase 2 proposal shall specify the lump sum price and contract time for Phase 2 based on bidding and pricing results and the Design-Builder's fees for final design, permitting, equipment and materials procurement, physical construction of the project, engineering design services during construction, construction management, start-up, testing, and any additional contracted services for the duration of the project.

### 3.5 Roles and Responsibilities

**District:** The District will cooperate with the Design-Builder and will fulfill its responsibilities in a timely manner to facilitate the Design-Builder's timely and efficient performance of services. District responsibilities include:

- Being a collaborative partner
- Reviewing submissions and provide comments to Design-Builder
- Furnishing existing studies and information regarding the Project, including record drawings, preliminary studies, environmental impact assessments, etc.
- Providing information (or engage Design-Builder to perform) additional studies that may be necessary to complete the Project
- Project funding
- Access to the Project site
- Environmental review
- Obtaining governmental approvals and permits District is responsible for and assist Design-Builder in obtaining governmental approvals and permits it is responsible for
- Providing necessary data and inputs (e.g. water rights and agreements)

**Design-Builder:** The Design-Builder will cooperate with the District and will provide in a timely manner the Phase 1 and Phase 2 services necessary to complete the Project scope specified in this RFQ. Design-Builder responsibilities include:

- Supervise subcontractors and Design-Builder personnel
- Provide adequate resources to execute the Project elements

- Maintain site security
- Implement quality-management procedures
- Implement Project health and safety practices

The roles and responsibilities of the District and the Design-Builder are more fully described in Exhibit B (Scope of Services).

### 3.6 General Agreement Principles

Attachment B to this RFQ contains the preliminary Agreement principles envisioned by the District for incorporation in the draft Agreement. The District intends to use the Engineers Joint Contract Documents Committee (EJCDC®) D-512 Agreement Between Owner and Design-Builder for Progressive Design-Build, Copyright © 2016 as the form of Agreement between the District and the Design-Builder. Respondents are to acknowledge in their SOQ's that this Agreement will form the basis of Agreement and many of the terms will be negotiated with the preferred Respondent. The preliminary Agreement principles are neither all-inclusive nor definitive as to form or substance, and the District reserves the right to amend these Agreement principles in the draft Agreement or during Agreement negotiations. Respondents are encouraged to comment on those principles that are of concern to the Design-Builder's ability to enter into an Agreement with the District.

### 3.7 Risk Allocation

The District has not conducted preliminary investigations of the site, due to the fact the District is not dictating the intake and pump station facility type and location, rather making those decisions the focus of early Phase 1 work.

The following risk matrix table is provided to establish an anticipated foundation of risk allocation and management:

<b>Risk</b>	<b>District</b>	<b>Design-Builder</b>
Land and easements	X	
Technical Requirements	X	
Design		X
Environmental Approvals/Permitting	Shared	Shared
Unforeseen Conditions	X	

Project Performance		X
Phase 1 Design/Schedule	Shared	Shared
Phase 2 Construction/Schedule		X
Constructed Price		X
Warranty		X
Professional Liability		X
Force Majure/Uncontrollable Circumstance	Shared	Shared
Material Cost Escalation		X <sup>(1)</sup>

<sup>(1)</sup> District may consider a material cost escalation clause in Phase 1

The District and Design-Builder will work collaboratively in Phase 1 to develop a risk register to identify specific project risks areas and allocation, potential project impacts and probabilities, and mitigation actions.

### 3.8 Contingencies

Contingencies will be identified and developed in Phase 1 to include District's reserves and considerations for Design-Builder undefined design evolution scope, and risk events that may result in increased scope.

### 3.9 Allowances

During Phase 1, there may be items that are uncertain as to scope and therefore difficult to price as part of the Phase 2 proposal. The District is amenable to establish allowances to address uncertain items of work. Allowances may be available for use by the Design-Builder upon District approval and shall be used for direct labor, materials, equipment, transportation, taxes, and insurance associated with the work.

### 3.10 Agreement Term

The Agreement will take effect upon execution by the District and selected Design-Builder and continue through successful negotiation of a lump sum construction cost and execution of a Phase 2 amendment. This phase shall not exceed 12 months unless the delay is caused by District or causes outside Design-Builder's control.

The Phase 2 amendment will take effect upon execution by the District and selected Design-

Builder and continue through Final Completion as defined in the Agreement. The duration of this phase will be negotiated based on the outcome of Phase 1.

## Section 4. Procurement Process

### 4.1 Acknowledgement of RFQ

Each Respondent shall provide the District, within ten (10) calendar days of receipt of this RFQ, an acknowledgement that it has received the RFQ and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Respondent, who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFQ. Such acknowledgement must be sent by email to the District Contact.

### 4.2 Communications and District Contact

On behalf of the District, Robert L. Granberg, P.E., DBIA, will act as the sole point of contact for this RFQ and shall administer the RFQ process. All communications shall be submitted by email and shall specifically reference this RFQ. All questions or comments should be directed to the District Contact as follows:

Robert L. Granberg, P.E., DBIA  
Granberg & Associates, Inc  
Email: [rgranberg@granbergassociates.com](mailto:rgranberg@granbergassociates.com) with a cc to [NSJWCD@outlook.com](mailto:NSJWCD@outlook.com)

No oral communications from the District Contact or other individual are binding. No contact with District staff, District Board members or any public official concerning the Project during the procurement process is allowed. Violation of this provision may result in disqualification of the Respondent.

### 4.3 Procurement Schedule

The current procurement schedule is as follows:

- |   |                      |
|---|----------------------|
| • Issue RFQ   | November 3, 2023     |
| • Pre-submittal meeting                                 | December 13, 2023    |
| • Deadline for questions                                | January 11, 2024     |
| • Last Addenda issued                                   | January 19, 2024     |
| • Submit SOQ  | February 1, 2024     |
| • Interviews  | February 5-9, 2024   |
| • SOQ evaluation  | February 12-16, 2024 |
| • Board approval to enter into a Design-Build Agreement | February 26, 2024    |

## 4.4 Pre-Submittal Meeting and Site Tour

The District will conduct a pre-submittal meeting for those interested in responding to the RFQ. **Attendance at this meeting is mandatory.** The meeting will be held at the **Lodi Grape Festival Grounds, Zinfandel Room, Lodi, CA** on **December 13, 2023**, starting at **1:30pm, PST**. At this meeting, District will offer information about the Project and the procurement process. Those who attend the pre-submittal meeting will have the opportunity to tour the Project site following the meeting to familiarize themselves with site conditions. Respondents shall advise the District Contact by **December 8, 2023** of the names of individuals who will attend the pre-submittal meeting. Due to space constraints, each firm is limited to four attendees at the meeting and site tour.

## Section 5. SOQ Submission Requirements

### 5.1 Submittal Place and Deadline

**Five (5)** bound paper documents (**one** original and **four (4)** copies), as well as **one (1)** electronic version of the SOQ on a flashdrive in searchable .pdf format, must be received no later than **4:00 pm, PST on February 1, 2024**, addressed to:

**North San Joaquin Water Conservation District  
498 East Kettleman Lane  
Lodi, CA 95240**

Each Respondent assumes full responsibility for timely delivery of its SOQ at the required location. Any SOQ received after the submittal deadline will be deemed nonresponsive and returned. The delivered packaging containing the SOQ documents must note "SOQ – North Pump Station Improvements Project" on its face.

### 5.2 Submission Format

The SOQ must not exceed forty-five (45) total pages (most or all 8½ x 11 inch with 1-inch or greater margins, each sheet with text shall constitute a page; i.e. front and back of a sheet is two pages), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of five (5) of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger must be used in SOQ Parts 1–4.

### 5.3 Submission Content

The content requirements set forth in this RFQ represent the minimum content requirements for the SOQ. It is the Respondent's responsibility to include information in its SOQ to present all

relevant qualifications and other materials. The SOQ, however, should not contain standard marketing or other general materials. It is the Respondent's responsibility to modify such materials so that only directly relevant information is included in the SOQ.

The SOQ must include the following information in the order listed:

- Transmittal Letter of Interest
- Part 1 – Executive Summary
- Part 2 – Design-Builder Profile
- Part 3 – Project Team
- Part 4 – Experience
- Attachment A – SOQ Forms
- Attachment B – Resumes

### **Transmittal Letter of Interest**

Respondents must submit a transmittal letter (maximum two pages) on the Respondent's letterhead, signed by a Respondent representative who is authorized to sign such material and to commit the Respondent to the obligations contained in the SOQ. The transmittal letter must include the name, address, phone number and email address for the Respondent's Contact, and must specify who would be the Design-Builder's signatory to any contract documents executed with the District. Such letter may include other information deemed relevant by the Respondent.

#### **5.3.1 Part 1 – Executive Summary**

The executive summary (maximum three pages) must include a concise overview of the key elements of the SOQ and must summarize and refer to information in the SOQ concerning satisfaction of the Minimum Qualification Requirements defined in Section 6.3. The executive summary shall not be used to convey additional information not found elsewhere in the SOQ.

#### **5.3.2 Part 2 – Design-Builder Profile**

A detailed and complete description of the Respondent must be provided in Part 2 of the SOQ. (The term "Respondent" can refer to either a single entity or a joint venture). Information concerning Key Personnel and other firms that may be included on the Project Team, such as subconsultants and subcontractors, should be provided in Part 3 of the SOQ. The Design-Builder Profile must include the following information:

##### **General**

Provide general information about the Design-Builder, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.

##### **Legal structure**

Identify whether the Design-Builder is organized as a corporation, limited liability company (LLC),

general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the Design-Builder (*e.g.*, shareholders, members, partners, and the like) who hold an interest of ten percent or more.

**Project office location**

Identify where the Design-Builder intends to maintain its project office(s) and where the majority of the design work will be performed.

**Payment and performance bonds**

A letter from the Respondent's surety must be provided to verify the availability to provide performance and payment bonds of at least \$15 million for this Project. The surety must be authorized by law to do business in California and must have an A.M. Best Company Rating of A:VII or better. The surety must also be listed in the U.S. Department of Treasury's Circular 570. Include bonding letter as directed in the SOQ Forms included in Attachment D.

**Insurance**

A letter from the Design-Builder's insurance company or broker indicating that the Respondent can comply with the insurance requirements as defined in the General Conditions contained in Exhibit C to the Agreement. Include insurance letter as directed in the SOQ Forms included in Attachment D.

The SOQ must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Design-Builder's ability to perform its contractual commitments:

**Material adverse changes in financial position.**

Describe any material historical, existing, or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.

**Legal proceedings and judgments.**

List and briefly describe any pending or past (within 10 years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to District. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the general counsel.

**Completion of contracts.**

Has the Design-Builder failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.

**Violation of laws.**

Has the Design-Builder been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances.

**Debarred from bidding.**

Has the Design-Builder been debarred within the past 10 years, or is it under consideration for debarment, on public contracts by the federal government or by any state? If so, describe the circumstances.

If any of the above questions are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Design-Builder's ability to perform its contractual commitments.

The Respondent must notify the District of any changes subsequent to submission of the SOQ and before the selection process is completed (and, in the case of the selected Respondent, before execution of the Progressive Design-Build Agreement).

**5.3.3 Part 3 – Team Organization**

The composition, organization and management of the Project Team must be described in two separate subsections:

*Design-Builder/other firms:*

- Identify any other firms (such as subcontractors and subconsultants) included on the Project Team along with the Design-Builder and describe the scope of the Design-Builder's and each firm's services and responsibilities during Phase 1 and Phase 2 of the Project. The firm(s) serving as the Designer and the Constructor must be clearly identified.
- Provide Phase 1 and Phase 2 organizational charts showing the reporting relationships and responsibilities of the Design-Builder and any other firms and describe the Design-Builder's approach to the management of such firms.

*Key Personnel*

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities during Phase 1 and Phase 2 of the Project.
- Provide Phase 1 and Phase 2 organizational charts showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations) and describe the Design-Builder's approach to the management of such Key Personnel.
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time during each phase of the Project.
- Provide resumes for all Key Personnel in SOQ Attachment B (Resumes). Resumes must be limited to two pages per individual and include:
  - Academic and professional qualifications
  - Professional registration (as applicable)
  - Experience as it relates to the Project and to the individual's specific role on the



## Project

Any change in the firms or Key Personnel included in the SOQ will require District approval.

### 5.3.4 Part 4 – Experience

The SOQ must describe the performance history and experience of the Project Team on similar projects and provide information concerning safety.

#### *Reference Projects*

The Respondent shall submit descriptions of reference projects to demonstrate relevant experience.

Each project description shall contain at least the following information:

- Project name
- Project location
- Owner Name and contact information
- Description of the delivery method and integration of design and construction, identifying the respondent's role as prime consultant, subconsultant, contractor, subcontractor, etc.
- Name of each Key Team Member who is proposed for this Project who played a key role in the reference project, including a description of their responsibilities and function
- Initial contract price, final contract price, with an explanation of the difference (if applicable)
- Initial scheduled for substantial completion date and final substantial completion date, with an explanation of the difference (if applicable)
- Description of the project showing relevance to this Project

#### *Safety*

Provide a summary description of the Design-Builder's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five years. The following safety records must be provided for the Design-Builder for the current and past five years:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod.)
- The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift. The

incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

### **5.3.5 Part 5 – Project Concepts**

Respondents shall provide the District initial project concepts that may be proposed to meet the District's goals and objectives for a new river intake and pump station to deliver irrigation and surface recharge water north of the Mokelumne River. These initial project concepts will inform the District of Design-Build teams that are creative in their approach to the Progressive Design-Build process. The initial design phase includes a validation and programming requirement that will verify these concepts in further detail to establish the Project scope, schedule, and budget.

### **5.3.6 Part 6 - Progressive Design-Build Draft Contract Comments**

Respondents are encouraged to provide comments on the Draft Agreement in any form that is convenient to the Respondent, including a track changes markup of the draft in Attachment B. Any such comments will be considered by the District and addressed in contract negotiations.

### **5.3.7 Part 7 – Cost Proposal**

Complete in accordance with Exhibit B to the Agreement and submitted in a separate sealed envelope.

## **Section 6. SOQ Evaluation and Selection**

### **6.1 General**

The SOQs will be reviewed and evaluated by the District's selection committee (with assistance provided by outside advisors if desired by District) according to the requirements and criteria outlined in this Section 6. During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for the elimination of the Respondent from further consideration. In addition, the District may require that all or a limited number of Respondents participate in interviews.

### **6.2 Responsiveness**

Each SOQ will be reviewed to determine whether it is responsive to the RFQ. Failure to comply with the requirements of this RFQ may result in an SOQ being rejected as nonresponsive. At its sole discretion, however, the selection committee may waive any such failure to meet a requirement of this RFQ and may request clarification or additional information to remedy a failure.

### 6.3 Minimum Qualification Requirements

Each responsive SOQ will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any SOQ that does not satisfy all the Minimum Qualification Requirements may be rejected.

- **Payment and Performance bond.** Provide a letter signed by an authorized representative of the Design-Builder's surety company (or agent) confirming that the Design-Builder can meet the mandatory minimum payment and performance bond in the amount of \$15 million.
- **Insurance.** Provide a letter from the Design-Builder's insurance company or broker indicating the ability to comply with the insurance requirements specified in the General Conditions.
- **Material adverse condition.** The Design-Builder must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.
- **Safety Record.** The Design-Build Contractor must have achieved an experience modification rate (EMR) of not greater than 1.0 for the current and past two years as described in Section 5.3.4.
- **Licensing and registration.** The Design-Builder and each firm must be licensed in California for the type of work to be performed. The Designer must include in responsible charge an engineer registered in California.

### 6.4 Technical and Management Qualifications

The SOQ shall demonstrate the Design-Build Team's ability to undertake the Project by providing the following technical and management qualifications of the Respondent, Team members, and individual Key Team members.

Emphasis will be placed on past performance and expertise in performing substantive work on projects that are of similar scope and complexity, as described below. The District reserves the right to award more points to reference projects that are of similar scope and complexity to the Project and to successful projects in which the Respondent, Team members and/or Key Team members had substantial responsibility for their respective scopes of work.

#### 6.4.1 Demonstrated Past Performance with Successful Projects of Similar Scope and Complexity

- Describe the Respondent’s past performance in successfully managing design-build projects of similar scope and complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Describe any problems or issues encountered and how those issues or problems were resolved. Describe the Respondent’s past performance in developing integrated design and construction schedules for projects of similar scope and complexity.
- Describe the Respondent’s past performance in developing and/or managing costs within a Lump Sum Price.
- Describe the Respondent’s past performance working together and/or describe the steps the Respondent has taken to promote integration and a collaborative working environment.
- Describe the Respondent’s experience working with owners through alternative design approaches of projects of similar scope and complexity to demonstrate creative approaches to cost, functionality, and effectiveness in project delivery.
- Describe the Respondent’s past performance in managing the design process for projects of similar scope and complexity. Describe any problems or issues encountered and how those issues or problems were resolved.
- List all professional registrations and/or certifications that are relevant to the work associated with the Project.

#### 6.4.2 Design-Build Construction Past Performance

- Describe the Design-Builder’s past performance with construction and construction management of projects of similar scope and complexity. Describe any problems or issues encountered and how those issues or problems were resolved.

### 6.5 Comparative Evaluation Criteria

The selection committee will evaluate and rank the responsive SOQs that satisfy the Minimum Qualification Requirements by applying the weighted comparative evaluation criteria set forth below. Financial condition is evaluated on a pass/fail basis as part of the Minimum Qualification Requirements.

Criteria	Points
5.3.3 Team Organization	20
5.3.4 Experience	20
5.3.5 Project Concepts	20
6.4.1 Demonstrated Past Performance of Similar Projects	20
6.4.2 Design-Build Construction Past Performance	20
<b>Total Points</b>	<b>100</b>

## 6.6 Selection of Preferred Proposer

After the evaluation process is complete, the top-ranked Respondent will be selected for negotiation of an Agreement.

## Section 7. Conditions for Respondents

### 7.1 District Authority

The Facilities project delivery is authorized and governed by the North San Joaquin Water Conservation District under Division 21 of the California Water Code.

### 7.2 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the District for this Project and are therefore not eligible to assist or participate with any Respondent that submits an SOQ for the Project.

Weber, Ghio & Associates, Inc.  
P.O. Box 251  
San Andreas, CA 95249

DeGraaf Engineering, Inc.  
P.O. Box 87  
Ripon, CA 95366

Granberg & Associates, Inc.  
P.O. Box 637  
Escalon, CA 95320

### 7.3 Conflicts of Interest

Respondents has reviewed all the engagements and pending engagements of the Respondent and acknowledges that no potential existing for any conflict of interest of unfair advantage by submitting a SOQ.

### 7.4 Proprietary Information

The District will, to the extent permitted by Applicable Law, not voluntarily disclose information submitted by Respondents as part of, or in support of the SOQs, to persons other than District elected officials and members of an evaluation committee, and consultants involved in the evaluation of the SOQs.

However, all information obtained by the District regarding the Project, including responses to this RFQ is subject to public disclosure, in response to requests received under provisions of the

California Public Records Act. If a submittal contains any information that may reasonably be considered a trade secret, which the submitter does not want disclosed to the public or used by the District for any purpose other than evaluation of the qualifications of the submitter, each sheet of such information must be marked with the designation "Confidential." The District agrees that if a Public Records Act request is made for disclosure of data so classified, the District will take reasonable efforts to avoid disclosure and to notify the submitter of such data so that the submitter will have an opportunity to legally challenge the District's obligation to disclose such information. However, the District makes no warranty as to whether any particular item of information, whether or not it is marked "Confidential", will be withheld from disclosure, and specifically disclaims any and all responsibility for any damage or injury that may arise from the District's failure to notify the submitter as provided herein or from the disclosure of any submittal, or part thereof.

## 7.5 Rights of the District

In connection with this procurement process, including the receipt and evaluation of SOQs, District reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFQ, in whole or in part, at any time, without incurring any obligations or liabilities
- Modify the procurement schedule
- Waive deficiencies, informalities and irregularities in an SOQ and accept and review a non-conforming SOQ
- Suspend and terminate the procurement process or terminate evaluations of SOQs received
- Permit corrections to data submitted with any SOQ
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an SOQ
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the SOQs
- Seek clarification from any Respondent to fully understand information provided in the SOQ and to help evaluate and rank the Respondents
- Reject an SOQ containing exceptions, additions, qualifications or conditions not called for in the RFQ or otherwise not acceptable to the District
- Conduct an independent investigation of any information, including prior experience, identified in an SOQ by contacting project references, accessing public information, contacting independent parties, or any other means
- Request additional information from a Respondent during the evaluation of its SOQ

## 7.6 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the SOQ shall remain on

the Project Team for the duration of the procurement process and execution of the Project. (The anticipated dates for award of the Progressive Design-Build Contract and for completion of the Project are set forth in Section 4.3 of this RFQ.) If extraordinary circumstances require a change, it must be submitted in writing to the District Contact, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Design-Builder's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

## 7.7 Addenda

If any revisions to the RFQ or procurement process become necessary or desirable (at the District's sole discretion), the District may issue written addenda. **The District will not transmit addenda to potential Respondents.** The District will post all addenda on the District website at the following address: [www.nsigroundwater.com](http://www.nsigroundwater.com) and through Public|Purchase™. **It is Respondent's responsibility to obtain all addenda prior to submitting its SOQ.**

## 7.8 Protests

Any protest to a District's action in connection with this procurement must be filed in writing no later than ten (10) business days following such action and must be in strict accordance with the District's applicable procedures and with applicable law.

## END OF REQUEST FOR QUALIFICATIONS

## **ATTACHMENT A**

### **Definition of Terms**

See Standard General Conditions of the Contract Between Owner and Design-Builder.



## ATTACHMENT B

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER FOR PROGRESSIVE DESIGN-BUILD

Prepared by



Issued and Published Jointly by



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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
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**AGREEMENT**  
**BETWEEN OWNER AND DESIGN-BUILDER**  
**FOR PROGRESSIVE DESIGN-BUILD**

THIS AGREEMENT is by and between North San Joaquin Water Conservation District (“Owner”) and \_\_\_\_\_ (“Design-Builder”).

---

**PROJECT INFORMATION**

Project: North Pump Station Improvements Project

Owner’s Consultant: Granberg & Associates, Inc.

Engineer: Design-Builder has retained [ ] (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Robert L. Granberg, P.E., DBIA, [rgranberg@granbergassociates.com](mailto:rgranberg@granbergassociates.com), (209) 401-0439
2. Design-Builder’s Authorized Representative: [ ] **[include mailing and delivery addresses, e-mail address, telephone numbers]**

Owner and Design-Builder further agree as follows:

**ARTICLE 1 – THE WORK**

1.01 *General Description:* Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of a river intake and pump station as described in Exhibit C – Project Criteria.

1.02 *Work Stages:*

- A. *Preliminary Stage:* As set forth in more detail in Exhibit B, which is attached and incorporated by reference, Design-Builder shall perform the following in the Preliminary Stage: Study and Report services; drafting of Preliminary Technical Documents; and Construction Planning services (including preparation of proposed Completion Stage Price).
- B. *Completion Stage:* If Owner and Design-Builder advance to the Completion Stage pursuant to Paragraph 3.03, then Design-Builder shall perform the following in the Completion Stage: Preparation of Construction Drawings and Construction Specifications, based on the

Preliminary Technical Documents; Construction; Start-up, Testing, and Commissioning; and Correction Phase services.

C. Regardless of stage, the Work is subject to the terms of the Standard General Conditions.

**ARTICLE 2 – CONTRACT TIMES**

2.01 *Time of the Essence*

A. All time limits for Design-Builder’s attainment of Milestones, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.02 *Contract Times: Preliminary Stage*

A. Design-Builder shall complete the Work under the Preliminary Stage within 335 days of the Effective Date.

B. In addition to Design-Builder’s Preliminary Stage completion commitment above, the parties shall meet the following Preliminary Stage Schedule:

<b><u>PRELIMINARY STAGE SCHEDULE</u></b>		
<b><u>Party</u></b>	<b><u>Action</u></b>	<b><u>Schedule</u></b>
Design-Builder	Furnish three (3) review copies of the Project Management Plan to Owner.	Within 30 days of the Effective Date.
Owner	Submit comments regarding the Project Management Plan to Design-Builder.	Within 15 days of the receipt of Project Management Plan from Design-Builder.
Design-Builder	Furnish three (3) copies of the initial Basis of Design Report to Owner.	Within 90 days of the Effective Date.
Design-Builder	Furnish three (3) copies of the 1 <sup>st</sup> draft BDR to Owner.	Within 180 days of the Effective Date.
Owner	Submit comments regarding the 1 <sup>st</sup> draft BDR to Engineer.	Within 30 days of the receipt of 1 <sup>st</sup> draft BDR from Engineer.
Design-Builder	Furnish 3 copies of the 2 <sup>nd</sup> draft BDR to Owner.	Within 270 days of the Effective Date.
Design-Builder	Furnish to Owner a final, binding Completion Stage Price based on the Stipulated Sum method of compensation.	Within 335 days of the Effective Date.

2.03 *Contract Times: Completion Stage*

B. The Work will be completed and ready for final payment on or before [TBD].

## 2.04 *Liquidated Damages; Early Completion Bonus*

- A. *Preliminary Stage:* Liquidated damages are not anticipated for the Preliminary Stage work; however, the Design-Builder is expected to execute the work diligently to the submission of a Completion Stage price and schedule to maintain overall work progress.
- B. *Construction:* Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 and that Owner will suffer financial and other losses if the Work is not completed within the times specified in Paragraph 2.03, as such may be revised in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Design-Builder shall pay Owner \$[TBD] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.03.B for Substantial Completion, until the Work is substantially complete. Since the completion date is unknown at this time, actual damages for late completion will be addressed prior to the commencement of the Completion Stage.
  2. *Completion of Remaining Work:* After Substantial Completion, if Design-Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, as specified in Paragraph 2.03.D above, then Design-Builder shall pay Owner \$[TBD] for each day that expires after such until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion, final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence.
  4. *Milestones:* Design-Builder shall pay Owner \$[TBD] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of any defined Milestones until Milestones are achieved.
- C. *Bonus:* Design-Builder and Owner further recognize the Owner *may* realize financial and other benefits if the Work is substantially completed prior to the time specified for Substantial Completion. Accordingly, Owner and Design-Builder *may* agree that as a bonus for early completion, Owner shall pay Design-Builder \$[TBD] for each day prior to the time specified in Paragraph 2.03 for Substantial Completion as duly adjusted pursuant to the Contract that the Work is substantially complete. The maximum value of the bonus shall be limited to \$[TBD].

## **ARTICLE 3 – CONTRACT PRICE**

### 3.01 *Contract Price Definitions*

- A. For purposes of this Agreement, the following definitions apply:
1. *Contract Price*—The money that Owner has agreed to pay Design-Builder for performance and completion of the Work in accordance with the Contract Documents. Contract Price is comprised of the Preliminary Stage Price and the Completion Stage

Price, and when applicable the Owner’s Completion Contingency. Contract Price is subject to and governed by any duly established Stipulated Sum.

2. Preliminary Stage Price—the portion of the Contract Price established in Paragraph 3.02, as Design-Builder’s compensation for the performance of the Preliminary Stage Work.
3. Completion Stage Price—the portion of the Contract Price established in Paragraph 3.03, as Design-Builder’s compensation for the performance of the Completion Stage Work.
4. Owner’s Completion Contingency—When applicable, a contingent amount included in the Contract Price for use by Owner, at its sole discretion, in funding the Completion Stage Price.

3.02 Preliminary Stage

- A. For performance of the Preliminary Stage Work in accordance with the Contract Documents, Owner shall pay Design-Builder the Preliminary Stage Price (1) pursuant to the following compensation methods, and (2) in the amounts that follow, subject to adjustment under the Contract, and subject to the applicable terms of Exhibit B:

***For the phases, as an alternative to indicating dollar amounts in the right-hand column, instead indicate a percentage and state a lump sum (stipulated price) only in the Total row.***

Category	Compensation Method	Amount
Study and Report Phase	Stipulated Price	\$
Preliminary Technical Documents	Standard Hourly Rates	\$
Construction Planning	Standard Hourly Rates	\$
[Study and Report, Preliminary Technical Documents, and Construction Planning Phases, combined.]		\$
<b>Total: Preliminary Stage Price</b>		\$

- B. Monetary amounts stated for portions of the work to be performed on a Stipulated Price basis are fixed and binding. For portions of the Work subject to the Direct Labor Costs Times a Factor or Standard Hourly Rates methods of payment, the stated monetary amounts are estimates of the amounts that will become payable for the specified services; such stated amounts are for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design-Builder under the Agreement.

3.03 Completion Stage

- A. As part of Construction Planning under the Preliminary Stage, Design-Builder is required to determine an estimate of the cost of completion of the Work, including completion of the design and all Construction labor, administration, equipment, materials, and subcontracts (“Completion Cost Estimate”). Any categories of Construction that are not included in the Construction Cost Estimate, because their price will be determined by competitive bidding as set forth in Exhibit B, should be noted. Design-Builder shall use the final Completion Cost Estimate as the basis for developing and submitting to Owner a proposed Completion Stage Price based on:

1. the Stipulated Price method of compensation, as set forth in Exhibit B.
- B. The proposed Completion Stage Price shall be based on the Contract Times established in this Agreement; or if no Contract Times were established with respect to the Completion Stage when the Agreement was executed, then upon proposed or mutually-agreed Contract Times developed during the Preliminary Stage and expressly stated as an essential part of Design-Builder's Completion Stage Price submittal to Owner.
- C. The proposed Completion Stage Price submitted by Design-Builder to Owner constitutes an offer that is binding on Design-Builder for 30 days.
- D. After receipt of the proposed Completion Stage Price from Design-Builder, Owner shall either (1) accept the Completion Stage Price, in which case the Completion Stage Price is binding on both Owner and Design-Builder for the performance of the Completion Stage Work; or (2) enter into negotiations with Design-Builder regarding the Completion Stage Price and the corresponding scope of Work and schedule, or (3) reject the Completion Stage Price. If Owner accepts the Completion Stage Price, or an accord is reached through negotiations, the parties shall prepare and enter into a Change Order or special amendment to the Contract, memorializing the acceptance of such Completion Stage Price, as modified by any negotiations, and establishing an adjusted Contract Price or Guaranteed Maximum Price based upon such Completion Stage Price.

If Owner does not accept the proposed Completion Stage Price, and negotiations (if any) are not successful, then the Contract shall terminate for convenience. Under such a termination for convenience,

1. Design-Builder shall be entitled to full payment for all Preliminary Stage Work;
2. Owner shall be entitled to use of the Preliminary Technical Documents only if Owner pays a supplemental termination fee of \$[TBD]; and
3. Owner shall assume and discharge all remaining payment obligations for any equipment or materials that Design-Builder has ordered or purchased for the Project pursuant to express authorization from Owner, and Design-Builder shall assign to Owner all rights and interests in any such equipment and materials.

### 3.04 *Changes in Contract Price Based on Cost of the Work*

- A. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of 10%, which covers overhead, and profit.
- B. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark-ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

## ARTICLE 4 – PAYMENT PROCEDURES

### 4.01 *Submittal and Processing of Payments*

- A. Design-Builder shall submit Applications for Payment for processing by Owner in accordance with Article 14 of the General Conditions.

### 4.02 *Progress Payments; Retainage*

- A. During the Preliminary Stage the Owner shall make payment within 30 days of the receipt of Design-Builder's invoice for Preliminary Stage services. Owner shall not withhold any portion of such payment as retainage.
- B. During the Completion Stage the Owner shall make progress payments on account of the Completion Stage Price on the basis of Design-Builder's Applications for Payment on or about the 30th day of each month during construction as provided in Paragraphs 4.02.A.1 and 4.02.A.2 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
    - a. 10 percent of the Cost of Work completed (or in the case of a Stipulated Price contract, such percentage of the value of Work completed), with the balance being retainage. If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and
    - b. 10 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less 200 percent of Owner's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
  - 3. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of an Application for Payment pertaining to engineering, design, and other professional services.
- C. *For Design-Builder's fee:* Progress payments on account of the Design-Builder's fee will be made as follows:
  - 1. If Design-Builder's fee is a percentage fee, payments prior to Substantial Completion will be in an amount equal to the percent of work completed (less in each case payments previously made on account of such fee), and upon Substantial Completion in an



amount sufficient to increase total payments to Design-Builder on account of that fee to 100 percent of Design-Builder's fee.

- D. Notwithstanding any provision above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

#### 4.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the final amount due.

### **ARTICLE 5 – INTEREST**

#### 5.01 *Interest Rate*

- A. All amounts not paid when due shall bear interest at the rate stated in a governing prompt payment statute.

### **ARTICLE 6 – INSURANCE AND BONDS**

#### 6.01 *Insurance*

- A. Design-Builder and Owner shall obtain and maintain insurance as required by the General Conditions and Supplementary Conditions.

#### 6.02 *Performance, Payment, and Other Bonds*

- A. As part of the Work under the Completion Stage, the Design-Builder shall furnish a performance bond and a payment bond, each in an amount equal to the Completion Stage Price as duly established and modified under this Contract, as security for the faithful performance and payment of Design-Builder's obligations under the Completion Stage. These bonds shall be in the form prescribed by the Contract and governed by the provisions of Paragraph 6.01 of the General Conditions. Design-Builder shall also furnish such other bonds as are required by other specific provisions of the Contract.

### **ARTICLE 7 – DESIGN-BUILDER'S REPRESENTATIONS**

#### 7.01 *Representations*

- A. Design-Builder makes the following representations for Owner's reliance:
  1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the

Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (3) Design-Builder's safety precautions and programs.

5. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
6. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 8 – ACCOUNTING RECORDS**

### **8.01 *Maintaining and Preserving Cost Records***

- A. Design-Builder shall keep such full and detailed accounts of materials incorporated and labor, services, and equipment utilized for the Work as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to cost-based or time-based compensation or reimbursement of any type or description, including but not limited to direct labor hours, standard rate hours, reimbursable expenses, change order pricing, and the Cost of the Work (if applicable). Design-Builder shall preserve all such documents for a period of three years after the final payment by Owner.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 *Contents***

- A. The Contract Documents consist of the following:
  1. This Agreement (pages 1 to 11, inclusive).
  2. General Conditions (pages 1 to 59, inclusive).

3. Supplementary Conditions (pages 1 to [ ], inclusive).
4. Exhibit A, Preliminary Stage Work.
5. Exhibit B, Compensation.
6. Exhibit C, Project Criteria
7. Addenda (numbers [ ] to [ ]).
8. Design-Builder's Proposal.
9. Proposal Amendment.
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Performance Bond (in the form attached).
  - b. Payment Bond (in the form attached).
  - c. Other Bonds.
  - d. Work Change Directives.
  - e. Change Orders.
  - f. Record Drawings and Record Specifications.
11. Other Exhibits to this Agreement (enumerated as follows):
  - a. **[List]**.
  - B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
  - C. There are no Contract Documents other than those listed above in this Article 9.
  - D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

### 10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Design-Builder's Certifications*

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 15.05:
  - 1. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

OWNER:

DESIGN-BUILDER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*[If Design-Builder is a corporation, partnership, LLC, or a joint venture, attach evidence of authority to sign. In the case of a joint venture, expand the signature section to accommodate execution of the Agreement by an authorized representative of each joint venturer.]*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
(where applicable)

*[If Owner is a corporation, partnership, or LLC, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.]*

*[State a license number in those states or other jurisdictions where applicable or required.]*

This is **EXHIBIT A**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

## **EXHIBIT A – PRELIMINARY STAGE WORK**

---

### **ARTICLE 1 –BASIC SERVICES: Preliminary Stage**

#### **A1.01 Study and Report Phase**

- A. In the Study and Report Phase of the Preliminary Stage, the Design-Builder shall:
1. Review the Conceptual Documents, if any, and other information furnished by Owner.
  2. Consult with Owner as needed to define and clarify Owner’s requirements for the Project, as set forth in the Conceptual Documents or otherwise, including design objectives and constraints; space, capacity and performance requirements; flexibility and expandability needs; quality standards; and Owner’s budgetary limitations.
  3. Identify available data, information, reports, facilities plans, and site evaluations; obtain such items from Owner or others; review.
  4. Request that Owner obtain data or services that are not part of Design-Builder’s Preliminary Stage Services and are reasonably required to enable Design-Builder to complete its Preliminary Stage Services.
  5. If Owner has already identified one or more potential solutions to meet its Project requirements, in the Conceptual Documents or otherwise, then proceed with the study and evaluation of such potential solution(s).
  6. If Owner has not identified one or more potential solutions for study and evaluation, or if the Owner’s proposed solutions are not feasible, then identify one or more potential solutions to meet Owner’s Project requirements, and study and evaluate such potential solution(s).
  7. Identify and analyze relevant requirements of governmental authorities having jurisdiction over the Project; consult with such governmental authorities as necessary.
  8. Visit the Site(s) to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the Study and Report objectives.
  9. Review any environmental assessments and impact statements furnished by Owner, and analyze the effect of any such environmental documents (including any mitigation measures identified in the documents) on the Project, including the contemplated design and construction.
  10. Recommend to Owner those solutions which in Design-Builder’s judgment meet Owner’s requirements for the Project.
  11. Prepare a report (the “Report”) which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, considerations involved, and Design-Builder’s recommended solutions. This Report will be accompanied by Design-Builder’s estimate of Design-Build Cost for each recommended solution. This Report shall include descriptions of any

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**EXHIBIT A – Preliminary Stage Work.**

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deviations from the Contract Documents, particularly the Conceptual Documents and excerpts from Design-Builder's Proposal.

12. In the Report, advise Owner of any limitations on the use or applicability of the Report.
  13. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project.
  14. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to develop a scope of work and procedure for the identification and mapping of existing utilities, consistent with the provisions of Paragraph 5.05 of the General Conditions regarding Underground Facilities.
  15. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
  16. If Owner and Design-Builder have not already stipulated that certain Work will be performed by Construction Subcontractors selected on a competitive-bid basis (or by Design-Builder if it bids on such work and is the successful bidder), identify Construction Subcontract bid packages that in Design-Builder's judgment should be let by competitive bidding.
  17. Perform or furnish the following additional Study and Report Phase tasks or deliverables: [TBD].
  18. Furnish 5 review copies of the Report (and any other deliverables) to Owner pursuant to the Preliminary Stage Schedule and review it with Owner.
  19. Revise the Report (and any other deliverables) in response to Owner's comments, as appropriate, and furnish 5 copies of the revised Report (and any other deliverables) to the Owner pursuant to the Preliminary Stage Schedule.
- B. Design-Builder's Work under the Study and Report Phase of the Preliminary Stage will be considered complete on the date when Design-Builder has delivered the copies of the revised Report (and any other deliverables) to Owner.

#### A1.02 *Preliminary Technical Documents*

- A. After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Design-Builder shall:
1. Conduct necessary field surveys and topographic and utility mapping for the purpose of preparing Preliminary Technical Documents. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected during the Study and Report phase based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," consistent with the provisions of Paragraph 5.05 of the General Conditions.
  2. Visit the Site as needed to prepare the Preliminary Technical Documents.
  3. Make measured drawings and conduct additional investigation of the Site.
  4. Prepare or furnish Preliminary Technical Documents (including but not limited to final design criteria, preliminary drawings, outline specifications, and written descriptions of

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the Project) that show or describe the character, scope, and intent of, the Construction to be performed or furnished by Design-Builder in the Completion Stage. The Preliminary Technical Documents shall be based on or consistent with the Report unless noted otherwise. The Preliminary Technical Documents will be taken to a point of [TBD] percent of the final design.

5. Provide in writing to Owner descriptions of any deviations in the Preliminary Technical Documents from the Contract Documents, particularly the Conceptual Documents and the excerpts from the Design-Builder's proposal, or the Report.
  6. Furnish to Owner 5 final copies of the Preliminary Technical Documents according to the Preliminary Stage Schedule , and review them with Owner.
  7. Revise the Preliminary Technical Documents in response to Owner's comments, as appropriate, and furnish 5 copies of the revised Preliminary Technical Documents to the Owner pursuant to the Preliminary Stage Schedule.
- B. Design-Builder's Work under the Preliminary Technical Documents Phase of the Preliminary Stage will be considered complete on the date when Design-Builder has delivered final copies of the Preliminary Technical Documents to Owner.

#### A1.03 *Construction Planning*

- A. *Planning Tasks:* Concurrent with Design-Builder's development of the Preliminary Technical Documents, Design-Builder shall begin to plan and organize anticipated construction activities. Tasks shall include (but are not limited to) the following:
1. Identification of potential Construction Subcontractors and Suppliers.
  2. Constructability reviews, with ongoing feedback to the design professionals.
  3. Development and refinement of the construction schedule, with the addition of greater scheduling detail as the design and construction planning progresses.
  4. Identification of potential for phased or fast-track construction.
  5. Consideration of off-site fabrication options.
  6. Identification of the need for or advantage in making long lead-time equipment and materials purchases.
  7. Development of Subcontract bid packages that will be let by competitive bidding.
- B. *Development of Completion Cost Estimate:* Throughout the Preliminary Stage, Design-Builder shall develop and refine the Completion Cost Estimate, based on Site information, square-foot or similar estimated costs, the draft design, budget considerations, construction planning, projected schedule, quantity estimates, unit prices, cost of materials and labor, anticipated allowances, permits and taxes, storage and transportation costs, insurance costs, information from prospective Subcontractors and Suppliers, construction-phase engineering services, standard contingencies, administrative costs, Contract terms and conditions, and other relevant factors. Design-Builder shall conduct the development and refinement of the Completion Cost Estimate using a transparent "open book" process. Under the open book process:

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**EXHIBIT A – Preliminary Stage Work.**

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1. Owner and Design-Builder shall meet as needed to review the status of the draft Completion Cost Estimate, including detailed line item components and supporting data and information.
  2. Owner may at any time during the Preliminary Stage indicate to Design-Builder ways in which the draft Completion Cost Estimate might be improved, including opportunities for Owner to furnish materials or equipment, access to improved information regarding the Site or local conditions, changes in scope or schedule, and enhancing competition.
- C. *Final Completion Cost Estimate:* After delivering the final Preliminary Technical Documents, as duly reviewed and revised, to Owner, as required in Paragraph A1.02 above, Design-Builder shall prepare a final Completion Cost Estimate, based on such final Preliminary Technical Documents and all other relevant factors relevant to cost.
- D. *Completion Price:* Pursuant to the Preliminary Stage Schedule, Design-Builder shall submit to Owner proposed Completion Price(s) as set forth in Paragraph 3.03 of this Agreement. The proposed Completion Price(s) shall indicate the Contract Times applicable to each specific Contract Price.

#### A1.04 *Initial Equipment and Materials Procurement*

- A. As Design-Builder develops the Preliminary Technical Documents, it shall:
1. identify equipment to be installed during construction that (a) requires early procurement to allow sufficient time for manufacture or customization, and delivery to the Site, or (b) will not be readily available, or will be inordinately expensive if not procured well in advance of construction.
  2. Identify materials needed for construction that (a) should be procured and stockpiled to avoid potential shortages, (b) are currently priced advantageously and should be procured or ordered to avoid possible price fluctuations, (c) require early procurement to give sufficient time for shipment and delivery.
- B. In the case of any such item, Design-Builder shall propose to Owner early procurement, prior to completion of the Preliminary Technical Documents. Owner shall at its option (1) procure the item itself, and make the item available to Design-Builder during construction, (2) authorize Design-Builder to purchase the item, for mutually agreed compensation or reimbursement based on cost and standard mark-ups, or (3) inform Design-Builder that the item is not to be procured until a later point, with acknowledged acceptance by Owner of the risk of adverse price or schedule impacts.

### **ARTICLE 2 – ADDITIONAL SERVICES**

#### A2.01 *Owner's Authorization in Advance Required*

- A. If authorized in writing by Owner, during the Preliminary Stage the Design-Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.
1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

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#### **EXHIBIT A – Preliminary Stage Work.**

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2. Verify the accuracy of drawings or other information furnished by Owner.
3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design-Builder or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revise previously accepted studies, reports, technical exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design-Builder's control.
4. Perform services required as a result of Owner's providing incomplete or incorrect Project information.
5. Provide renderings or models for Owner's use.
6. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assist in obtaining financing for the Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing, audits, or inventories required in connection with construction performed by Owner.
7. Perform services requiring out-of-town travel by Design-Builder, other than for visits to the Site or Owner's office.
8. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Documents or other Proposal Documents as a result of such review processes.

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**EXHIBIT A – Preliminary Stage Work.**

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This is **EXHIBIT B-1**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

**B-1: PRELIMINARY STAGE—STIPULATED PRICE**

---

*Article 3 of the Agreement is supplemented as follows:*

**B3.01 Preliminary Stage Work Subject to Stipulated Price Compensation**

- A. For each phase of Work under the Preliminary Stage that is subject to Stipulated Price compensation under Paragraph 3.02 of the Agreement, Owner shall pay Design-Builder for performance of such Work the Stipulated Price indicated in that paragraph.
- B. The Stipulated Price includes compensation for the subject Work and the services, labor, and materials furnished by Design-Builder's Project Design Professionals and Construction Subcontractors, if any. Appropriate factors have been incorporated into the Stipulated Price to account for labor, overhead, profit, and expenses.
- C. The portion of the Stipulated Price billed will be based upon Design-Builder's estimate of the proportion of the total Work actually completed during the billing period to the Stipulated Price for the phase.

This is **EXHIBIT B-2**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

**B-2: PRELIMINARY STAGE—DIRECT LABOR COSTS TIMES A FACTOR – NOT USED**

---

Article 3 of the Agreement is supplemented as follows:

**B3.01** *Preliminary Stage Work Subject to Direct Labor Costs Times a Factor Compensation*

- A. For each phase of Work under the Preliminary Stage that is subject to Direct Labor Costs Times a Factor compensation under Paragraph 3.02 of the Agreement, Owner shall pay Design-Builder for performance of such Work an amount equal to Direct Labor Costs times a factor of [ ] for all Work by design and construction professionals engaged directly in providing such services, regardless of the contractual tier of such design and construction professionals' employers, plus reimbursement of specified expenses, if any.
- B. Direct Labor Costs means salaries and wages paid to design and construction professional personnel but does not include payroll-related costs or benefits.
- C. The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, but excluding operating margin or profit; and any mark-up by Design-Builder or its Project Design Professionals or Construction Subcontractors, regardless of contractual tier.
- D. Owner shall pay Design-Builder for reimbursable expenses.
  1. The amounts payable to Design/Builder for reimbursable expenses will be the Work-related internal expenses actually incurred or allocated by Design-Builder; plus all invoiced external reimbursable expenses allocable to the Work.

This is **EXHIBIT B-3**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

### **B-3: PRELIMINARY STAGE—STANDARD HOURLY RATES**

---

Article 3 of the Agreement is supplemented as follows:

#### **B3.01 *Preliminary Stage Work Subject to Standard Hourly Rates Compensation***

- A. For each phase of Work under the Preliminary Stage that is subject to Standard Hourly Rates compensation under Paragraph 3.02 of the Agreement, Owner shall pay Design-Builder for performance of such Work an amount equal to cumulative hours devoted to the Work under the specific phase by each class of design and construction professionals engaged directly in providing such services, regardless of the contractual tier of such design professionals' employers, times Standard Hourly Rates for each applicable billing class for all services rendered, plus reimbursable expenses, if any.
- B. Design-Builder's Standard Hourly Rates Schedule is attached to this Exhibit B as Appendix 1.
- C. Standard Hourly Rates set forth in Appendix 1 to this Exhibit B include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit, and any mark-up by Design-Builder or its Project Design Professionals or Construction Subcontractors, regardless of contractual tier.
- D. Owner shall pay Design-Builder for Reimbursable Expenses. The amounts payable to Design-Builder for Reimbursable Expenses will be the Work-related internal expenses actually incurred or allocated by Design-Builder plus all invoiced external Reimbursable Expenses allocable to the services.

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**EXHIBIT B-3: Preliminary Stage—Standard Hourly Rates.**

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This is **EXHIBIT B-4**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

#### **B-4: PRELIMINARY STAGE—ADDITIONAL SERVICES**

---

Article 3 of the Agreement is supplemented as follows:

##### **B3.02 Preliminary Stage—Additional Services**

A. Owner shall pay Design-Builder for Additional Services as follows:

For Work performed by design and construction professional personnel engaged directly in providing services pursuant to Article A2 of Exhibit A, regardless of the contractual tier of such design and construction professionals' employers, an amount equal to the cumulative hours devoted to such services by each class of design and construction professionals times hourly rates for each applicable billing class for all Additional Services, plus Reimbursable Expenses, if any. The Design-Builder's Standard Hourly Rates and Reimbursable Expenses Schedule are attached to this Exhibit B as Appendix 1 and Appendix 2. **[Notes: 1. Prepare or furnish a schedule of standard hourly rates for the categories of professionals likely to contribute to the subject Preliminary Stage Work. 2. User may wish to use Exhibit B-5 as starting point for preparation of an appendix that lists agreed-upon rates for common reimbursable expenses.]**

1. Standard Hourly Rates set forth in Appendix 1 to this Exhibit B include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The amounts payable to Design-Builder for Reimbursable Expenses will be the internal expenses actually incurred or allocated by Design-Builder with respect to the Additional Services; plus all invoiced external Reimbursable Expenses allocable to the Additional Services.

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**EXHIBIT B-4: Preliminary Stage—Additional Services.**

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This is **EXHIBIT B-5**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

**B-5: PRELIMINARY STAGE—REIMBURSABLE EXPENSES - NONE**

---

Article 3 of the Agreement is supplemented as follows:

**B3.03 Preliminary Stage—Reimbursable Expenses**

- A. For all Preliminary Stage Work, other than Initial Equipment and Materials Procurement, in addition to other compensation as set forth in the Agreement including this Exhibit B, Owner shall also reimburse Design-Builder for specified expenses at the rates set forth in Table 1 below.
- B. Reimbursable expenses include the expenses identified in Table 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Technical Documents, and similar Project-related items; and Subcontractor’s charges. In addition, if authorized in advance by Owner, reimbursable expenses will also include expenses incurred for the use of highly specialized equipment. ***[Revise this paragraph to suit the specific needs of the Project’s Preliminary Stage Work. If expenses are to be covered by the ordinary compensation for Preliminary Stage Work (for example by a Stipulated Price) delete the text of this exhibit, and the table, and indicate “Reimbursable Expenses: None.”***
- C. The amounts payable to Design-Builder for reimbursable expenses will be the Project-related internal expenses actually incurred or allocated by Design-Builder, plus all invoiced external reimbursable expenses allocable to the Project, the latter multiplied by a factor of [ ].
- D. **Table 1: Reimbursable Expense Rates**

8"x11" Copies/Impressions	\$ [ ]/page
Copies of Drawings	\$ [ ]/sq. ft.
Mileage (auto)	\$ [ ]/mile
Air Transportation	at cost
CAD Charge	\$ [ ]/hour
Laboratory Testing	at cost
Health and Safety Level D	\$ [ ]/day
Health and Safety Level C	\$ [ ]/day
Meals and Lodging	at cost

This is **EXHIBIT B-6**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

**B-6: COMPLETION STAGE—COST OF COMPLETION OF THE WORK PLUS A FEE, SUBJECT TO A GUARANTEED MAXIMUM PRICE – NOT USED**

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This is **EXHIBIT B-7**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Design-Builder for Progressive Design-Build** dated [ ], [ ].

---

**B-7: COMPLETION STAGE PRICE—STIPULATED PRICE**

---

**ARTICLE 1 – STIPULATED PRICE**

1.01 Owner shall pay Design-Builder for performance of the Completion Stage Work in accordance with the Contract Documents the following stipulated amount: [ ] (Completion Stage Price).

**ARTICLE 2 – COMPETITIVE BIDDING OF SPECIFIED SUBCONTRACTED WORK**

2.01 *Work to be Subcontracted After Competitive Bidding*

- A. As part of Construction Planning services during the Preliminary Stage, Design-Builder shall prepare bid packages for the following categories of Construction, together with any other categories of Construction that the parties mutually agree shall be competitively bid as a result of Study and Report Phase or Construction Planning Phase tasks:
  - 1. *Site civil package*
  - 2. *Structural package*
  - 3. *Mechanical package*
  - 4. *Electrical package*
- B. The Completion Stage Price agreed to under Paragraph 3.03 shall not include compensation for the performance of the packages of Construction to be competitively bid. The Completion Stage Price agreed to under Paragraph 3.03 shall include anticipated administrative costs associated with such Construction.
- C. Design-Builder or a Construction Subcontractor shall solicit bids from subcontractors for the bid packages. The bidding procedures, including advertisements for bids and instructions to bidders, shall be consistent with public bidding practices in the jurisdiction in which the Project is located. Design-Builder or Construction Subcontractor shall award each bid package to the responsible bidder submitting the best value bid.
- D. The Completion Stage Price shall be subject to increase (when applicable funded by using the Owner's Completion Contingency, at Owner's discretion) based on the amount of each subcontract awarded, and the parties shall enter into a change order adjusting the Contract Price.

# Exhibit C

## Project Criteria

### OVERVIEW

The District hereby sets forth the criteria required by the North Pump Station Improvements Progressive Design Build (PDB) Project to achieve a reliable means for diverting surface water from the Mokelumne River under the District's water right and any other condition that may apply. Water diverted is intended to be used to provide in-lieu recharge by providing pressurized irrigation water and off-season direct recharge through field flooding, also known as Flood Managed Aquifer Recharge (FloodMAR).

Once completed, the river intake and pump station must be able to divert surface water under all river conditions at any time of the year.

### WATER RIGHTS

NSJWCD has an appropriative Permit 10477 to divert up to 20,000 afa from the Mokelumne River. The North Pump Station is an existing authorized point of diversion under Permit 10477, for diversions of up to 40 cfs from that point of diversion.

San Joaquin County (SJC) has a pending water right application to divert more water from the Mokelumne River during wet years. The North Pump Station is a proposed point of diversion under the pending SJC application.

### CAPACITIES AND PHASING

The existing North Pump Station and Intake does not serve the current or future needs of the district because it was designed to deliver low head water during only the irrigation season and is currently inoperable. To meet current irrigation demand, most growers along the system need pressurized water for drip and micro-sprinkler irrigation systems to serve vineyards and orchards. Also, water is only available in about half of years for the irrigation season. Due to climate variability and increased environmental flow obligations on the river, there is more water available to NSJWCD in the non-irrigation season for recharge. Therefore, the system needs to be modernized to (1) allow the district to maximize the low head delivery of water for recharge in both the irrigation and non-irrigation seasons, and (2) provide pressurized surface water in the irrigation season.

The current pump station and fish screen is also prone to maintenance issues due to its location on the river and problematic access. The fish screen is covered with sand after high flow events, and the entire system is not always operational at the widely varying river elevations that occur at the intake location. The new system needs to address these challenges.

The district envisions modernizing the system in at least three phases as follows:

### **Phase I (Initial, currently under development)**

- 12 cfs diversion using interim pump/screen
- Accomplish up to 4,000 acre-feet annually (afa) of direct recharge through recharge basins and/or Flood MAR
- 5-10 acre direct recharge basin (Assumed operation: average delivered flow rate of 5 cfs (10 af/day) over 200 days for 2,000 afa)
- 400 acres of land under seasonal FloodMAR Agreements (Assumed operation: average delivered flow rate of 7 cfs (14 af/day) rotating between 10 different 40 acre blocks for 90 days between October 1st and March 1st (28 x 90 = 2520))
- Accomplish up to 2,000 af of in-lieu recharge through deliveries of pressurized surface water to approximately 600 acres of irrigated farmland

### **Phase II (2026-2033, the Progressive Design Build Project)**

- 40 cfs diversion using new pump/screen to accomplish up to 10,000 afa of direct recharge through recharge basins and/or Flood MAR
- 5-10 acre direct recharge basin (Assumed operation: average delivered flow rate of 5 cfs (10 af/day) over 200 days for 2,000 afa).
- 1,000 acres of land under seasonal Flood MAR Agreements (Assumed operations: average delivered flow rate of 30 cfs (60 af/day) rotating between 25 different 40-acre blocks for 90 days between October 1st and March 1st (120 x 90 = 10,800))
- See Figure 3 - Flood MAR lands (Lakso, Reynolds, Cranston, Fuso, Graffigna – which others are good candidates?) with new pipelines (note sizes and flow rates) to deliver water to these lands) – Note we have the maps from Deverell that show that best recharge areas. We should mark the fields we think are best and have him evaluate the selections and provide input.
- Accomplish 6,000 af of in-lieu recharge through deliveries of surface water to approximately 2000 acres of irrigated farmland
- See Figure 4 – Lands that can be served with irrigation water from Phase I and Phase I pipes – chart with acres, crops, flow rate requirements, annual irrigation water demands)

### **Phase III (2034 on, accommodated through proper Progressive Design-Build Project design planning)**

- 60 cfs diversion using new pump/screen to [NOTE – THE DESIGN/BUILD PROJECT NEEDS TO SPECIFY THAT IT HAVE IMMEDIATE CAPACITY OF 40 CFS AND ABILITY TO EXPAND TO 60 CFS] (Accomplish up to 20,000 afa of direct recharge through recharge basins and/or Flood MAR)

## **SUMMARY OF RECOMMENDED DESIGN PARAMETERS FOR PUMP STATION AND INTAKE**

- Permitted fish screen that can handle/avoid sand build up and operate under wide variations in river level
- Initial pumping capacity of 40 cfs, expandable to 60 cfs through a combination of low head and pressurized delivery
- SCADA system, meters, remote operation that works with the District's existing SCADA system
- Design for access and ease of operations and maintenance
- Design that is environmentally sensitive and will have achievable permitting success
- Conveyance from pump station to District's distribution system capable of conveying 60 cfs

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

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with one of the three Agreements between Owner and Design-BUILDER (EJCDC® D-512, D-520, and D-525, 2016 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design-Build Documents (EJCDC® D-001, 2016 Edition) are also carefully interrelated with the wording of these General Conditions.

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1420 King Street, Alexandria, VA 22314-2794

(703) 684-2882

[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies

1015 15th Street N.W., Washington, DC 20005

(202) 347-7474

[www.acec.org](http://www.acec.org)

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

(800) 548-2723

[www.asce.org](http://www.asce.org)

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

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

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.
19. *Design Professional Services*: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications,

Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. *Design Agreement*: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal*: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition*: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.
29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.

31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
39. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
40. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
41. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. *Schedule of Values*: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.

43. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
44. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
45. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
46. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.
47. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.
49. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light,

heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
52. *Unit Price Work*: Work to be paid for on the basis of unit prices.
53. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
54. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

#### 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives*:
  1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
  3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.



5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

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

### **2.02 *Copies of Documents***

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

### **2.03 *Conceptual Documents***

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

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

#### 2.04 *Before Starting the Work*

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

#### 2.05 *Authorized Representatives*

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

#### 2.06 *Initial Conference*

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

#### 2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the

schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

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

#### 2.08 *Electronic Transmittals*

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

### **ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE**

#### 3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the

Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

### 3.02 *Reference Standards*

#### A. *Standards, Specifications, Codes, Laws or Regulations:*

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Resolving Discrepancies*

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

### 3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
  1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
  2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
  3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
  4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

##### **4.01 *Commencement of Contract Times***

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

##### **4.02 *Starting the Work***

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

##### **4.03 *Progress Schedule***

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

##### **4.04 *Delays in Design-Builder's Progress***

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
  - 4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

**5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the

Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.

- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

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

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

B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

## 5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or

property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

5.04 *Differing Site Conditions*

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

5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
  - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
  - 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.



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

modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

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

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds

as are required by the Supplementary Conditions or other specific provisions of the Contract.

- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation,

employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.

- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.

- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability:* Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance for:
1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Design-Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
  2. Claims for damages insured by reasonably available personal injury liability coverage.
  3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Design-Builder's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder's contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG

20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of Design-Builder's work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.
- G. *Contractor's pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from

both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. *Professional liability insurance:*

1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.
2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days' prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.
4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project



Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

#### 6.04 *Owner's Liability Insurance*

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

#### 6.05 *Property Insurance*

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

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

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

- E. *Additional Insurance:* If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.
- G. *Loss of Use and Delay in Start-up:* Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

#### 6.06 *Waiver of Rights*

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

allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

### **ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

#### 7.01 *Design Professional Services*

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

#### 7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.

- B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

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

7.04 *Labor; Working Hours*

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

7.05 *Services, Materials, and Equipment*

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

7.06 *"Or Equals" and Substitutions*

- A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its

sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  3. Has a proven record of performance and availability of responsive service; and
  4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

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

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such

proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
  - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual

Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

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

#### 7.09 *Permits and Utility Charges*

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

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages



(including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

#### 7.12 *Record Documents*

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

#### 7.13 *Safety and Protection*

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

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

7.14 *Safety Representative*

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

7.15 *Hazard Communication Programs*

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

7.16 *Emergencies*

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

7.17 *Post-Construction Phase*

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

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

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

7.19 *Indemnification*

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

under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

## **ARTICLE 8 – SUBMITTALS**

### **8.01 *Design-Builder's Preparation of Submittals***

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
  - 1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
  - 2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
  - 1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
  - 2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
  - 3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

#### 8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.

- F. Construction tasks and expenditures by Design-Builder prior to Owner’s review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder’s design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner’s interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

**ARTICLE 9 – OTHER CONSTRUCTION**

9.01 *Other Work*

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

- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

9.02 *Coordination*

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

9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual

rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

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

## **ARTICLE 10 – OWNER'S RESPONSIBILITIES**

### **10.01 General**

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
  - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
  - 2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
  - 3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
  - 4. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
    - a. Environmental assessment and impact statements;
    - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;



- c. Property descriptions;
  - d. Zoning, deed, and other land use restrictions;
  - e. Utility and topographic mapping and surveys;
  - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
  - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
  - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
  - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
  - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
  - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 *Insurance*

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

10.03 *Limitations on Owner's Responsibilities*

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

10.04 *Undisclosed Hazardous Environmental Condition*

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

10.05 *Owner's Site Representative*

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

10.06 *Owner's Consultants and Managers*

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

10.07 *Safety Programs*

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

10.08 *Permits and Approvals*

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

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

11.01 *Amending and Supplementing Contract Documents*

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

11.02 *Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

#### 11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

#### 11.05 *Change of Contract Price*

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

actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;

- d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity , and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);
- e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount equal to 5 percent of such net decrease; and
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

#### 11.06 *Change of Contract Times*

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

#### 11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the

parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notice to Sureties*

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

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

#### 12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
    - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder.

For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.
3. Cost of permits obtained by Design-Builder.
4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
  - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
  - e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
  - h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
  - 2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
  - 3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
  - 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.
- D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.
- E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance



with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

#### 12.02 *Unit Price Work*

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

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

#### 13.01 *Access to Construction*

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

#### 13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
  - 3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;

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

### 13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.
  1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.

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

#### 13.04 *Defective Construction*

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

#### 13.05 *Owner May Correct Defective Construction*

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

#### 13.06 *Costs*

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

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

13.07 *Owner's Acceptance of Defective Construction*

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

13.08 *Owner May Stop Construction*

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

**ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are

covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

C. *Payment of Obligations:*

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. *Review of Applications:*

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
  - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Design-Builder has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

14.02 *Design-Builder's Warranty of Title*

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

14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of

Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.

- B. If Owner considers the Work substantially complete:
  - 1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

#### 14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
  - 1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
  - 2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply

with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

#### 14.05 *Final Inspection*

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

#### 14.06 *Final Payment*

##### A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
  - a. All documentation called for in the Contract Documents;
  - b. Consent of the surety, if any, to final payment;
  - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
  - d. A list of all disputes that Design-Builder believes are unsettled; and
  - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in



which case Design-Builder shall make the necessary corrections and resubmit the Application.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due*: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

#### 14.07 *Waiver of Claims*

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

#### 14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *Owner May Suspend Work*

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

### 15.02 *Owner May Terminate for Cause*

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

### 15.03 *Owner May Terminate for Convenience*

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

### 15.04 *Design-Builder May Stop Work or Terminate*

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

## **ARTICLE 16 – DISPUTES**

### 16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract.

The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

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

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

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

### **17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any

such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
  - 1. Laws or Regulations; or
  - 2. Any special warranty or guarantee; or
  - 3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 *Limitation of Damages*

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

17.05 *No Waiver*

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

17.06 *Survival of Obligations*

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

17.07 *Controlling Law*

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

17.08 *Headings*

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

# GUIDE TO THE PREPARATION OF THE SUPPLEMENTARY CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Prepared by



Issued and Published Jointly by



This **Guide to the Preparation of the Supplementary Conditions of the Contract Between Owner and Design-Builder** has been prepared for use with **EJCDC® D-700, Standard General Conditions of the Contract Between Owner and Design-Builder** (2016 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested provisions contained in other 2016 Design-Build documents are also carefully integrated with the suggested supplementary contract clauses of this document. The full EJCDC Design-Build Series of documents is discussed in **EJCDC® D-001, Commentary on the 2016 EJCDC Design-Build Documents**.

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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

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## I. INTRODUCTION

### A. General

The Engineers Joint Contract Documents Committee (EJCDC) has prepared and publishes standard contract documents for construction contracts for various types of project delivery, including design-build, as well as documents related to procuring goods and services related to design and construction. EJCDC's principal documents for design-build project delivery are listed below in Tables 1 through 3. Furthermore, Table 4 lists other EJCDC documents directly applicable to, or useful in, design-build project delivery. EJCDC has also prepared other documents for other types of project delivery. For the most recent editions of EJCDC's documents, please see EJCDC's website, [www.ejcdc.org](http://www.ejcdc.org), or the websites of EJCDC's three sponsoring organizations: American Council of Engineering Companies, [acec.org](http://acec.org); National Society of Professional Engineers, [nspe.org](http://nspe.org); and American Society of Civil Engineers, [asce.org](http://asce.org).

Table 1 presents EJCDC's principal documents related to the Owner's initiation of the Project and procurement of the Design-Builder's services (Design-Builder selection):

<b>Table 1 Principal EJCDC Documents and Guides for Procuring Design-Builder Services</b>		
<b>Name</b>	<b>Number</b>	<b>Short Title/Abbreviation</b>
Agreement Between Owner and Owner's Consultant for Design-Build Project	D-500	Owner-Consultant Agreement
Request for Qualifications—Design-Build Project	D-110	Request for Qualifications/RFQ
Request for Proposals—Design-Build Project	D-111	Request for Proposals/RFP
Price Proposal Form—Design-Build Project	D-425	Price Proposal Form
Teaming Agreement to Pursue Joint Business Opportunity for Design-Build Project	D-580	Teaming Agreement

Table 2 presents the principal EJCDC documents related to the Contract between the Owner and the Design-Builder:

**Table 2  
Principal EJCDC Documents and Guides for  
the Contract Between Owner and Design-Builder**

<b>Name</b>	<b>Number</b>	<b>Short Title/Abbreviation</b>
Agreement Between Owner and Design-Builder for Progressive Design-Build	D-512	Progressive DB Agreement
Agreement Between Owner and Design-Builder on the Basis of Stipulated Price	D-520	Agreement (Stipulated Price)
Agreement Between Owner and Design-Builder on the Basis of Cost-Plus	D-525	Agreement (Cost-Plus)
Performance Bond for Design-Build Contract	D-610	Performance Bond

**Table 2**  
**Principal EJCDC Documents and Guides for**  
**the Contract Between Owner and Design-Builder**

<b>Name</b>	<b>Number</b>	<b>Short Title/Abbreviation</b>
Payment Bond for Design-Build Contract	D-615	Payment Bond
Standard General Conditions of the Contract Between Owner and Design-Builder	D-700	General Conditions/GC
Guide to the Preparation of the Supplementary Conditions of the Contract between Owner and Design-Builder	D-800	Supplementary Conditions/SC

Table 3 presents EJCDC’s documents intended for the Design-Builder’s subcontracts:

**Table 3**  
**Principal EJCDC Documents and Guides for**  
**Design-Builder’s Subcontracts**

<b>Name</b>	<b>Number</b>	<b>Short Title</b>
Agreement Between Design-Builder and Engineer for Professional Services	D-505	Design-Builder—Engineer Agreement
Construction Subcontract for Design-Build Project	D-523	Construction Subcontract

Presented in Table 4 is a listing of additional EJCDC Design-Build Series (“D-Series”) documents, and design build related documents, that may be useful in implementing design-build projects:

<b>Table 4 Other EJCDC Documents Useful in Design-Build Project Delivery</b>		
<b>Name</b>	<b>Number</b>	<b>Short Title</b>
Public-Private Partnership Agreement	P3-508	P3 Agreement/P3
Commentary on the 2016 EJCDC Design-Build Documents	D-001	Commentary
Design-Builder’s Application for Payment	D-620	Application for Payment
Work Change Directive for Design-Build	D-940	Work Change Directive/WCD
Change Order for Design-Build	D-941	Change Order/CO

Table 5 lists documents from EJCDC’s Construction Series (“C-Series”) that may be useful if revised to apply to the design-build project:

<b>Table 5 EJCDC Construction Series Document with Potential Application to Design-Build</b>		
<b>Name</b>	<b>Number</b>	<b>Short Title</b>
Bid Bond (Penal Sum Form)	C-430	Bid Bond (Penal Sum)
Bid Bond (Damages Form)	C-435	Bid Bond (Damages)
Qualifications Statement	C-451	Qualifications Statement/QS
Notice of Award	C-510	Notice of Award/NOA
Certificate of Substantial Completion	C-625	Certificate of Substantial Completion
Notice of Acceptability of Work	C-626	Notice of Acceptability
Engineer’s Letter to Owner Requesting Instructions Concerning Bonds and Insurance	C-051	Engineer’s Letter to Owner Concerning Bonds and Insurance
Owner’s Instructions to Engineer Concerning Bonds and Insurance	C-052	Owner’s Instructions Concerning Bonds and Insurance

Finally, EJCDC notes that EJCDC® N-122/AIA® A521™ Uniform Location of Subject Matter is a useful standard resource in drafting and organizing contract documents.

**B. Mandatory Supplementary Conditions**

Several provisions of the General Conditions expressly indicate that essential, Project-specific information will be indicated in a corresponding provision of the Supplementary Conditions. For example, Paragraph 6.03.I.2 of the General Conditions indicates that required insurance coverage limits will be in the Supplementary Conditions. Every design-build contract that includes EJCDC® D-700 should include, at a minimum, the following Supplementary Conditions:

1. One of the suggested Paragraphs SC-5.04, concerning reports and drawings of conditions at the Site, and any Technical Data in the reports and drawings on whose accuracy the Design-Builder may rely;
2. One of the suggested Paragraphs SC-5.06, concerning reports and drawings regarding Hazardous Environmental Conditions at the Site, and any Technical Data in those reports and drawings on whose accuracy the Design-Builder may rely;
3. Those portions of SC-6.03 identifying specific requirements for the Design-Builder's liability insurance coverages;
4. SC-8.01, indicating the Submittals that the Design-Builder is required to deliver to the Owner for review and approval, or for comments, as applicable; and
5. One of the two alternatives presented in SC-10.05, to indicate whether the Owner will furnish the services of an Owner's Site Representative during the Construction, with specific authority and responsibilities.

Other suggested Supplementary Conditions are mandatory under specific circumstances: for example, on projects where either the Owner will furnish the property insurance, or where an installation floater form of property insurance is required, one of the alternative versions of SC-6.05 would be necessary.

C. *Relationship of Supplementary Conditions to Other Contract Documents*

The Supplementary Conditions are modifications to the General Conditions—additions, deletions, and changes. EJCDC's Supplementary Conditions are consistent with the concepts set forth in CSI's (Construction Specification Institute) *Practice Guides* and EJCDC® N-122/AIA® A521™, Uniform Location of Subject Matter. Model contracts by other organizations may use supplementary conditions to modify a broader range of contract documents, such as the agreement forms and standard specifications.

The standard fundamental provisions affecting the rights and duties of the parties to the Contract appear in the General Conditions. Language to modify the fundamental relationships between the parties, supplement the framework set forth in the General Conditions, or otherwise change the language of the General Conditions, should appear in the Supplementary Conditions. (However, it is common and tolerable practice to modify the General Conditions in the GCs themselves, using a track changes feature to highlight the changes from the standard EJCDC General Conditions text.)

Price terms, other monetary terms such as liquidated damages clauses, and the Contract Times should all be set forth in the Owner/Design-Builder Agreement (EJCDC® D-512—Progressive Design-Build; EJCDC® D-520—Stipulated Price; or EJCDC® D-525—Cost-Plus), and should not be included in the Supplementary Conditions, nor should such provisions be in the specifications (if any) that are part of the Conceptual Documents. Refer to the Uniform Location of Subject Matter for guidance the appropriate document in which particular clauses should be located.

The conceptual documents of many design-build contracts do not include specifications in Division 01, General Requirements, although such specifications could certainly be drafted and included with the Conceptual Documents. The substance of Division 01 falls generally into three categories: (1) administrative requirements, such as summary of work, allowances, coordination, alternatives (materials, equipment, or price), product options, project meetings, and project close-out; (2) work-related provisions, such as general quality requirements,

temporary facilities, and project execution; and (3) general provisions applicable to more than one section in Divisions 02 through 49, such as Project-wide sustainability requirements.

Although the conceptual documents that Owner furnishes only rarely include specifications, such inclusion is certainly acceptable and some (probably limited in number) specifications may be appropriate for the Owner to properly define to Proposers and the Design-Builder the Owner's requirements for the Project.

D. *Arrangement of Subject Matter*

This Guide is arranged in the same order as the 2016 edition of EJCDC® D-700, Standard General Conditions, and the Supplementary Conditions paragraphs bear comparable addresses to those of the General Conditions, but with the prefix "SC-". A discussion of the purpose and function of these suggested Supplementary Conditions is included in EJCDC® D-001, Commentary on the 2016 EJCDC Design-Build Documents.

E. *Use of this Guide*

The text presented in **bold type** in the remainder of this Guide is suggested wording for some commonly used Supplementary Conditions. The drafter should bear in mind that most contractual provisions have important legal consequences. Consultation with legal counsel before finalization of any amendment or supplement is recommended. The Owner is also encouraged to obtain advice from experienced risk advisors or insurance counselors on the types and coverage limits for insurance that will be required of the Design-Builder and set forth in the General Conditions and Supplementary Conditions.

In preparing the actual contract Supplementary Conditions, the user should ultimately delete all explanatory text, usage comments, notes (sometimes shown in brackets and italics), and inapplicable Supplementary Conditions text.

As noted above, EJCDC® D-700, General Conditions, uses carefully chosen language and sets forth the basic responsibilities of the parties (Owner and Design-Builder) with respect to fundamental matters and legal consequences. These General Conditions provisions should be altered only if the consequences of any modification are thoroughly understood. Before the drafter incorporates provisions into the Supplementary Conditions, EJCDC encourages acquisition of a strong familiarity with the requirements of the General Conditions. Failure to do so may result in Supplementary Conditions clauses that conflict with other provisions of the General Conditions, or have unintended consequences or impacts.

This Guide also assumes that the drafter of the Supplementary Conditions possesses a general familiarity with EJCDC's other Design-Build ("D-Series") and, when drafting the Supplementary Conditions, specific attention to such other documents is encouraged. Standard documents or prescribed forms issued by governmental entities and other owners may differ materially from EJCDC's documents so that careful correlation of any amending or supplementing language is essential.

Caution should be exercised when making any change in the model language and standard language of EJCDC's documents. They have been carefully prepared. Terms are used uniformly throughout and are consistent with the terms in other EJCDC documents. Their provisions have been carefully integrated, and are dependent on one another. A change in one document may necessitate a corresponding change in another, and a change in one paragraph may necessitate an associated change in other language of the same document. No change should be made until

its full effect on the rest of the General Conditions and other Contract Documents has been considered.

## II. STANDARD PREFATORY LANGUAGE AND TRADITIONAL FORMAT FOR SUPPLEMENTARY CONDITIONS

EJCDC's suggested format and wording conventions for the Supplementary Conditions are presented below.

### A. *Table of Contents*

Including a table of contents will benefit the user of the Supplementary Conditions, especially when additional articles (beyond the 18 Articles of the General Conditions) are added for the purpose of including additional provisions, such as those mandated by laws or regulations.

### B. *Pagination*

When CSI *MasterFormat*<sup>™</sup> is used for organizing the Project's procurement requirements and Contract Documents, consult either the full text of *MasterFormat*<sup>™</sup> or its "[Numbers and Titles](#)" abridgement for the appropriate document numbering and accordingly number the pages and table(s) of their content. In *MasterFormat*<sup>™</sup>, design-build general conditions are numbered between "00 72 50" and "00 72 59", while supplementary conditions are numbered under "00 73 00".

### C. *Format for Complete Paragraph Change*

When completely superseding a paragraph of the General Conditions, the following language may be used:

**SC-5.09.B Delete Paragraph 5.09.B in its entirety and insert the following in its place:**

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### D. *Format for Change within a Paragraph*

When changing language within a paragraph of the General Conditions, the following language may be used:

**SC-7.20.A Amend the second sentence of Paragraph 7.20.A [to read as follows] [or] [by deleting the following words]:**

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### E. *Format for Additional Language*

When adding language to an existing paragraph of the General Conditions, use the following format and wording:

**SC-8.03 Add the following language at the end of the second sentence of Paragraph 8.03:**

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F. *Format for Additional Paragraph*

When it is necessary to add a new paragraph to the General Conditions, use the following model language:

**SC-11.06 Add the following new paragraph immediately after Paragraph 11.06.B:**

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**III. ALTERNATIVE FORMAT FOR SUPPLEMENTARY CONDITIONS**

Electronic files are commonly used for transmitting and storage of the text of standard contract documents; EJCDC documents are published exclusively in electronic or digital form. Because it is easy to modify electronic documents, it is increasingly common for practitioners to integrate the text of desired Supplementary Conditions into the text of the General Conditions. Most word processing software has features to allow changes to be tracked (via strike-out text and added text using underlining, highlighting, or other method), thereby clearly showing the deletions, changes, and additions when the “track changes” feature is turned on. Users of EJCDC’s General Conditions are contractually obligated, through the terms of EJCDC’s License Agreement, which is binding on all purchasers and users of the document, to clearly show all changes made to the text of the General Conditions to other entities interested in the Project; for example, during the design-builder selection process, if the Owner or its counsel or other representatives make changes in the D-700 General Conditions, as published by EJCDC, then the revised version of the document should clearly and explicitly indicate such changes to prospective Proposers. It would be misleading to entities interested in the Project (such as Proposers, sureties, and prospective Construction Subcontractors) to imply or represent that the General Conditions are EJCDC's General Conditions when changes are not properly and clearly indicated. At a later stage, when the Owner has awarded the Contract and the Contract Documents are finalized, the parties are free to accept all agreed changes and generate a clean record copy of the General Conditions.

**IV. SUGGESTED SUPPLEMENTARY CONDITIONS**

A. *Caption and Introductory Statements*

The following is a suggestion for use at the beginning of the Supplementary Conditions for a specific design-build contract:

**Supplementary Conditions**

**These Supplementary Conditions amend or supplement EJCDC® D-700, Standard General Conditions of the Contract Between Owner and Design-Builder (2016 Edition). All provisions that are not so amended or supplemented remain in full force and effect.**

**The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms defined in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.**

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC-" added thereto.

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### *SC-1.01, Defined Terms*

- A. The terms used in the Supplementary Conditions which are defined in the General Conditions should be used with exactly the same meanings. This is true for all the Contract Documents.

When using defined terms, it is essential to use initial capitals as indicated in the General Conditions.

The modification of terms defined in Article 1 or the addition of more defined terms for general use in the Contract Documents should be accomplished in SC-1.01.A. Obviously, the addition of terms may necessitate changes throughout the General Conditions and other Contract Documents.

Note that although not specifically defined, certain terms are frequently used throughout EJCDC's D-Series documents, always with precisely the same meaning. It is important for the preparer of the Supplementary Conditions, notes on the Drawings, requirements of the Specifications, and other Contract Documents to adhere to this usage and practice. An example is "materials and equipment" which is intended to include all that the Design-Builder furnishes and provides other than labor, professional services, and other services. It should not be necessary to refer to "products," "supplies," and the like; and, in fact, by doing so the intended meaning of the term "materials and equipment" may be altered unintentionally.

## ARTICLE 2 – PRELIMINARY MATTERS

### *SC-2.01, Delivery of Bonds and Evidence of Insurance*

- A. Paragraph 2.01.B of the General Conditions requires that Design-Builder furnish certificates of insurance. Paragraph 6.02.C states that upon request by Owner or other named or additional insureds, Design-Builder must provide evidence of insurance such as copies of required policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Parallel provisions apply to the Owner and the insurance that the Owner is required to furnish. Rather than relying on this two-step process (delivery of certificates of insurance at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:

**SC-2.01 Delete Paragraph 2.01.B in its entirety and insert the following in its place:**

- B. *Evidence of Design-Builder's Insurance:* When Design-Builder delivers the executed counterparts of the Agreement to Owner, Design-Builder shall also deliver to Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Design-Builder in Article 6. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.**

- C. **Evidence of Owner's Insurance:** After receipt from Design-Builder of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Design-Builder copies of the policies of insurance to be provided by Owner under Article 6 (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

*SC-2.02, Copies of Documents*

- A. **Quantity of Copies:** If the number of printed or "hard" copies of the initial Contract Documents to be provided is different than four copies, the following may be used:

**SC-2.02.A. Amend the first sentence of Paragraph 2.02.A. to read as follows:**

**Owner shall furnish to Design-Builder [ ] copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the Contract Documents will be furnished upon request at Owner's cost of reproduction.**

- B. **Conformed Documents:** On some projects it may be useful to produce conformed Contract Documents, in which the content of the Addenda, the Proposal, the Proposal Amendment, and other negotiated changes (after receipt of Proposals) are merged into the appropriate initial Contract Documents, including the Agreement, Conceptual Documents, General Conditions, or other Contract Documents. Conformed documents may be more convenient to use during the performance of the Work and the administration of the Contract.

EJCDC advises that if conformed documents are to be prepared and made available to the Design-Builder, sufficient time and budget must be allocated to ensure the quality and full coordination of the conformed documents, and Owner and Owner's Consultant (if any) must recognize that the Design-Builder, Construction Subcontractors, Design-Builder's Engineer, and Suppliers will likely rely on the conformed version of the Contract Documents rather than the source components. If conformed documents are prepared without the level of commitment necessary to allow them to be accorded the full status of "Contract Documents," and are merely for reference or convenience, they should be accompanied by clear disclaimers of their content and a warning to consult the actual source Contract Documents.

A Supplementary Condition regarding conformed documents is necessary only if the Owner intends to provide the Design-Builder with conformed documents that will serve as binding Contract Documents. The following may be used for that purpose:

**SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:**

- A. **Owner shall furnish to Design-Builder [ ] copies of conformed Contract Documents incorporating and integrating the content of all Addenda, the Proposal, the Proposal Amendment, and any other amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement), and one electronic copy of the Contract Documents in portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at Owner's cost of reproduction.**

- C. *Form of Electronic Contract Documents:* If the Owner is not furnishing a PDF or other electronic files of the Contract Documents, then draft a Supplementary Condition that deletes the reference in Paragraph 2.02.A of the General Conditions to providing the PDF files.

*SC-2.04.A, Preliminary Schedules*

- A. *Timing of Submittals of Preliminary Schedules:* GC-2.04.A requires several documents to be submitted by Design-Builder within 10 days (as a default) after commencement of the Contract Times. The feasibility of submitting each of these documents within 10 days for each specific design-build project should be carefully considered by users. If the time is to be revised, it should be done in SC-2.04.A. If the time is changed, changes may also be required in GC-2.07.A via corresponding Supplementary Conditions. Note that the preliminary schedule of Submittals will include a schedule for submitting and approving Design-Builder's Design Submittals. Any specific requirements for their submittal and approval (such as Owner's required approval times) should be included in the Conceptual Documents' Division 01 specifications (if any) or in SC-2.04 if there are no Division 01 specifications in the Conceptual Documents.

**ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE**

*SC-3.04, Ownership and Reuse of Documents*

- A. GC-3.04.A.1 provides that Design-Builder shall have and retain the ownership and property rights in all documents prepared for or furnished to Owner pursuant to the Contract. Subsequent provisions grant the Owner specified rights to such documents for its records (GC-3.04.A.2), for Owner's operations and maintenance purposes (GC-3.04.A.3), and, in the case of a termination of Design-Builder for cause, for continuing the Project after termination. On some projects, the Owner may determine that it needs to take even broader control of the rights to the documents furnished or prepared by Design-Builder—for example, in the case of a private industrial facility involving proprietary systems, trade secrets, or equipment; or with respect to facilities with exceptional security concerns. In such cases, the parties may wish to use the following paragraph:

**SC-3.04.A Delete in its entirety Paragraph 3.04.A, and replace it with the following:**

- A. **All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to the Construction Drawings and Construction Specifications) are instruments of service. With respect to such documents:**
  - 1. **Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in any design elements (including but not limited to standard details, drawings, plans, specifications, methodologies, and engineering computations) used in the documents, but developed by Design-Builder or its Project Design Professionals independent of this Contract. Design-Builder shall provide appropriate verification of such independent development upon Owner's request.**
  - 2. **Subject to the limited exception in Paragraph SC-3.04.A.1, upon final payment to Design-Builder of all amounts due and owing under this Contract, the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents prepared for or furnished to Owner by Design-Builder**

pursuant to this Contract (including but not limited to the Construction Drawings and Construction Specifications) shall transfer to Owner.

3. Upon transfer of ownership, title, and property rights to Owner under Paragraph SC-3.04.A.2, Design-Builder shall receive a limited, nonexclusive license to use the content of any subject document on other projects, provided such use does not conflict with Owner's business, commercial, proprietary, competitive, or security interests.
4. Upon termination of this Contract for Owner's convenience, or termination by Design-Builder for cause, Design-Builder shall retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in all documents prepared or furnished by Design-Builder under this Contract.
5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project. Any such use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

#### ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

##### *SC-4.04, Delays in Design-Builder's Progress*

- A. GC-4.04 is arguably one of the most important provisions in the General Conditions because it allocates the risk of delays in the Work. Delays may be costly to the Design-Builder and detrimental to the success of the Project. Delays beyond the Contract Times have the potential to result in the imposition of liquidated and special damages included in the Contract. When there is any change in the allocation of risks for delays from what is included in GC-4.04, a corresponding SC-4.04 is required.

Particular attention should be paid to the provisions of GC-4.04.C, which is the Contract's force majeure clause governing allocation of risks for delays that are beyond the control of both the Design-Builder and the Owner. Because the most common form of force majeure delay is weather-related delays, the drafter of the Supplementary Conditions may want to consider including a more specific provision regarding weather-related delays, particularly in cases where adherence to the Contract Times is extremely important and where the Construction will be of such a nature as to be susceptible to weather-related delays. Sample contract language is presented below as SC-4.04.C. As the following commentary indicates, other approaches are possible and should be considered.

The General Conditions indicate at GC-4.04.C.2 that the Design-Builder will be entitled to an equitable adjustment in Contract Times if the Construction is delayed by "abnormal weather conditions." This standard will be sufficient in most situations, and is applicable to the full range of possible bad weather events. However, the drafter of the specific contract may wish to define

“abnormal weather” by reference to objective, measurable weather factors. To draft a supplemental weather-delay provision that defines abnormal weather, the drafter must consider the threshold level of severity of weather that may affect the progress of the Construction—the Design-Builder must anticipate and cope with the weather up to the defined threshold, and if the threshold is reached or exceeded, the Design-Builder will be entitled to additional time to complete the Construction. One such threshold level of severity could be specified to apply to the entire Project (this is the approach taken in the sample SC-4.04.C), or separate levels could be specified for different elements of the Construction. As an example of the second alternative, and while it is acknowledged that the parties may not know specific construction activities at the time the initial Contract Documents are prepared, presumed weather severities could be tailored to the materials or type of construction involved. For example, if the Project involves reinforced concrete, the weather conditions that could delay concrete pouring might not reasonably delay erection of formwork or placement of reinforcing steel. The possibility of lingering effects should be considered when drafting such provisions.

In some localities there may be well established and widely accepted procedures for monitoring and evaluating the weather impacts on a construction project, such as the procedures set forth in a municipal or state department of transportation standard specifications. The drafter of the Contract Documents may wish to adopt such procedures if relevant to the specific project, as an alternative to the sample procedures set out in the optional SC-4.04.C.

SC-4.04.C, if adopted, ties the definition of “abnormal weather” to two factors, precipitation and temperature. The drafter must establish a threshold amount of daily precipitation that is tolerable in the specific location—any day that incurs an amount at or above the threshold is a bad weather day. Similarly, the drafter must define acceptable temperature thresholds—dropping below the minimum or rising above the maximum will result in categorization as a bad weather day. Finally, the drafter must define how many bad weather days in each category (precipitation, excessively cold weather, excessively hot weather) are foreseeable (essentially “normal” or tolerable) in each month. In most locations, the normal expectation for bad weather in a month will vary with the seasons.

Even if the parties anticipate a short project duration, the table in SC-4.04.C should encompass the entire calendar year to ensure that, regardless of postponements, suspensions, or delays, the Construction as actually performed is contractually covered by SC-4.04.C.

An important step in drafting a supplemental clause regarding weather delays is establishing the source for actual weather records and site conditions (for lingering effects) and the required content of such records. A variety of sources may be viable options for weather records, but in general it is better when the weather monitoring site is relatively close to the construction Site. Sources may include the National Weather Service, media outlets that maintain weather-monitoring networks, certain schools and universities, and possibly wastewater conveyance utilities. Before specifying the source of data, verify that the data is available and the type of data collected.

The text of SC-4.04.C, defining “abnormal weather” based on precipitation and temperature extremes, and including Table 4.04.C, is indicated below. If the drafter elects to use this optional Supplementary Condition, edit the example language to suit the Project, and provide the weather thresholds required in the text and table.

**SC-4.04.C Amend Paragraph 4.04.C by adding the following subparagraphs:**

**1. Weather-Related Delays:**

- a. If “abnormal weather conditions” as set forth in Paragraph 4.04.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request shall be documented by data substantiating each of the following: (i) that weather conditions were abnormal for the period of time in which the delay occurred, (ii) that such weather conditions could not have been reasonably anticipated, and (iii) that such weather conditions had an adverse effect on the Work as scheduled.
- b. The existence of abnormal weather conditions shall be determined on a month-by-month basis in accordance with the following:

*[Edit Paragraphs “1).a)” and “1).b)”, below, to suit the Project; the times specified in Paragraph “1).a)” are presumed times for wet weather to render the Site inoperable for the following workday. Based on recorded weather data available from the weather station indicated in Paragraph “2)”, below, insert in “1).a)” and “1).b)” the threshold one-day precipitation quantity and the threshold temperatures (minimum and maximum). Insert in the appropriate blanks below the entity operating and maintaining the weather station, and the location of the weather station; for example, “National Weather Service weather monitoring station at the Buffalo-Niagara International Airport.” For the selected entity and site, verify the data types and frequency available for the particular weather monitoring station.]*

- 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
  - a) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds [ ] *[insert threshold precipitation quantity]* of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the Notes to Table 4.04.C ).
  - b) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: [ ] *[insert temperature]* degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: [ ] *[insert temperature]* degrees Fahrenheit.
- 2) Determination of actual bad weather days during performance of Construction shall be based on the weather records measured and recorded by *[insert the name of the entity operating the weather station]* weather monitoring station at *[insert the location of the weather monitoring station]*.
- 3) Design-Builder shall anticipate the number of foreseeable bad weather days per month indicated in the table.

*[Based on data from the weather monitoring station indicated in Paragraph “2)”, above, fill in all the cells in the table below. Optimally, data indicated should be averaged over a period of not less than five years although other durations may be appropriate.]*

**Table SC-4.04.C—Foreseeable Bad Weather Days**

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) <sup>(1)</sup>	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
<b>Notes:</b> <ol style="list-style-type: none"> <li>1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of “dry” powder snow equals one inch of rain.</li> <li>2. All entries in the table are in numbers of days.</li> </ol>			

4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in Table SC-4.05.C will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions shall not relieve Design-Builder of the obligation to demonstrate and document that delays caused by abnormal weather specific to the work activities or that such activities thus delayed were on Design-Builder’s then-current progress schedule’s critical path for the Project.



*[Edit the sample language, above, when other foreseeable weather factors can affect the Construction, such as high winds or other factors.]*

- B. To further strengthen the delay provisions of GC-4.04, consider including the following Paragraph SC-4.04 when necessary:

**SC-4.04 Add the following new paragraphs after Paragraph 4.04.D:**

- E. **Design-Builder’s requests for increasing the Contract Times shall set forth in detail the following: (1) circumstances that form the basis for the requested change in Contract Times, (2) the date upon which each cause of delay began to affect the progress of the Work, (3) the date upon which each cause of delay ceased to affect the progress of the Work, and (4) the number of days’ increase in the Contract Times claimed as a consequence of each such cause of delay. Design-Builder shall furnish such supporting documentation as Owner may require including, where appropriate, a revised progress schedule indicating all the activities affected by the circumstances forming the basis of the request for changing the Contract Times.**
- F. **Design-Builder shall not be entitled to a separate increase in the Contract Times for causes of delay that have concurrent effects, or for interrelated effects on the progress of the Work, or for concurrent delays within Design-Builder’s control.**

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

*SC-5.01, Availability of Lands*

- A. The reference in GC-5.01.A to other provisions of the Contract Documents may refer to further information to be contained in the Conceptual Documents’ Division 01 specifications (if any) or elsewhere in the Conceptual Documents. Other than an explanation of special circumstances such as a delay in the acquisition of lands by the Owner, no statement on this subject is contemplated in the Supplementary Conditions. When such a delay in acquiring the Site is contemplated, indicate requirements in either the Conceptual Documents’ Division 01 specifications (if any) or at SC-5.01.A.

*SC-5.04, Differing Site Conditions*

- A. **This is a mandatory Supplementary Condition.** GC-5.04.A refers to Technical Data on which the Design-Builder may rely. “Technical Data” is defined at GC-1.01.A. Accordingly, those reports and drawings that constitute “Technical Data” are to be indicated at SC-5.04.A. Such data and information should include subsurface and physical conditions at both the Site and adjacent to the Site (this requirement is broader than merely requiring that the Design-Builder be given access to subsurface data and reports prepared for the current Project). It also requires the identification of Technical Data (upon whose accuracy the Design-Builder may rely) contained in such documents. Use the first version of SC-5.04.A, presented immediately below, for the purpose of identifying the known Site condition documents. If no such documents are known, then use the second version of SC-5.04.A, below. Also note that if the known documents include either a geotechnical report or environmental report prepared for the Project, or both, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy the Design-Builder may rely, that is contained in such reports, then the default definition of Technical Data in GC-1.01.A will apply.

If the Owner elects to furnish a Geotechnical Baseline Report (GBR), include appropriate provisions for a GBR. Consider adapting the model language on GBRs contained in EJCDC® C-800, Guide to the Preparation of Supplementary Conditions for Construction Contracts.

**SC 5.04.A Add the following new paragraph immediately after Paragraph 5.04.A:**

- 1. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.**

*SC-5.05, Underground Facilities*

- A. When the basic risk allocations of GC-5.05 regarding Underground Facilities will be changed for the Project, the revised allocations are to be indicated in SC-5.05.A, as expressly indicated in GC-5.05.A. Note that by following the standard practices advocated by GC-5.05, the Design-Builder has substantial opportunity to manage and reduce the risks associated with Underground Facilities, particularly during the investigatory and design phase of Design-Builder's services. The possibility remains, however, that despite appropriate procedures by Owner and Design-Builder, there may be undetectable Underground Facilities at the Site, revealed only as a result of construction activities. EJCDC cautions against transferring to the Design-Builder the risk of encountering such "undetectable" Underground Facilities, because it is a risk over which the Design-Builder has little control.
- B. If there is likelihood at the specific Site of encountering undetectable Underground Facilities, the Owner may deem it appropriate to include in the Contract a contingency allowance for changes in the Work due to undetectable Underground Facilities. Such an allowance, if any, should be indicated in the Proposal Form (EJCDC® D-425).

*SC-5.06, Hazardous Environmental Conditions at Site*

- A. **This is a mandatory Supplementary Condition.** GC-5.06 contemplates that the Owner will identify all known documents regarding Hazardous Environmental Conditions (HEC), if any, that have been identified at or adjacent to the Site. GC-5.06.A requires the identification of Technical Data (upon whose accuracy the Design-Builder may rely) contained in such documents. Use the first version of SC-5.06.A, presented immediately below, to identify the known HEC documents. If no HEC documents are known, then use the second version of SC-5.06.A, below. If the known documents include an environmental report or other Site assessment prepared for the Project, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy the Design-Builder may rely, that is contained in such reports, then the default definition of Technical Data in Paragraph GC-1.01.A will apply.

**SC 5.06.A Delete Paragraph 5.06.A in its entirety and insert the following in its place:**

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.**

**ARTICLE 6 – BONDS AND INSURANCE**

*SC-6.01, Performance, Payment, and Other Bonds*

- A. *General:* GC-6.01 requires that Design-Builder furnish a performance bond and payment bond each in an amount equal to the Contract Price, and sets forth requirements for the surety's

qualifications. If any of these requirements are to be changed for the Project, such provisions should be included at SC-6.01.

- B. *Other Bonds*: Where the Owner desires that the Design-Builder furnish additional bonds, such as a maintenance bond for an extended correction period, or other required bond, the complete requirements for such other bonds are to be included at SC-6.01, including the purpose of such bond(s), the duration that such bonds are to remain in effect, and other provisions. Also, coordinate such provisions with the enumeration of the Contract Documents in the Owner—Design-Builder Agreement.
- C. *Extended Duration of Bonds*: See the discussion, below, at SC-14.08.A regarding the correction period. If the Design-Builder’s one-year correction period is extended, also extend the period that the performance bond and payment bond are to remain in effect to match the correction period (unless a maintenance bond is required for that part of the correction period extending longer than one year). In the SC-6.01.A, below, the inserted number of years should match the number of years at SC-14.08.

**SC-6.01.A Modify the second sentence of Paragraph 6.01.A by replacing the words, “one year” with the words, “[insert number of years] years”.**

#### *SC-6.02, Insurance—General Provisions*

- A. Paragraph 6.02.B of the General Conditions requires that all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better, unless a different standard is indicated in the Supplementary Conditions. The A.M. Best ratings are based on the financial strength and size of the insurance company, with A-VII representing a commonly used standard. SC-6.02 is the location for alternative qualifications for insurers, whether narrower or broader.

In some states, not all worker’s compensation insurers obtain A.M. Best ratings. The Owner may wish to include the following optional exception (modified to meet applicable provisions in the state) to the requirement in GC-6.02.B:

**SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:**

- 1. Design-Builder may obtain workers’ compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a workers’ compensation insurance provider by the appropriate state agency having jurisdiction, and (c) has been accepted to provide workers’ compensation insurance for similar projects by the state within the last 12 months.**
- B. Paragraph 6.02.D of the General Conditions indicates that if alternative forms of insurance coverage, such as self-insurance, will be allowed to meet the Contract’s insurance requirements, such permitted alternatives will be stated in the Supplementary Conditions. SC-6.02 is the suggested location for this purpose.
  - C. Paragraph 6.02.E of the General Conditions states that Design-Builder shall require its Construction Subcontractors, Engineer, and other design consultants to carry certain specified insurance in the same limits as are required for Design-Builder itself. This is the standard default position, but it is common to revise it. It is often the case that Owner’s risk managers and insurance consultants will advise Owner that it is acceptable for lower-tier entities to not carry



Products - Completed Operations Aggregate           \$ \_\_\_\_\_

Personal and Advertising Injury                               \$ \_\_\_\_\_

Each Occurrence (Bodily Injury and Property  
Damage)   \$ \_\_\_\_\_

**3. Automobile Liability under Paragraph 6.03.E. of the General Conditions:**

**Bodily Injury:**

Each person   \$ \_\_\_\_\_

Each accident   \$ \_\_\_\_\_

**Property Damage:**

Each accident   \$ \_\_\_\_\_

[or]

Combined Single Limit of                                       \$ \_\_\_\_\_

**4. Excess or Umbrella Liability:**

Per Occurrence   \$ \_\_\_\_\_

General Aggregate   \$ \_\_\_\_\_

*[See Paragraph 6.03.F of the General Conditions.]*

*[If Owner revises the standard terms by deleting the requirement that Design-Builder furnish Excess or Umbrella liability insurance, then Owner should consider requiring (in SC-6.03.K.2) that "The aggregate limits under SC-6.03.K.2 (Commercial General Liability) be maintained fully available for this Contract by obtaining and maintaining a Designated Construction Project General Aggregate Limit endorsement, or equivalent."]*

*[Note that GC-6.03.F allows Design-Builder to combine policy limits in underlying policies such as commercial liability insurance with the policy limit of the umbrella or excess liability policy. This is a common practice that allows the Design-Builder flexibility in its insurance program. If on a specific project Owner wishes to withdraw this option, so indicate here in SC-6.03 with a provision that deletes the third sentence of GC-6.03.F.]*

**5. Contractor's Pollution Liability under Paragraph 6.03.G of the General Conditions:**

Each Occurrence   \$ \_\_\_\_\_

General Aggregate   \$ \_\_\_\_\_

If box is checked, Design-Builder is not required to provide

**Contractor’s Pollution Liability insurance under this Contract.**

*[On some projects, the Owner may conclude that it is not cost-effective or necessary to require the Design-Builder to carry Contractor’s Pollution Liability insurance, based on the type of work to be performed or knowledge of conditions at the Site. In such cases, check the box above and either delete the “Each Occurrence” and “General Aggregate” line items, or indicate “N.A.” or “Not applicable” in the blanks. Also consider whether select subcontractors should be exempted from carrying Contractor’s Pollution Liability insurance, and if so indicate the exemption either here in SC-6.03, or in SC-6.02—see note concerning GC-6.02.E.]*

**6. Additional Insureds:** In addition to Owner, include as additional insureds the following: *[Here list by name (not category, role, or classification) other persons or entities to be included on the commercial general liability, automobile liability, umbrella or excess, and pollution liability policies as additional insureds. For each such entity, indicate the entity by their full legal/contractual name and business address; where known, indicating associated contact personnel may be appropriate.]*

**7. Design-Builder’s Professional Liability:**

<b>Each Claim</b>	\$ _____
<b>Annual Aggregate</b>	\$ _____

*[See Paragraph GC-6.03.1.]*

**8.** *[Here list additional types and amounts of insurance that may be required by Owner.]*

**SC-6.05, Property Insurance**

- A. **Builder’s Risk—Customization of Requirements:** Builder’s risk policies are not standardized, and it is common to customize the contractual requirements for builder’s risk insurance to suit the needs of the specific project and to conform with the prevailing insurance market. EJCDC recommends a careful review of the standard builder’s risk requirements in EJCDC® D-700, in consultation with an insurance advisor, especially with respect to the requirements of Paragraph 6.05.A.2 (concerning the covered risks) and Paragraph 6.05.A.3 (concerning the insured property), during the contract drafting process. Any changes that are identified as appropriate for the specific project (for example, deletion of the requirement for coverage of the risk of flood) should be made in this section of the Supplementary Conditions.
- B. **Builder’s Risk Deductible:** Paragraph GC-6.05.A requires builder’s risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. In many cases, the Owner (as the party directing or specifying the content of the insurance-related Supplementary Conditions) will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible. Note that it is common for builder’s risk policies to feature several different deductibles, typically including a primary deductible and specific deductibles applicable to specific types of

loss. The following Supplementary Condition provides a means of identifying a primary deductible; other specific deductibles may also be added.

If a primary deductible is to be stipulated, use the following to establish the maximum amount of the deductible:

**SC-6.05. Add the following to the list of requirements in Paragraph 6.05.A, as a numbered item:**

**14. be subject to a deductible amount of no more than \$[ ] for direct physical loss in any one occurrence.**

C. *Builder's Risk—Supplemental Insureds:* GC-6.05.A.1 refers to other individuals or entities (in addition to the Owner, Design-Builder, and all Construction Subcontractors) that are to be identified in the Supplementary Conditions as being entitled to protection as insureds under the builder's risk insurance on the Construction. In such cases use the following:

**SC-6.05.A.1 Add the following new subparagraph after Paragraph 6.05.A.1:**

a. **In addition to Owner, Design-Builder, and all Construction Subcontractors, include as insureds the following:**

*[Here list by name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as insureds. For each such entity, indicate the entity by their full legal/contractual name and business address; where known, indicating associated contact personnel may be appropriate.]*

D. *Builder's Risk—Supplemental Requirements:* GC-6.05.A lists several items that are to be included in the builder's risk insurance. Consider adding one or more of the following items to the list as appropriate to the Project:

**SC-6.05.A. Add the following to the list of items in Paragraph 6.05.A, as numbered items:**

**15. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorneys' fees and engineering or other consultants' fees, if not otherwise covered;**

**16. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Design-Builder but furnished by Owner or third parties:**

a. *[here list specific items of equipment and purchase value]*

b. *[here list items of material and purchase value]*

**17. include by express endorsement coverage of damage to Design-Builder's equipment.**

E. *Installation Floater:* An installation floater is insurance carried by the Design-Builder, covering the materials and equipment to be incorporated in the Construction. It typically does not insure against losses that occur after installation. In most cases, builder's risk insurance offers broader coverage and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder's risk policy. For additional information, refer to EJCDC® C-001, Commentary on the EJCDC Construction Documents (2013 or later editions). (In other instances, the Design-Builder may choose to purchase an installation floater to supplement property insurance provided by the Owner.) If, after consultation with its risk

managers, Owner elects to require purchase of an installation floater rather than a builder's risk policy, the following requirements may be included as a Supplementary Condition:

**SC-6.05.A. Delete Paragraph 6.05.A of the General Conditions and substitute the following in its place:**

**A. Design-Builder shall provide and maintain installation floater insurance for property under the care, custody, or control of Design-Builder. The installation floater insurance shall be a broad form or "all risk" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Construction. Coverage under Design-Builder's installation floater shall include:**

- 1. any and all loss to property while in transit,**
- 2. any and all loss at the Site, and**
- 3. any and all loss while in storage, both at the Site and at offsite storage locations.**

**Coverage cannot be contingent on an external cause or risk, or limited to property for which Design-Builder is legally liable. Design-Builder will be solely responsible for any deductible carried under this coverage and claims on materials, supplies, machinery, fixture, and equipment that will be incorporated into the Construction while in transit or in storage. This policy shall include a waiver of subrogation applicable to Owner, Design-Builder, Owner's Consultant, all Construction Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.**

**F. *Builder's Risk—Owner Purchased:*** In the event that the Owner, rather than the Design-Builder, will purchase the builder's risk insurance, use the following SC-6.05.A:

**SC-6.05.A. Delete the first sentence of Paragraph 6.05.A and insert the following sentence in its place:**

**Owner shall purchase and maintain builder's risk insurance upon the Construction on a completed-value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations).**

## **ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

### *SC-7.01, Design Professional Services*

- A. *Scope of Professional Services:*** The Supplementary Conditions are not the proper place to establish the scope and extent of Design Professional Services. Typically, the scope of Design Professional Services will be established in either the Conceptual Documents or the Design-Builder's Proposal, both of which are Contract Documents, or will be left as the responsibility of the Design-Builder to determine, as necessary to achieve performance standards or other Project objectives.
- B. *Standard of Care:*** As in past editions of the EJCDC Design-Build documents, EJCDC D-700 (2016) contains a professional standard of care clause applicable to design services. Retaining this clause maximizes the potential access to professional liability insurance at all tiers, and allows for an orderly flowdown of the standard of care to the design professionals that perform



professional services, often at a lower contractual tier than the prime Owner—Design-Builder contract.

On some projects, the nature of the Design-Builder’s scope of work may be such that the parties decide to delete or modify the professional standard of care at the prime contract tier. For example, if the Owner’s input into design has been minimal and the Design-Builder is given substantial leeway in establishing the design and meeting Project expectations, some design-builders may be willing to accept the risk inherent in modifying the professional standard of care clause. One common situation within this category occurs when the Owner establishes express performance standards that the Design-Builder must meet, but does not otherwise restrict the design or construction processes. In such a case the parties may wish to use the following Supplementary Condition:

**SC 7.01.B Amend Paragraph GC-7.01.B by adding the following sentence:**

**If the Contract establishes objective performance standards with which Design-Builder must comply, and if such performance standards have been clearly identified in the Contract Documents using the term “performance standards,” then Design-Builder shall perform or furnish Design Professional Services that allow the Work to meet such performance standards, notwithstanding the professional standard of care set forth in the preceding sentence.**

*SC-7.03, Supervision and Superintendence of Construction*

- A. GC-7.03.B sets forth very basic requirements for the Design-Builder’s onsite supervision and superintendence of the Construction. If the Owner desires to impose additional requirements for the superintendent (such as required foreign language proficiency), such provisions should be included at SC-7.03.B.

*SC-7.04, Labor; Working Hours*

- A. GC-7.04.B allows Design-Builder to determine its own work days and working hours. Note that overtime wages incurred during the contractually permitted working hours and days are part of Design-Builder’s compensation when Cost of the Work provisions apply. If the Contract will place restrictions on working days or hours, then use the following Supplementary Condition, modified to suit the specific needs of the Project:

**SC-7.04.B. Replace GC-7.04.B with the following new paragraph:**

**B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, all Construction at the Site shall be performed during regular working hours. Design-Builder will not perform Work on any legal holiday. Design-Builder may perform Construction at the Site outside regular working hours or on a legal holiday only with Owner’s written consent, which will not be unreasonably withheld.**

1. **Regular working hours will be** *[here insert schedule of regular working hours, indicating days of the week (most commonly Monday through Friday) and hours of the day during which Construction is allowed to take place.]*
2. **Legal holidays applicable to this Contract are** *[here insert list of legal holidays]*

If SC-7.04.B, restricting Construction to regular working hours (as defined) is made a part of the Contract, and during the course of the Project the Design-Builder performs Construction outside such regular hours (by the Owner's consent, or otherwise) is it the parties' intent that the Owner be able to charge the Design-Builder for costs of Owner's Site Representative and Owner's Consultant (if any) being present at the Site during the non-regular schedule? Some owners may prefer to absorb these costs to incentivize (or at least facilitate) an aggressive schedule and timely completion; and in many cases the net additional expense may be modest. Other owners may prefer to establish and collect a charge for the costs incurred by the Owner for the additional services of the Owner's Representative and the Owner's Consultant. Add the following as SC-7.04.C, making a policy choice regarding responsibility in the beginning of the sentence:

**SC-7.04.B.3 Add the following new paragraph immediately after Paragraph SC-7.04.B.2:**

3. **[Design-Builder] [Owner] [choose one and delete the other] shall be responsible for the cost of any overtime pay or other expense incurred by Owner for services of Owner's Site Representative and Owner's Consultant, and other additional costs incurred by Owner because of the performance of Construction outside regular working hours. If Design-Builder is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due Design-Builder under Article 14.**

- B. If responsibility for costs in SC-7.04.C will be allocated to the Design-Builder, the Owner may wish to provide some specificity regarding the potential costs, through the addition of the following:

**SC-7.04.B.4 Add the following new subparagraph immediately after Paragraph SC-7.04.B.3:**

4. **For purposes of administering Paragraph SC-7.04.B.3, additional overtime costs are defined as [here insert parameters for compensated overtime hours].**

*SC-7.09, Permits and Utility Charges*

- A. GC-7.09 provides that responsibility for obtaining and paying for permits, licenses, and approvals of governmental authorities is to be indicated in the Contract Documents. **It is mandatory that this allocation of permit duties is made either here in SC-7.09 or elsewhere in the Contract Documents.** Some permit applications may need to be filed by the Owner; others may require long lead times that would make it inconvenient for the Design-Builder to obtain, or hinder the Design-Builder's ability to comply with the Contract Times. In some cases, permit responsibilities may have been allocated in the Conceptual Documents, in the Agreement, or elsewhere in the Contract Documents; if not, permit responsibilities of both Owner and Design-Builder should be stated here at SC-7.09. See also GC-10.08 and SC-10.08.

**SC-7.09 Add two new paragraphs immediately after Paragraph 7.09.A:**

1. **Owner is specifically required to obtain the following permits and approvals of government authorities: [List permits and approvals that Owner is required to obtain]**
2. **Design-Builder is specifically required to obtain the following permits and approvals of government authorities: [List permits and approvals that Design-Builder is required to obtain]**

*SC-7.10, Taxes*

- A. If the Owner qualifies for a state or local sales or use tax exemption in the purchase of certain materials and equipment to be incorporated into the Construction, add the following Supplementary Condition, with any revisions necessary to meet the specific applicable exemption rules. If instructions to proposers are used in any request for proposals, confirm that the provisions made at SC-7.10 are consistent with the corresponding provisions in such instructions. See EJCDC® D-111, Requests for Proposals—Design-Build Project (2016 Edition).

**SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:**

**B. Owner's Tax-Exempt Status**

- 1. Owner is exempt from payment of sales and compensating use taxes of the State of *[insert name of state where Project is located]* and of cities and counties thereof on all materials to be incorporated into the Construction.**
- 2. Owner will furnish the required certificates of tax exemption to Design-Builder for use in the purchase of supplies and materials to be incorporated into the Construction.**
- 3. Owner's exemption does not apply to construction tools, machinery, or equipment purchased by or leased by Design-Builder, or to supplies or materials not incorporated into the Construction.**

*SC-7.11, Laws and Regulations*

- A. On publicly funded projects, it is frequently mandated by statute that the specific text of given statutory provisions or regulations be included in the Contract Documents. These provisions should be included in SC-18. Use Paragraph SC-7.11.D as a cross-reference to their location at SC-19.

It is unwise to include a specific reference to a particular statute or regulation when that statute or regulation does not require such reference, because such reference may create the inference that the requirement in GC-7.11.A to “comply with all Laws and Regulations applicable to the performance of the Work” (emphasis added) means less than it says. For the same reason, it is unwise to include a specific requirement to comply with a particular Law or Regulation unless there is a provision in the Law or Regulation mandating the inclusion of such language in the Contract Documents.

When statutory provisions are required to be included in the Contract Documents, include SC-7.11 and SC-18:

**SC-7.11 Add a new paragraph immediately after Paragraph 7.11.C that is to read as follows:**

- D. Refer to Article SC-18 for Laws and Regulations that, by terms of said Laws and Regulations, are to be expressly included in the Contract Documents.**

*SC-7.13, Safety and Protection*

- A. Some owners have developed and maintain written safety programs with which construction contractors must comply. If such requirements apply to the Project, GC-7.13.C mandates that the safety program be identified in the Supplementary Conditions (and GC-10.07 requires the

Owner to furnish a copy of such programs to the Design-Builder). The identification of the safety programs may be accomplished as follows:

**SC-7.13 Insert the following after the second sentence of Paragraph 7.13.C:**

**The following Owner safety programs are applicable to the Work:** *[here expressly identify by title and/or date, any such Owner safety programs].*

*SC-7.17, Post-Construction Phase*

- A. GC-7.17 obligates the Design-Builder to certain post-construction services. When either different services (for example, assisting the Owner in developing systems and procedures for operation and maintenance, or for facilities recordkeeping), or if no post-construction services are required, include an appropriate SC-7.17 to amend the post-construction services of GC-7.17.

**ARTICLE 8 – SUBMITTALS**

*SC-8.01, Design-Builder’s Preparation of Submittals*

- A. **This is a mandatory Supplementary Condition.** As set forth in EJCDC’s D-Series documents, the concept of Submittals in design-build project delivery has a number of important differences compared with the concept of shop drawings and the contractor’s other submittals furnished under design-bid-build project delivery (as set forth in EJCDC® C-700, Standard General Conditions for Construction Contract). For example, GC-1.01.A of EJCDC® D-700 (2016) defines the term “Submittal” (which is not used in EJCDC® C-700) as encompassing Design Submittals (described below), Construction-phase Submittals, and other Submittals prepared by or for the Design-Builder, and that the Contract Documents require the Design-Builder to submit to the Owner. Also defined, at GC-1.01.A, is “Design Submittals,” which are Submittals that either Laws or Regulations or the Design-Build Contract require be prepared under the supervision of a properly licensed design professional.

GC-8 and the associated SC-8 provisions are based on the assumption that the Owner’s involvement with submittals will be fairly limited. For example, because the Design-Builder’s Project Design Professionals (including the Engineer) will review and approve all shop drawings, product data, and other Construction-phase submittals that pertain to engineering or technical matters that affect the Construction, and the Design-Builder’s Project Design Professionals have professional responsibility for such engineering and technical matters, the Owner will need to review and comment on few, if any, shop drawings and similar Construction-level submittals.

EJCDC anticipates that the Owner will review and approve appropriate Design Submittals, notably including the draft design at preliminary and final (Construction Drawings and Construction Specifications) stages.

Although design-build project delivery does not typically encompass review by the Owner of a substantial quantity of Construction-phase documentation, EJCDC recognizes that most projects will entail some Owner review of such documentation, for informational purposes and to maintain involvement in important matters such as the progress schedule. The specific degree of Owner involvement should be stated in the Contract, and accordingly the definition of Submittals at GC-1.01.A states that Submittals (by definition to be reviewed by the Owner) are indicated in the Contract Documents. Although the listing of required Submittals may be

included in the Conceptual Documents or the Conceptual Documents' Division 01 specifications (if any), presented below is EJCDC's suggested language for listing some or all of the required Submittals in the Supplementary Conditions at SC-8.01.

The required Design Submittals indicated at SC-8.01 must be coordinated with the scope of the Design Professional Services necessary for the specific Project. For example, in some cases the Owner may have already prepared or furnished feasibility and design reports, and perhaps substantially developed draft drawings and specifications—making it unnecessary for Design-Builder to prepare and submit these items. (Note that Design-Builder will want to coordinate the Design Submittals with the scope of services for the Design-Builder's Engineer, and for other Project Design Professionals (if any); see EJCDC® D-505, Agreement between Design-Builder and Engineer for Professional Services, Exhibit A).

The model language of SC-8.01 divides Submittals into three broad categories: (1) Design Submittals and other Submittals requiring Owner approval, (2) administrative Submittals during the Construction phase, and (3) Submittals regarding materials and equipment to be incorporated into the Construction.

Examples of the third type of Submittal (Construction-phase Submittals regarding materials and equipment to be incorporated into the Construction) that the Owner may wish to review could include the shop drawings and product data for a major item of process equipment, shop-testing or field-testing plans for such equipment, or results of required shop- and field-testing, and samples showing the color, texture, and quality of finished Construction. Again, EJCDC expects that the number of such Submittals will be limited.

In general, listing in detail those Submittals requiring the Owner's review will be advantageous to both parties, and will serve as a genesis for preparing the schedule of Submittals required in Article 2 of the General Conditions. Model language for SC-8.01 is presented below; the user should edit the model language to suit the Project.

**SC-8.01 Insert the following immediately after Paragraph 8.01.F:**

**G. Required Submittals**

**1. Furnish for Owner's review and approval the following Submittals:**

<b>Submittals Requiring Owner's Approval [<i>entries below are examples; the user must edit and supplement to suit the needs of the specific Project</i>]</b>	<b>Remarks</b>
Draft feasibility study report	
Final feasibility study report	
Report on subsurface investigations	
Report on Constituents of Concern at the Site	
Draft preliminary design report and other preliminary design documents	
Final preliminary design report and other preliminary design documents	
60-percent drawings and specifications, and related construction cost estimate	
90-percent drawings and specifications, and related construction cost estimate	

<b>Submittals Requiring Owner's Approval [entries below are examples; the user must edit and supplement to suit the needs of the specific Project]</b>	<b>Remarks</b>
100-percent Construction Drawings and Construction Specifications	
Proposed modifications to the Construction Drawings and Construction Specifications	
Requests for Owner's approval of substitutes to items indicated in the Contract Documents	
Requests for Owner's approval of "or-equals" to items indicated in the Contract Documents	
<b>Other Submittals requiring Owner's approval:</b>	

2. **Furnish for Owner's review the following Construction-phase administrative Submittals, which shall be acceptable as to form and content:**

<b>Submittal [edit and supplement to suit the needs of the specific Project]</b>	<b>Remarks</b>
Progress schedule – preliminary, initial, and monthly updates	
Schedule of Values – preliminary and initial, and update for each change in the Contract Price	
Schedule of Submittals – preliminary, initial, and monthly updates	
Copies of construction permits and licenses required by authorities having jurisdiction	Includes evidence that required inspections are successfully completed
Requests for interpretation or clarification of the Contract Documents	
Records of delivery of spare parts and extra materials	
Operation and maintenance data for materials and equipment incorporated into the Construction	
Record Drawings and Record Specifications	
Other Construction-related Submittals as indicated in the schedule of Submittals accepted by Owner	

3. Furnish for Owner’s review the following Submittals for materials and equipment to be incorporated into the Construction; such Submittals shall be acceptable as to form and content. *[delete the sample language in the table below and replace with Project-specific requirements]*

Material or Equipment Item <i>[entries below are examples; the user must edit and supplement to suit the needs of the specific Project]</i>	Shop Drawing	Product Data	Testing Plans	Samples	Field Tests	O&M Data	Other	Remarks
Main blowers and controls	X	X	X		X	X	X	Submit as Samples of individual units and construct 4-ft by 4-ft mock-up at the Site
Brick masonry				X			X	
Other materials and equipment Submittals as indicated in the schedule of Submittals accepted by Owner								

- B. Administrative and procedural requirements for Submittals should be in the Conceptual Documents (for example, in Division 01 specifications, if any), but may be located here in the Supplementary Conditions if necessary. Such requirements may include the Submittals review, approval, and acceptability process, whether Submittals are to be furnished in electronic (digital) form or whether printed copies are required, contact person and address where Submittals are to be transmitted, and other procedural matters.
- C. If actions or dispositions by Owner other than approval, rejection, acceptance, or the issuance of objections or comments, are to be allowed, appropriate changes should be made via SC-8.02.B.

**ARTICLE 9 – OTHER CONSTRUCTION**

*SC-9.01, Other Work*

- A. GC-9.01.B requires the Owner to give the Design-Builder written notice when other work will be performed at the Site during Construction. When the Owner is aware, in advance of the Effective Date of the Contract, of other work that Owner (or others) intends to undertake at the Site during the Project, such information may be incorporated into the Supplementary Conditions using the following model language:

**SC-9.01.B Add a new subparagraph immediately after Paragraph 9.01.B as follows:**

- 1. *Other Construction Contracts:* Other construction contracts have been or will be awarded by Owner that will entail construction in close proximity to or border on**

**the Work of this Contract. Work under these other contracts is briefly described as follows:**

- a. *[Insert name of other project]:*
  - 1) **Principal Work Location:** *[insert information]*, and adjacent areas.
  - 2) **Scope:** Project involves *[insert information]*.
  - 3) **Contract times expected to start running on** *[insert date]*.
  - 4) **Approximate Substantial Completion:** *[insert date]*.
  - 5) **Approximate Final Completion:** *[insert date]*.
2. **Other Construction by Owner's Forces:** Owner will conduct other construction that is in close proximity to or borders on the Work of this Contract. This construction by Owner's forces is briefly described as follows:
  - a. *[Insert name of other project]:*
    - 1) **Principal Work Location:** *[insert information]*, and adjacent areas.
    - 2) **Scope:** Project involves *[insert information]*.
    - 3) **Start of Construction** *[insert date]*.
    - 4) **Approximate Substantial Completion:** *[insert date]*.
    - 5) **Approximate Final Completion:** *[insert date]*.
3. **Owner-arranged Utility Construction:** Owner has arranged for third-party utilities to perform construction that is in close proximity to or borders on the Work of this Contract. This Owner-arranged utility construction is briefly described as follows:
  - a. *[Insert name of other project]:*
    - 1) **Principal Work Location:** *[insert information]*, and adjacent areas.
    - 2) **Scope:** Project involves *[insert information]*.
    - 3) **Start of Construction** *[insert date]*.
    - 4) **Approximate Substantial Completion:** *[insert date]*.
    - 5) **Approximate Final Completion:** *[insert date]*.

#### *SC-9.02, Coordination*

- A. GC-9.02 requires that if in addition to retaining the Design-Builder, Owner will arrange to have others perform work at the Site, Owner must furnish to Design-Builder specified information regarding the coordination of the various construction activities. If such information is not provided, GC-9.02.B indicates that by default the Owner will take charge of such coordination. (Note that specific information about the other work—nature of the work, scope, schedule, exact location—should be indicated at SC-9.01.B.) Use the following to indicate the construction-coordinating entity and its responsibilities:



**SC-9.02 Delete Paragraph 9.02.A and 9.02.B in their entirety and replace with the following:**

- A. Owner intends to perform, arrange, or contract with others for the performance of other work at or adjacent to the Site.**
  - 1. *[Here identify individual or entity]* shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
  - 2. The following specific matters are to be covered by such authority and responsibility: *[here itemize such matters]*;
  - 3. The extent of such authority and responsibilities is: *[here provide the extent]*

## **ARTICLE 10 – OWNER’S RESPONSIBILITIES**

### *SC-10.05, Owner’s Site Representative*

- A. This is a mandatory Supplementary Condition when the Owner will employ an Owner’s Site Representative.** GC-10.05 indicates that the Owner may designate a representative or agent to represent the Owner at the Site (“Owner’s Site Representative”). It is possible that the Owner’s Site Representative may be Owner’s Consultant, an employee of the Owner, or a third-party retained by the Owner.

The following should be used for the identification of the Owner’s Site Representative. Note that the following must be supplemented by customized text that explains the responsibilities of the Owner’s Site Representative, so far as such are relevant to the Design-Builder. The content of Paragraphs SC-10.05.B and SC-10.05.C below may be a helpful starting point in drafting such supplemental text.

### **SC-10.05 Add the following new paragraph immediately after Paragraph 10.05.A:**

*[Retain one version of Paragraph SC-10.05.B, below, and delete the other.]*

- B. On this Project, Owner will not furnish an Owner’s Site Representative to represent Owner at the Site or assist Owner in observing the performance of the Work.**

*[or]*

- B. Owner will furnish an “Owner’s Site Representative” (OSR) to represent Owner at the Site and assist Owner in observing the performance of the Construction. OSR is not Design-Builder’s subcontractor, consultant, agent, or employee. OSR will be *[Here identify individual or entity]*. The authority and responsibilities of OSR follow:**
  - 1. **General:** OSR's dealings in matters pertaining to the Construction in general shall be with Design-Builder’s designated representatives at the Site. OSR's dealings with Design-Builder’s Construction Subcontractors and Suppliers, including Project Design Professionals, shall only be through or with the knowledge and approval of Design-Builder.
  - 2. **Schedules:** Review the Construction progress schedule, schedule of Submittals, and Schedule of Values prepared by or for Design-Builder.
  - 3. **Conferences and Meetings:** Attend meetings with Design-Builder and Construction Subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings.

4. **Liaison. Serve as Owner's liaison:**
  - a. with Design-Builder regarding the Construction.
  - b. with Design-Builder when Design-Builder's operations affect Owner's onsite operations.
  - c. with respect to Design-Builder requests for additional details or information from Owner, or for clarifications and interpretations of the Contract Documents.
  - d. with respect to proposed modifications of the Contract Documents, Change Orders, and similar matters.
5. **Submittals:**
  - a. Record date of receipt of Submittals and samples approved by Design-Builder.
  - b. Receive samples furnished at the Site by Design-Builder, and notify Owner of availability of samples for examination.
  - c. Advise Owner and Design-Builder of the commencement of any portion of the Construction requiring a Submittal or sample for which OSR believes that the Submittal has not been accepted by Owner
6. **Observation of the Construction:**
  - a. Conduct on-site observations of Design-Builder's Construction in progress.
7. **Inspections, Tests, and System Start-ups:**
  - a. Observe tests, equipment and systems start-ups, and operating and maintenance training.
  - b. Review Design-Builder's recordkeeping regarding tests, equipment and systems start-ups, and operating and maintenance training.
8. **Records:**
  - a. Prepare a daily report or keep a diary or log book, recording Design-Builder's hours at the Site, Construction Subcontractors present at the Site, weather conditions, Site visitors, any Site accidents, force majeure or delay events, emergencies, damage to property by fire or other causes, the discovery of any Constituent of Concern or Hazardous Environmental Condition, and deliveries of equipment or materials.
  - b. Record names, addresses, fax numbers, e-mail addresses, website locations, and telephone numbers of all Construction Subcontractors and major Suppliers of materials and equipment.
9. **Payment Requests: Review each Construction-related Application for Payment received from Design-Builder; note compliance with the established procedure for Application for Payment submission; meet with Design-Builder to review each Application for Payment; and forward the Application for Payment with recommendations to Owner, noting particularly the relationship of the payment requested to: (a) the Schedule of Values accepted by Owner, (b)**

relevant cost of the work provisions, (c) Construction completed, and (d) materials and equipment delivered to the Site but not incorporated in the Construction.

10. **Certificates, Operation and Maintenance Manuals:** During the course of Construction, review materials and equipment certificates, operation and maintenance manuals, and other documentation required by the Contract Documents to be assembled and furnished by Design-Builder, noting whether the documentation is applicable to the items actually installed, and deliver such documentation to Owner for its review and acceptance prior to payment for that part of the Work.

**11. Completion:**

- a. Participate in Owner's visits to the Site to determine Substantial Completion, assist in the preparation of a punch list of items to be completed or corrected, and in preparation of the certificate of Substantial Completion.
- b. Participate in Owner's final inspection at the Site to determine completion of the Work, in the company of Owner and Design-Builder, and assist in preparation of a final punch list of items to be completed and deficiencies to be remedied, if any.
- c. Observe whether items on the final punch list have been completed or corrected, and make recommendations to Owner concerning acceptance and issuance of the notice of acceptability of the Work. Assist Owner with preparing the notice of acceptability of the Work.

**C. The OSR shall not:**

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Owner's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Design-Builder, Construction Subcontractors, Project Design Professionals, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Design-Builder.
6. Accept Submittals from anyone other than Design-Builder.
7. Have any authority with respect to Owner's occupancy of the Construction, in whole or in part.

*SC-10.08, Permits and Approvals*

- A. GC-10.08 indicates that Owner shall obtain permits and approvals “as indicated in the Contract Documents.” To similar effect, GC-7.09 states that the Contract Documents will allocate responsibilities regarding permits. **If permit responsibilities are not addressed elsewhere in the Contract Documents, it is mandatory that they be stated in the Supplementary Conditions.** SC-7.09 is the recommended location for permit responsibilities of both Design-Builder and Owner.

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

### *SC-11.05.D, Design-Builder’s Fee*

- A. GC-11.05 stipulates limits on the Design-Builder’s fee for overhead and profit charged for changes in the Work. In general, the fee markup is limited to 15 percent on the installing contractor’s direct costs for labor, materials, and equipment when the basis of compensation is Cost of the Work; higher-tier Construction Subcontractors and the Design-Builder may mark up such costs by a further 5 percent each; and where a change results in a credit on the basis of Cost of the Work the “markup” on the deducted costs shall be 5 percent. GC-11.05.D. Where the parties determine that alternative fees should apply, the changes should be indicated in an appropriate Paragraph SC-11.05.D.

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

### **General Notes regarding Article GC-12:**

Article 12 of the General Conditions addresses two topics, Cost of the Work as the basis for adjusting the Contract Price (for example, as a measure of the monetary value ascribed to an increase in the scope of Work), and Unit Price Work. The two optional Supplementary Conditions that are set out here (SC-12.01, and SC-12.02), relate to those two topics.

Article 12 may also be supplemented to address two related subjects, cash allowances and contingency funds (contingency allowances).

1. *Cash Allowances.* Cash allowances are used only occasionally in design-build construction. They are a means of deferring final decisions with respect to materials or equipment for which varying levels of quality, durability, or aesthetics are available, and for which the final choice is of importance to Owner. If a cash allowance is used, then for the designated category of Work the Owner establishes an allowance amount (in essence a budget number) that is included in the Contract Price. During performance of the Work the Design-Builder makes recommendations and provides the Owner with choices for materials or other items within the category, including prices; Owner then makes its selection. If the price of the selected items exceeds the allowance amount, Design-Builder is entitled to an increase in Contract Price to reflect the additional costs; if the price of the selected items is less than the allowance amount, the Contract Price is reduced. For a more detailed discussion of cash allowances, and for possible contract wording, the user is referred to EJCDC® C-001, Commentary on the 2013 EJCDC Construction Documents, page 131, and to Paragraph 13.02, *Allowances*, of the **Construction** General Conditions (EJCDC C-700, Standard General Conditions of the Construction Contract, 2013).
2. *Contingencies.* There are several types of contingencies that may be included as part of the Contract Price. One is an “Owner’s contingency” that the Owner controls and is available at Owner’s discretion for unanticipated costs, increases in the scope of Work, or similar purposes. An Owner’s contingency is most often a fund or account for financing Change Orders. By

establishing the contingency at the outset of the project, Owner’s administrators and project managers reduce the need to return to a council, board, or other governing body to request additional project funds. See EJCDC® C-700, Standard General Conditions of the Construction Contract (2013), Paragraph 13.02.C, and the optional Owner’s Completion Contingency clause at Paragraph 3.03.E of EJCDC® D-512, Agreement between Owner and Design-Builder for Progressive Design-Build.

Another common form of contingency in design-build is the Design-Builder’s contingency. The Owner establishes the fund, which Design-Builder may use to cover unanticipated costs that would not otherwise be compensable, such as force majeure delay costs, overtime labor, material cost escalations, or rework. Making such a contingency available for the Design-Builder’s use may encourage leaner pricing, and can help reduce dispute costs and delays. If the user elects to supplement the specific contract by including a Design-Builder’s contingency, then the terms and conditions under which the Design-Builder may draw on the fund, the extent of control retained by the Owner, and the disposition of any remaining balance at the end of the project, must be spelled out carefully in a customized contract provision.

*SC-12.01, Cost of the Work*

- A. The text of GC-12.01 applies only to the pricing of changes in the Work, where the basis of compensation for such change is Cost of the Work, on contracts that are otherwise compensated on the basis of stipulated price, unit prices, or a combination thereof. For contracts where the basis of compensation is cost-plus-fee, detailed requirements on what is and is not compensable is indicated in the Owner—Design-Builder Agreement; see EJCDC® D-525, Agreement between Owner and Design-Builder (Cost-Plus) (2016 Edition).
- B. Equipment rental charges, particularly with respect to Design-Builder—owned or Construction Subcontractor-owned equipment, can sometimes lead to disagreements when attempting to place a fair price on Change Order Work. To reduce the possibility of such disagreements, the following Supplementary Condition may be used. This provision requires a published reference or method for determining the equipment rental costs by which the parties will be bound. Note that similar wording can be used to amend or supplement the Agreement if some or all of the Work is being conducted on a “cost-plus” basis.

**SC-12.01.A.7.c.1 After Paragraph 12.01.A.7.c, add the following new subparagraph:**

**c. Construction Equipment, Engineering Equipment, and Machinery:**

- 1) Costs for construction or engineering equipment and machinery owned by Design-Builder will be paid at a rate shown for such equipment in the [cite the rate book appropriate for the Project]. An eligible hourly rate will be determined by dividing the published monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the construction or engineering equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such construction or engineering equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Construction or engineering equipment or machinery with a value of less than \$1,000 will be considered as small tools.**

SC-12.02, Unit Price Work

- A. The following Supplementary Condition is typically called a “variation in estimated quantities (VEQ) clause” and facilitates administrative resolution of situations where actual quantities of one or more unit price items differ materially from estimated quantities. Typically, the clause applies where the extended price (unit price multiplied by an estimated quantity) of an item of the Unit Price Work is more than 5 percent of the Contract Price (based on estimated quantities), and the actual quantity of the units of Work performed varies by more than a specified percent (typically 15 to 25 percent).

**SC-12.02.D Delete Paragraph 12.02.D in its entirety and insert the following in its place:**

- D. The unit price of an item of Unit Price Work shall be subject to reevaluation and Design-Builder or Owner may seek an adjustment in the Contract Price under the following conditions:**
- 1. if the extended price of a particular item of Unit Price Work amounts to [ ] percent or more of the Contract Price (based on estimated quantities at the time the Contract Price is established) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Design-Builder differs by more than [ ] percent from the estimated quantity of such item indicated in the Agreement; and**
  - 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and**
  - 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.**

**ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

*SC-14.01 and SC-14.06, Applications for Progress and Final Payments*

- A. *Payment is Due:* GC-14.01.F requires the Owner to pay progress payments within 10 days after the Owner’s acceptance of the completed Application for Payment. Similarly, GC-14.06.D requires the Owner to pay the final payment within 30 days after the presentation to the Owner of the final Application for Payment, accompanied by the required contract closeout documents and other documents required by the Contract Documents. Some owners, particularly public entities, will have difficulty complying with one or both of these time frames. The preparer of the Supplementary Conditions must check with the Owner to determine if the times for issuance of payment in GC-14.01.F and GC-14.06.D are acceptable and feasible. Payment times by owners on public projects are typically regulated by Laws and Regulations (for example, prompt payment statutes) and most public owners desire that the times by which payment is due be revised to match the times allowed in the applicable statute or ordinance. (Note that Laws and Regulations or Owner preference may also affect the interest owed on late payments. The applicable interest rate is established in the Agreement.) When the user determines that the Project-specific times for payment (whether driven by statute or preference) differ from those specified in Article 14 of the General Conditions, include appropriate language at SC-14.01.F and SC-14.06.D.

**SC-14.01.F In the first sentence, delete the number “10” and replace with “[insert number of days]”.**

**SC-14.06.D Delete the number “30” and replace with “[insert number of days]”.**

- B. *Time for Owner’s Review of Applications for Payment:* The preparer of the Supplementary Conditions should also note that (i) GC-14.01.E.1 requires that, within 10 days after Owner’s receipt of an application for a progress payment, the Owner will issue notice to the Design-Builder either indicating that the Application for Payment is acceptable or not acceptable (and, in the case of the latter, indicating the reasons therefor); and (ii) GC-14.06.B allows the Owner 10 days after the Owner’s receipt of the final Application for Payment and other required documents to issue to the Design-Builder a notice of acceptability of the Work. While 10 days for the Owner to act is usually sufficient, if others are involved in the Owner’s duties, such as an Owner’s Consultant or construction coordinator, the preparer of the Supplementary Conditions should check with the Owner and, when necessary, revise the time frames via appropriate language at SC-14.01.E.1 and SC-14.06.B.

*SC-14.03, Substantial Completion*

- A. Paragraph GC-14.03.A requires the Design-Builder to give notice that the Work is substantially complete; GC-14.03.B requires an inspection of the Work to determine whether the Owner agrees that the Work is substantially complete. If the Work is not substantially complete, and must be inspected again at a later point, then the following Supplementary Condition, if included in the Contract, would allow the Owner to recover the cost of the re-inspection; such a provision may be desirable when the Owner has retained an Owner’s Site Representative to assist the Owner during the Project’s construction phase, including the inspection for Substantial Completion.

**SC-14.03.B Add the following new subparagraph to Paragraph 14.03.B:**

- 1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Owner or its representatives, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Design-Builder to Owner. If Design-Builder does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off, in accordance with Paragraph 14.01.G of the General Conditions, against payments due under Article 14 of the General Conditions.**

*SC-14.08, Correction Period*

- A. A correction period of one year from the date of Substantial Completion is customary and should be used unless the Owner mandates a longer period. Note that premiums for performance bonds and payment bonds are typically based on an assumed construction duration of up to two years and a one-year correction period; accordingly, requiring a longer correction period will not only result in increased costs for the Design-Builder’s extended correction period but also increased costs for the bonds. If the Owner requires a correction period longer than one year, use SC-14.08.A, below. Consider a similar change to GC-14.08.C, via a new SC-14.08.C. Any changes here will require a similar change at SC-6.01.A to change the duration that the contract bonds are to remain in effect. Alternatively, for reduced bonding costs, a maintenance bond could be required for the correction period that extends for longer than one year after Substantial Completion; when mandated, requirements for a maintenance bond should appear at SC-6.01.

**SC-14.08.A Modify Paragraph 14.08.A of the General Conditions by changing the word “one” in the first line to “[insert number of years]”.**

**ARTICLE 16 – DISPUTES**

*SC-16.01 Methods and Procedures*

- A. *Mediation*: Paragraph 16.01.C of the General Conditions provides that for any dispute between the Owner and the Design-Builder, the parties first negotiate in good faith; such negotiations will typically involve higher-level personnel, such as executives, from the Owner’s and Design-Builder’s respective organizations. If such negotiations do not result in a mutually-agreeable resolution of the disagreement within 60 days, GC-16.01.D requires the parties to submit the matter to resolution via mediation “by a mutually agreeable mediator or mediation service.” If the parties elect to stipulate to a specific mediator or mediation service in the Contract, then use the following to do so:

**SC-16.01.D.5 After Paragraph 16.01.D.4, add the following new paragraph SC-16.01.D.5:**

**D. Mediation**

- 5. The mediation shall be conducted by [insert name of mediator or mediating entity], in accordance with the [insert name of the mediation rules to be used] in effect on the Effective Date of the Contract. If the mediator or mediation service designated in this paragraph is not available or declines to serve as mediator, then the parties shall mutually select an alternate mediator or mediation service.**

- B. *Arbitration*: If the claim, counterclaim, disagreement, or dispute is not successfully resolved via mediation, GC-16.01.E allows the parties to either agree to a form of binding dispute resolution, proceed based on a contractually established dispute resolution method, or, at the option of either party, if no dispute resolution process has been agreed to the dispute may be resolved by litigation—the pursuit of rights in a court of competent jurisdiction.

As an alternative to litigation, there are many other possible dispute resolution procedures, or combinations of procedures. One of the most common is binding arbitration; wording for a binding arbitration clause is presented below. A discussion of the pros and cons of the binding arbitration process (and there are many advocates on both sides) is beyond the scope of this Guide. The Owner should consult with its legal counsel when considering the inclusion of a binding arbitration clause, or of any other dispute resolution procedure or combination of procedures.

The arbitration option is as follows:

**SC-16.02 Delete Paragraph 16.01.E in its entirety and insert the following new paragraph immediately after Paragraph 16.01.**

**SC-16.02 Arbitration**

- A. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation either party may seek to have the dispute resolved by binding arbitration. Such binding arbitration shall be conducted by [insert name of arbitration entity] in accordance with [insert the title of the arbitration rules to be used] in effect on the Effective Date of the Contract, subject to the conditions and limitations of this Paragraph SC-16.02.**



- B. This agreement to arbitrate and any other agreement or consent to arbitrate entered into, together with the settlement determined by the arbitrator or arbitration provider, will be specifically enforceable under the prevailing law, by any court having jurisdiction.**
- C. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider. The demand for arbitration will be made within the specific time required in this Article, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-16.02.D below.**
- D. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Owner's Consultant, and Owner's Consultant's consultants and the officers, directors, partners, agents, employees or consultants of any of them) that is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and**
  - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.****
- E. The award rendered by the arbitrator(s) shall be consistent with the Contract Documents and made in writing, and shall include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.**
- F. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.**
- G. The fees and expenses, including any filing fees, of the arbitrators and any arbitration service shall be shared equally by Owner and Design-Builder.**
- H. The arbitration proceedings shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.**

*SC-16.03, Attorneys' Fees*

- A. In most jurisdictions in the United States, as a general matter each party to a dispute is responsible for its own attorneys' fees, unless an express agreement provides to the contrary. Some legal authorities believe that this general rule encourages claims and disputes, because claimants have little concern that they will be forced to pay for the opposing party's fees if the claim fails. Other authorities take the opposite view—that the enticing prospect of not only prevailing but also of having one's own fees paid by the opponent would encourage overly aggressive pursuit of claims (or overzealous defense against valid claims).**

If an exception to the general American rule on attorneys' fees is preferred for disputes subject to final resolution under Article 16, then add the following express agreement:

**SC-16.03** Add the following new paragraph immediately after Paragraph SC-16.02. [Note: If there is no Paragraph SC-16.02, because neither arbitration nor any other final dispute resolution process has been specified in the Supplementary Conditions, then revise this to state "Add the following new paragraph immediately after Paragraph 16.01" and revise the numbering accordingly.]

**SC-16.03** *Attorneys' Fees:* For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

## ARTICLE 17 – MISCELLANEOUS

### *SC-17.01, Giving Notice*

- A. Various provisions of the Contract Documents, including numerous provisions of the General Conditions, require the parties to give each other "notice." GC-17.01 specifies the only legitimate ways that such notices can be transmitted, including registered or certified mail (typically "return receipt requested"); in-person, whether via commercial courier service (for example, FedEx or UPS) or otherwise; or via e-mail subject to certain provisions. If it is desired to allow formal "notices" required under the Contract Documents to be delivered by other method, include such requirements at SC-17.01.A. Alternatively, SC-17.01.A can be used to delete a specified notice delivery method, such as e-mail deliveries, should such be desirable—for example, to assure that giving notice results in a written receipt upon delivery.

### *SC-17.09, Confidential Information*

- A. Use SC-17.09, below, where the Owner (usually private Owner) wants to protect trade secrets and/or other product/process information.

**SC-17.09** Add a new paragraph immediately after Paragraph 17.08 of the General Conditions that is to read as follows:

#### **SC-17.09** *Confidential Information*

- A. All Conceptual Documents, technical data, and other information furnished to Design-Builder either by Owner or Owner's Consultant or developed by Design-Builder or others in connection with the Work are, and will remain, the property of Owner, and shall not be copied or otherwise reproduced or used in any way except in connection with the Work, or disclosed to third parties or used in any manner detrimental to the interests of Owner and Owner's Consultant.
- B. The following information is not subject to the above confidentiality requirements:
1. information in the public domain through no action of Design-Builder in breach of the Contract Documents; or

2. information lawfully possessed by Design-Builder before receipt from Owner or Owner's Consultant; or
3. information required to be disclosed by Laws or Regulations, or by a court or agency of competent jurisdiction. However, in the event Design-Builder shall be so required to disclose such information, Design-Builder shall, prior to disclosure, provide reasonable notice to Owner and Owner's Consultant, who shall have the right to interpose all objections Owner may have to the disclosure of such information.

*SC-17.10, Publicity*

- A. Use SC-17.10, below, when the Owner wants to control publicity related to the Project. Edit the paragraph addresses when SC-17.09, Confidential Information (see above), is not used.

**SC-17.10** Add a new paragraph immediately after Paragraph SC-17.09, which is to read as follows:

**SC-17.10** *Publicity*

- A. Design-Builder shall not disclose to any third party the nature of its Work on the Project, nor engage in publicity or public media disclosures with respect to the Project without the prior written consent of Owner, which shall not be unreasonably withheld.

**ARTICLE SC-18 – STATUTORY REQUIREMENTS**

- A. In coordination with SC-7.11, add statutory requirements in SC-18 beginning with Paragraph SC-18.02. Omit Article SC-18 and SC-7.11 when not required; refer to the commentary at SC-7.11, above.

**SC-18** Add new Article immediately after Article 17 of the General Conditions, which is to read as follows:

**ARTICLE SC-18 – STATUTORY REQUIREMENTS**

**SC-18.01** This Article contains all or portions of the text of certain Laws or Regulations which, by provision of Laws or Regulations, are required to be expressly included in the Contract. The provisions included in this Article may not be complete or current. Design-Builder's obligation to comply with all Laws and Regulations is set forth in Paragraph 7.11 of the General Conditions.

**SC-18.02** *[Insert requirements; topics may include state requirements on payment of minimum prevailing wages on public work and other topics required by Laws and Regulations.]*