



DESIGN-BUILD GENERAL CONDITIONS

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ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Bidding Requirements or the Contract Documents.
2. **Agreement** - The written Contract between CITY and DESIGN-BUILDER governing the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
3. **Application for Payment** - The form accepted by CITY's Representative which is to be used by DESIGN-BUILDER in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. **Asbestos** - Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. **Bid** - consists of (1) the Technical Approach Submittal of the DESIGN-BUILDER providing information on the design and construction Work to be undertaken by DESIGN-BUILDER for the Project and (2) the Price Submittal setting forth the firm, fixed price for which the DESIGN-BUILDER agrees to perform all of the Work required by the Contract Documents.
6. **Bidder** - One who submits a Bid directly to CITY, as distinct from a sub-bidder who submits a bid to a Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean DESIGN-BUILDER in both the Bidding Documents and Contract Documents unless the context clearly indicates otherwise.
7. **Bidding Documents** - The advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form/Contract, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
8. **Bidding Requirements** - The advertisement or invitation to bid, Instructions to Bidders, Bid security, and the Bid Form/Contract with any supplements.
9. **Bonds** - Payment Bond and Performance and Maintenance Bond and other instruments of security.
10. **Calendar Day** - Any day shown on the calendar, including Saturdays, Sundays, and holidays.
11. **Change Order** - A written document issued by CITY that authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
12. **CITY/OWNER** - Kansas City, Missouri, a constitutionally chartered municipal corporation, with which DESIGN-BUILDER has entered into the Contract and for whom the Work is to be provided.

13. CITY's Project Design and Construction Criteria - are set forth in the Project Information portion of the Bidding Documents, and are those criteria developed by or for CITY to describe CITY's program requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing DESIGN-BUILDER's performance of the Work. CITY's Project Design and Construction Criteria may include, without limitation, survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria; cost or budget estimates; design and construction schedules; site development requirements; provisions for utilities, storm water retention and disposal, and parking requirements; standards, codes, and design manuals required to be employed; aesthetic considerations; conceptual documents; design criteria and performance-based criteria and requirements; and other Project-specific technical materials and requirements.

14. CITY's Representative - Person or agency designated to act for the Director as provided in these Contract Documents.

15. Construction Documents - means the complete and detailed drawings and specifications prepared or furnished by the DOR that provide the detailed requirements for construction of the Project, including, without limitation, defining the quantities and qualities of, and the relationships among, all of the materials and equipment needed to construct and deliver to CITY a finished and functional Project that conforms to CITY's Project Design and Construction Criteria.

16. Consultant - a person, firm, or corporation having a contract with CITY to furnish services as an independent professional associate or consultant (including, without limitation, as a construction manager, construction advisor, or program manager) with respect to the Project and who is identified as such in the Supplementary Conditions. The term "Consultant" also includes such person's firms, or corporation's agents, officers, directors, or employees.

17. Contract - The entire and integrated written agreement between CITY and DESIGN-BUILDER concerning the Work that incorporates all Contract Documents. The Bid Form/Contract submitted by Bidder is the Contract between CITY and DESIGN-BUILDER upon execution by CITY. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

18. Contract Documents - The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), DESIGN-BUILDER's Bid Form/Contract (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Intent to Contract), the HRD Construction Project Instructions, the DESIGN-BUILDER's Utilization Plan/Request for Waiver, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Project Manual and the certification page(s) of the CITY and Consultant(s), together with approved project baseline schedule and amendments thereto and all Written Amendments, Change Orders, Work Change Directives, and CITY's written interpretations and clarifications issued on or after the Effective Date of the Contract, and approved Shop Drawings. Reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this Paragraph are Contract

Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by CITY to DESIGN-BUILDER are not Contract Documents, except project schedules submitted by DESIGN-BUILDER and approved by CITY.

16. Contract Price - The money payable by CITY to DESIGN-BUILDER for completion of the Work in accordance with the Contract Documents as stated in the Agreement.

20. Contract Times - the number of calendar days or the date(s) stated in the Contract Documents for DESIGN-BUILDER to achieve certain Milestones, to achieve Substantial Completion of the Work, or portions of the Work, and to complete the entire Work such that DESIGN-BUILDER is entitled to receive final payment.

21. Day – Shall constitute a Calendar Day.

22. DESIGN-BUILDER - is the single entity or combination of persons and/or entities having the licensure, qualifications, and capability to perform as both a Designer of Record and a General Contractor on the Project, authorized by law to do business in Missouri and to perform or furnish professional design services and construction services for the Project, with whom CITY has entered into the Contract.

23. Designer of Record or DOR - is the qualified design professional member of DESIGN-BUILDER, holding a currently valid license or certificate of authority issued by the State of Missouri pursuant to Chapter 327, Revised Statutes of Missouri, who is to perform, provide for the performance of, oversee, and coordinate all of the professional design services for the Project, either directly, through employees or associates, or through agreements with Design Subconsultants; who shall review and approve all shop drawings issued on the Project; who shall coordinate the services of all design professionals and trade disciplines on the Project; who shall confirm the compliance of the Project as designed and constructed with the design intent of CITY's Project Design and Construction Criteria; and who shall bear ultimate responsibility for the accuracy, completeness, quality, and propriety of all professional design services performed on the Project.

24. Design Subconsultant means those qualified design professionals other than the DOR holding currently valid licenses or certificates of authority issued by the State of Missouri pursuant to Chapter 327, Revised Statutes of Missouri, who are retained by the DESIGN-BUILDER, the DOR, or the GC to perform or furnish professional design services for the Project.

25. Director - The term Director shall mean the duly appointed executive officer of a department of CITY who is empowered by the City Charter or by the City Council to enter into a contract on behalf of CITY, or to grant a permit for improvements to land owned by CITY. A Director is authorized to delegate this authority to a CITY employee so designated in writing.

26. Drawings - The drawings which graphically show the scope, extent and character of the Work to be furnished and performed by DESIGN-BUILDER and which have been prepared by DESIGN PROFESSIONAL and are included in the Contract Documents. Shop Drawings are not Drawings as so defined.

- 27. *Effective Date of the Contract*** - The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is fully executed by CITY.
- 28. *General Contractor or GC*** - means that member of DESIGN-BUILDER, qualified to perform construction services for the Project in the City of Kansas City, Missouri, who is to perform or oversee the performance of the construction services for the Project, either directly or through agreements with Subcontractors; who shall oversee and coordinate the services of all trade disciplines on the Project; who shall ensure the compliance of the Project, as constructed, with the Project design documents; and who shall bear responsibility for the accuracy, completeness quality, and propriety of all construction services performed on the Project.
- 29. *General Requirements*** - Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
- 30. *Hazardous Environmental Condition*** - The presence at the Site of Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- 31. *Hazardous Waste*** - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 32. *Laws or Regulations*** - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 33. *Lead Architect*** - refers to that natural person, identified by DESIGN-BUILDER as such in the Key Personnel portion of the Technical Approach Submittal of DESIGN-BUILDER's Bid, who is undertaking primary responsibility for the performance and furnishing of all professional design services for the Project and for the other obligations of the DOR under the Contract Documents.
- 34. *Lead-Based Paint*** - Any paint, varnish, stain, or other applied coating that has one (1) mg or more of lead per square centimeter. The terms "leaded paint" and "lead-containing paint" are synonymous with Lead-Based Paint.
- 35. *Liens*** - Liens, charges, security interests or encumbrances upon real property or personal property.
- 36. *Milestone*** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 37. *Notice of Intent to Contract*** - The written notice by CITY to the apparent successful Bidder stating that upon compliance by that apparent successful Bidder with the conditions in the Bid Documents enumerated, within the time specified, and upon enactment of an appropriate ordinance or resolution, CITY will sign and deliver the Contract.
- 38. *Notice to Proceed*** - The written notice given by CITY to DESIGN-BUILDER, establishing the date on which the Contract Time(s) will commence to run and on which date DESIGN-BUILDER shall begin to perform its obligations

under the Contract Documents. The term includes, without limitation, the Contract Notice to Proceed, the Design Notice to Proceed, and/or the Construction Notice to Proceed, as defined in the Contract for DESIGN-BUILDER Services... DESIGN-BUILDER shall perform no Work or services prior to the date on which the Contract Time(s) commence to run.

39. *Partial Utilization* - Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

40. *PCBs* - Polychlorinated biphenyls.

41. *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

42. *Project* - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

43. *Project Manual* - The documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual may be issued in one or more volumes and is contained in the table(s) of contents.

44. *Request for Qualifications or RFQ* - is the written solicitation issued by CITY for the Project, requesting preparation and submission of Statements of Qualifications by interested Applicants.

45. *Radioactive Material* - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

46. *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

47. *Shop Drawings* - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for DESIGN-BUILDER and submitted by DESIGN-BUILDER to illustrate some portion of the Work.

48. *Site* - Lands or areas indicated in the Contract Documents as being furnished by CITY upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CITY which are designated for the use of DESIGN-BUILDER.

49. *Specifications* - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

50. *Statement of Qualifications or SOQ* - Written and/or graphic description of the credentials, qualifications, experience, and other information about an Applicant that is responsive to the evaluation criteria set forth in the RFQ.

51. Subcontractor - Any individual, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, to whom DESIGN-BUILDER, with written notification to CITY, has entered into an agreement to perform a part of the Work.

52. Substantial Completion - When Work (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) 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 Work refer to Substantial Completion thereof.

53. Supplementary Conditions - The part of the Contract Documents which amends and/or supplements these General Conditions.

54. Supplier- A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with DESIGN-BUILDER or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by DESIGN-BUILDER or any Subcontractor.

55. Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

56. Unit Price Work - Work to be paid for on the basis of unit prices.

57. Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, and furnishing and incorporating material and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

58. Work Change Directive - A written directive to DESIGN-BUILDER, issued on or after the Effective Date of the Contract, signed by CITY and recommended by CITY, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

59. Written Amendment- A written statement modifying the Contract Documents, signed by CITY and DESIGN-BUILDER on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.08 or any other provision of the Contract Documents.

B. Defective

1. The word "defective," when modifying the word "Work," refers to Work 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 CITY's Representative's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with Paragraph 13.5).

C. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. 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.

D. Unless stated otherwise in the Contract Documents, words and phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. DESIGN-BUILDER shall deliver to CITY such Bonds as DESIGN-BUILDER may be required to furnish.

2.02 Evidence of Insurance

A. DESIGN-BUILDER shall deliver to CITY certificates of insurance or other evidence of insurance that CITY may request, which DESIGN-BUILDER is required to purchase and maintain in accordance with Article 5 or any other applicable provision in the Contract Documents.

2.03 Copies of Documents

A. CITY shall furnish to DESIGN-BUILDER one (1) copy of the Drawings and Specifications, including addenda.

2.04 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

2.05 Starting the Work

A. DESIGN-BUILDER shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the Site prior to the date on which the Contract Times commence to run, unless otherwise indicated in the Notice to Proceed.

2.06 Before Starting Construction

A. Preliminary Schedules: Within ten (10) days after the Effective Date of the Contract or on such later date as CITY's Representative shall provide in writing, DESIGN-BUILDER shall submit to CITY's Representative for review:

1. Preliminary Progress Schedule: DESIGN-BUILDER shall submit a proposed project schedule for CITY's acceptance. The proposed project schedule shall include a detailed and comprehensive design and construction schedule utilizing a critical path method diagram network that (a) shows all major procurement and construction elements and phases of the Project; (b) breaks down each element or phase by trade; (c) shows early and late starts so that all float time will be accurately identified; (d) all other activities necessary for the timely completion of the Project in accordance with the scheduled dates for Substantial and Final Completion; and (e) highlights the project's critical path. CITY's acceptance is expressly limited to CITY's acknowledgement that, based upon CITY's limited review, the dates of Substantial Completion and Milestone dates are acceptable. After final acceptance of the preliminary progress schedule by the CITY, it shall be considered the project baseline schedule pursuant to Paragraph 2.07(B).

2. Preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal; and

3. Preliminary 01290.02 Schedule of Values for all of the Work which will include quantities and prices of items which when added together equals the Contract Price and will subdivide 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.

2.07 Initially Acceptable Schedules

A. Thirty day interim schedule: The DESIGN-BUILDER shall prepare and submit to the CITY a 30-day interim schedule within seven (7) Calendar Days after the Notice to

Proceed. This schedule shall contain the sequence and dates of major work for the entire duration of the Work, including the following activities.

1. The construction activities to be accomplished or commenced during the first thirty (30) Calendar Days following the Notice to Proceed;
2. Procurement and submittal approvals, fabrication and delivery of all long lead time procurement activities;
3. Activities or Milestones that may be affected by the actions of the CITY or third parties.

The DESIGN-BUILDER shall incorporate the CITY's comments and resubmit the 30-day interim schedule within seven (7) Calendar Days from receipt of the CITY's comments.

B. Project Baseline Schedule: The DESIGN-BUILDER's 30-day interim schedule, as revised by the CITY pursuant to Paragraph 2.07A, shall be considered the baseline schedule and shall be used by the DESIGN-BUILDER for planning, scheduling, managing, and executing the Work. The baseline schedule shall not be changed without the written consent of CITY.

C. DESIGN-BUILDER's schedule of values will be acceptable to CITY's Representative as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents comprise the entire Contract between CITY and DESIGN-BUILDER concerning the Work.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or 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 will be furnished and performed whether or not specifically called for at no additional cost to CITY. Clarifications and interpretations of the Contract Documents shall be issued by CITY.

C. Correlation and intent of documents: The Drawings and Specifications are intended to supplement each other. Any Work shown on the Drawings and not mentioned in the Specifications (or vice versa) shall be as binding and shall be completed the same as if mentioned or shown on both. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Contract, including all Change Orders and Written Amendments
2. Approved Shop Drawings
3. Addenda, with those of later date having precedence over those of earlier date
4. Project Baseline Schedule Requirements
5. The Supplementary Conditions
6. The General Conditions
7. Drawings and Specifications

D. In the case of an inconsistency between Drawings and Specifications, the requirements of the Specifications shall govern. If Drawings are in conflict, larger scale details shall govern over smaller or no-scale Drawings. If Specification sections are in conflict with each other, the conflict shall be resolved by CITY in accordance with reasonable interpretation of such documents.

E. The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in the full size or scale details. Where the word "similar" occurs on the Drawings, it shall be used in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection to the other parts of the Work. Where on any Drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work. Where ornaments or other details are indicated by starting only, such details shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts in the Work, unless otherwise indicated.

3.02 Reference to Standards and Specifications of Technical Societies

A. 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 latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the date of DESIGN-BUILDER's proposal if there are no Bids), except as may be otherwise specifically stated in the Contract Documents.

1. No provision of any such standard, specification, manual, code or instruction of Supplier shall be effective to change the duties or responsibilities of CITY, or 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 CITY or any of CITY's Consultants, agents or employees 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 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Work, DESIGN-BUILDER discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Laws or Regulations applicable to the performance of the Work or of any standard, specification, manual, code or any instruction of any Supplier referred to in Paragraph 6.07, DESIGN-BUILDER shall report it immediately to CITY in writing. DESIGN-BUILDER shall not proceed with the Work affected thereby (except in an emergency as authorized by Paragraph 6.17) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04; provided, however, that DESIGN-BUILDER shall not be liable to CITY or CITY's Consultants for failure to report any such conflict, error, ambiguity or discrepancy unless DESIGN-BUILDER knew or reasonably should have known thereof.

B. Resolving Discrepancies. The provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code or instruction

(whether or not specifically incorporated by reference in the Contract Documents);
or

2. the provisions of any Laws or Regulations applicable to the performance of the Work.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. a Written Amendment or
2. a Change Order (pursuant to Article 10), whether pursuant to a Work Change Directive or otherwise.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

1. CITY's approval of a Shop Drawing or Sample, or
2. CITY's written interpretation or clarification.

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. CITY shall furnish the Site. CITY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which DESIGN-BUILDER will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If DESIGN-BUILDER and CITY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times or both as a result of any delay in CITY's furnishing these lands, rights-of-way or easements, DESIGN-BUILDER may make a Claim as provided in Article 15. 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.

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by CITY in preparing the Contract Documents; and
2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that have been utilized by CITY in preparing the Contract Documents.

B. Limited Reliance by DESIGN-BUILDER on Technical Data Authorized: DESIGN-BUILDER may rely upon the general accuracy of the technical data contained in reports and drawings of subsurface or physical conditions, but such reports and drawings are not

Contract Documents. The technical data is identified in the Supplementary Conditions. Except for reliance on such technical data, DESIGN-BUILDER may not rely upon or make any Claim against CITY, or CITY's Consultants with respect to:

1. the completeness of such reports and drawings for DESIGN-BUILDER's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by DESIGN-BUILDER and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
3. any DESIGN-BUILDER interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice of Differing Subsurface or Physical Conditions. If DESIGN-BUILDER believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any technical data on which DESIGN-BUILDER is entitled to rely as provided in Paragraphs 4.02 A and 4.02 B is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then DESIGN-BUILDER shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), notify CITY in writing about such condition(s). DESIGN-BUILDER shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. CITY's Review: After receipt of notice as required by Paragraph 4.03 A, CITY will promptly review the pertinent conditions, determine the necessity for CITY to obtain additional exploration or tests with respect thereto and notify DESIGN-BUILDER in writing of CITY's findings and conclusions.

C. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in Paragraph 4.03 A, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

D. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of a subsurface or physical condition causes an increase or decrease in DESIGN-BUILDER's cost of, or time required for, performance of the Work; subject, however, to the following:

1. the condition must meet any one or more of the categories described in Paragraphs 4.03 A.1 through 4.03 A.4, inclusive;

2. a change in the Contract Documents pursuant to Paragraph 4.03 C will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
3. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 10.04; and
4. DESIGN-BUILDER shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. DESIGN-BUILDER knew, or by the exercise of ordinary care could have known, of such conditions at the time DESIGN-BUILDER made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for DESIGN-BUILDER prior to DESIGN-BUILDER's making such final commitment; or
 - c. DESIGN-BUILDER failed to give the written notice as required by Paragraph 4.03 A.

E. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 10 and/or Contract Times pursuant to Article 11, a Claim may be made therefore as provided in Article 15. However, CITY, CITY's Consultants shall not be liable to DESIGN-BUILDER for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

4.04. Physical Conditions - Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to CITY by the owners of such Underground Facilities or by others.

1. CITY shall not be responsible for the accuracy or completeness of any such information or data; and
2. The cost of all of the following will be included in the Contract Price and DESIGN-BUILDER shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or

contiguous to the Site, and was not shown or indicated in the Contract Documents, or was shown or indicated incorrectly in the Contract Documents, DESIGN-BUILDER shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), identify the owner of such Underground Facility and give written notice to that owner and to CITY.

C. CITY's Review: After receipt of notice as required by Paragraph 4.04 B, CITY will promptly review the consequences of the existence of the Underground Facility and notify DESIGN-BUILDER in writing CITY's findings and conclusions.

D. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of the existence of an Underground Facility that either was not shown, or was shown incorrectly, in the Contract Documents, a Work Change Directive or Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

E. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of the Underground Facility causes an increase or decrease in DESIGN-BUILDER's cost of, or time required for, performance of the Work; subject, however, to the following:

1. a change in the Contract documents pursuant to Paragraph 4.04 D will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
2. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 10.04; and
3. DESIGN-BUILDER shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. DESIGN-BUILDER knew, or by the exercise of ordinary care could have known, of the existence of the Underground Facility at the time DESIGN-BUILDER made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of the Underground Facility could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for DESIGN-BUILDER prior to DESIGN-BUILDER's making such final commitment; or
 - c. DESIGN-BUILDER failed to give the written notice as required by Paragraph 4.04 B.

F. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 10 and/or Contract Times pursuant Article 11, a Claim may be made therefore as provided in Article 15. However, CITY and CITY's Consultants shall not be liable to DESIGN-BUILDER for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

4.05 Reference Points

A. CITY shall provide engineering surveys to establish reference points for construction that in CITY's judgment are necessary to enable DESIGN-BUILDER to proceed with the Work. DESIGN-BUILDER shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of CITY. DESIGN-BUILDER shall report to CITY whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste or Radioactive Material

A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the CITY in the preparation of the Contract Documents.

B. Limited Reliance by DESIGN-BUILDER on Technical Data Authorized: DESIGN-BUILDER may rely upon the general accuracy of the technical data contained in reports and drawings relating to a Hazardous Environmental Condition at the Site, but such reports and drawings are not Contract Documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, DESIGN-BUILDER may not rely upon or make any Claim against CITY, or CITY's Consultants with respect to:

1. the completeness of such reports and drawings for DESIGN-BUILDER's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by DESIGN-BUILDER and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any DESIGN-BUILDER interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

C. DESIGN-BUILDER shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. DESIGN-BUILDER shall be responsible for all Hazardous Environmental Conditions created with any materials brought to the Site by DESIGN-BUILDER, Subcontractors, Suppliers, or anyone else for whom DESIGN-BUILDER is responsible. DESIGN-BUILDER shall not be entitled to an extension of the Contract Times or an increase in the Contract Price if DESIGN-BUILDER, Subcontractor, Supplier or anyone for whom DESIGN-BUILDER is responsible created any Hazardous Environmental Condition at the Site or in connection with the Work.

D. If DESIGN-BUILDER encounters a Hazardous Environmental Condition at the Site or if DESIGN-BUILDER or anyone for whom DESIGN-BUILDER is responsible creates a Hazardous Environmental Condition at the Site, 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 6. 15); and
3. notify CITY (and promptly thereafter confirm such notice in writing). CITY shall promptly determine the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. DESIGN-BUILDER shall neither resume Work nor be required to resume Work in connection with such condition or in any affected area until after CITY has obtained any required permits related thereto and delivered to DESIGN-BUILDER written notice:

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. If CITY and DESIGN-BUILDER cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price pursuant to Article 10and/or Contract Times to pursuant to Article 11 as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by DESIGN-BUILDER, a Claim may be made therefore as provided in Article 15.

F. If after receipt of written notice as required in Paragraph 4.06 E, DESIGN-BUILDER does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under special conditions specified in the notice, then CITY may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If CITY and DESIGN-BUILDER cannot agree as to entitlement to or magnitude of an equitable adjustment in Contract Price pursuant to Article 10and/or Contract Times pursuant to Article 11 as a result of deleting such portion of the Work, then a Claim may be made therefore as provided in Article 15. CITY may have such deleted portion of the Work performed by CITY's own forces or others in accordance with Article 7.

G. The provisions of Paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

H. All materials used, whether new or salvaged, shall be asbestos-free materials. DESIGN-BUILDER shall immediately call to the attention of the CITY's Representative any specified material or product which the DESIGN-BUILDER knows or suspects to contain asbestos, whether new or salvaged.

ARTICLE 5 BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. DESIGN-BUILDER shall furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to the Contract Price, as set out in the Contract Documents, as security for the faithful performance and payment of all DESIGN-BUILDER's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. DESIGN-BUILDER shall also furnish such other Bonds as are required by the Supplementary Conditions.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent.

C. If the surety on any Bond furnished by DESIGN-BUILDER is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of Paragraph 5.01 B, DESIGN-BUILDER shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to CITY.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CITY or DESIGN-BUILDER shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri and in the jurisdiction in which the Project is located, if not in Missouri, to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

5.03 Certificates of Insurance

A. DESIGN-BUILDER shall deliver to CITY, prior to the start of any Work at the Project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to CITY. The receipt or acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by the City of the insurance requirements contained in the Contract Documents.

B. All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by DESIGN-BUILDER in accordance with Paragraphs 5.04 and 5.06 will contain waiver provisions in accordance with Paragraph 5.07 A. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. If the coverage afforded is cancelled or changed or its renewal is refused, DESIGN-BUILDER shall give at least thirty (30) days prior written notice to CITY and to each other additional insured to whom a certificate of insurance has been issued.

5.04 DESIGN-BUILDER's Liability Insurance

A. DESIGN-BUILDER shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished, and will provide protection from claims set forth below which may arise out of or result from DESIGN-BUILDER's performance and furnishing of the Work and DESIGN-BUILDER's other obligations under the Contract Documents, whether it is to be performed or furnished by DESIGN-BUILDER, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of DESIGN-BUILDER's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than DESIGN-BUILDER's employees;
4. claims for damages insured by customary personal injury liability coverage;

5. 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 therefore; and

6. 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.

B. The policies of insurance so required by Paragraph 5.04 A, to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 5.04 A.3 through 5.04 A.5 inclusive, include as additional insureds (subject to any customary exclusion for professional liability) CITY, Consultants and any other individuals or entities identified in the Supplementary Conditions to be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in Paragraph 5.04 C or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering DESIGN-BUILDER's indemnity obligations;

5. remain in effect at least until final payment and at all times thereafter when DESIGN-BUILDER may be correcting, removing or replacing defective Work in accordance with Paragraphs 13.06 and 13.07;

6. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and DESIGN-BUILDER shall furnish CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to CITY and any such additional insured of continuation of such insurance);

7. contain a cross-liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;

8. with respect to commercial automobile liability, commercial general liability, and umbrella liability insurance, DESIGN-BUILDER shall require its insurance carrier(s) to waive all rights of subrogation against CITY, and CITY's officers, directors, partners, employees and agents; and

9. contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility.

C. Specific policies of insurance required by this Paragraph 5.04 shall include:

1. Workers' Compensation and Employers' Liability Insurance. This insurance shall protect DESIGN-BUILDER against all claims under applicable state workers'"

compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. DESIGN-BUILDER shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an "all states" or "other states" endorsement. The liability limits shall be not less than:

Workers' Compensation: Statutory

Employers' liability: \$1,000,000 each occurrence

2. Commercial Automobile Liability Insurance. This insurance shall be occurrence type written in comprehensive form and shall protect DESIGN-BUILDER, and CITY, and Consultants against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the Project Site, whether they are owned, non-owned, or hired.

The liability limits shall be not less than: \$2,000,000

3. Commercial General Liability Insurance. This insurance shall be occurrence type written in comprehensive form acceptable to CITY. This insurance shall protect DESIGN-BUILDER, and CITY, and Consultants as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include coverage for personal injury liability; contractual liability; completed operations and products liability; and for blasting, explosion, and collapse of buildings; and damage to underground property. The liability limits for bodily injury and property damage shall be not less than:

\$2,000,000 combined single limit for each occurrence

\$2,000,000 general aggregate.

4. Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$2,000,000.

5. The insurer's costs of providing the insureds a defense and appeal as additional insureds, including attorney's fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility.

5.05 CITY's Liability Insurance

A. In addition to the insurance required to be provided by DESIGN-BUILDER under Paragraph 5.04, CITY, at CITY's option, may purchase and maintain at CITY's expense liability insurance that will protect CITY against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, DESIGN-BUILDER shall purchase and maintain property insurance on the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance shall:

1. include the interests of CITY, DESIGN-BUILDER, Subcontractors, and any other persons or entities identified in the Supplementary Conditions, each of whom is

deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, tornado, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, damage caused by frost and freezing, and acts of God;

3. be maintained in effect until final payment is made unless otherwise agreed to in writing by CITY with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of DESIGN-BUILDER, Subcontractors or others involved in the Work to the extent of any deductible amounts. The risk of loss within the deductible amounts will be borne by DESIGN-BUILDER, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.07 Waiver of Rights

A. CITY and DESIGN-BUILDER intend that all policies purchased in accordance with Paragraphs 5.04 and 5.06 will protect CITY, DESIGN-BUILDER, CITY's Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies 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 of the insureds or additional insureds thereunder. CITY and DESIGN-BUILDER waive all rights against each other and their respective officers, directors, partners, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work, but only to the extent of insurance coverage; and, in addition, waive all such rights against CITY, Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any and each of them) under such policies for losses and damages so caused and covered by insurance. 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 CITY as trustee or otherwise payable under any policy so issued. None of the above waivers shall apply if specifically in conflict with Laws and Regulations.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the property insurance will be adjusted with CITY and made payable to CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any indentures of indebtedness entered into by CITY.

B. CITY as fiduciary shall have power to adjust and settle any loss with the insurers

unless one of the parties in interest shall object to CITY's exercise of this power in writing within fifteen (15) days after the occurrence of loss. If such objection is made, CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CITY as fiduciary shall adjust and settle the loss with the insurers.

5.09 Partial Utilization - Property Insurance

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

ARTICLE 6 DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

6.01 General Requirements

A. Project Manager and Lead Architect. The Design-Build Project Manager and the Lead Architect shall be reasonably available to CITY's Representative and shall have the necessary expertise and experience required to supervise the Work. The Design-Build Project Manager and the Lead Architect shall communicate regularly with CITY's Representative. The Design-Build Project Manager, the Lead Architect, and any of the other Key Personnel identified in the Technical Approach Submittal portion of DESIGN-BUILDER's Bid may be removed or replaced only with the prior written consent of CITY.

B. Pre-Commencement Meeting. The parties will meet within ten (10) days after CITY's execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to schedules, submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

C. List of Subcontractors. DESIGN-BUILDER shall submit required information for all Subcontractors on Form 01290.09 - Subcontractor and Major Material Suppliers List, provided in these Contract Documents, prior to Subcontractor beginning Work at the Site. No acceptance by CITY of any Subcontractor or Sub-Subcontractor shall relieve DESIGN-BUILDER of its responsibility for scheduling and coordinating the Work of all Subcontractors and Sub-Subcontractors, nor shall it relieve DESIGN-BUILDER of its complete and exclusive responsibility and liability for all acts and omissions of any Subcontractor or Sub-Subcontractor, nor shall it result in any waiver of CITY's right to reject defective or nonconforming Work.

6.02 Professional Design Services

A. DESIGN-BUILDER shall, consistent with applicable Missouri licensing laws, perform or furnish, through the DOR and any Design Subconsultants, the necessary architectural, engineering, and other professional design services and the labor, materials, supervision, equipment, computers, documents, and other items and services necessary for the preparation of the required drawings, specifications, and other design information and submittals to permit DESIGN-BUILDER to complete the Work consistent with CITY's Project Design and Construction Criteria, the Contract Documents, and Legal Requirements. DESIGN-BUILDER acknowledges its responsibility to CITY for the proper

performance of the Work by the DOR and Design Subconsultants and its responsibility for any of their acts or omissions in connection with the Work, and acknowledges that such subcontracting shall in no way relieve DESIGN-BUILDER of its obligations and liabilities under the Contract Documents and Legal Requirements. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any Design Subconsultant, or between CITY and the DOR (unless the DOR is the DESIGN-BUILDER under contract with CITY), including, but not limited to, any third-party beneficiary rights, and a provision to such effect shall be inserted into all agreements between DESIGN-BUILDER and its Design Subconsultants and DOR (if the DOR is not the DESIGN-BUILDER under contract with CITY).

6.03 Design Standards; Seals and Endorsements

A. Design Standards. Except as otherwise directed in writing by CITY, DESIGN-BUILDER and the DOR shall use and implement in the performance of professional design services under the Contract, all applicable design standards required by federal, state, and local laws or codes or such standards as are recognized and used in the industry. In the development of any design under the Contract, DESIGN-BUILDER and the DOR shall comply with the Contract Documents and Legal Requirements, including, without limitation, all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., as well as 28 C.F.R. Parts 35 and 36 and 29 C.F.R. Part 1630, and CITY's Buy American policy, all as may be amended from time to time. DESIGN-BUILDER and the DOR shall notify and explain to CITY any applicable exceptions under these acts or provisions.

B. Seals and Endorsements. The DOR shall affix its seal to and endorse all drawings, plans, and specifications, or estimates, and engineering data prepared by the DOR under the Contract. All Design Subconsultants shall similarly affix their seals to and endorse their respective drawings, plans, and specifications, or estimates, and engineering data prepared for the Project.

C. Correction of Errors. DESIGN-BUILDER and the DOR shall monitor for quality assurance purposes all design services performed under the Contract, and shall immediately revise and correct the design drawings and plans at their own expense, without adjustment to the Contract Price and/or Contract Time(s), any act, omission, error, or oversight in the performance of such professional design services and the associated construction.

6.04 Standard of Care for Professional Design Services

A. The standard of care for all professional design services performed as part of the Work shall be the care and skill ordinarily exercised by members of the same design profession practicing under substantially similar conditions at the same time and locality of the Project, or as otherwise provided by Missouri law. Notwithstanding the preceding sentence, DESIGN-BUILDER shall design and construct the Project in such a manner that the Project and all of its components are functional and operational and in compliance with CITY's Project Design and Construction Criteria, Legal Requirements in effect as of the date of the Contract, and any other specific performance standards the parties may agree upon for any aspect of the Project.

6.05 Progress Schedule

A. DESIGN-BUILDER shall adhere to the progress schedule established in accordance with Article 2 as it may be adjusted from time to time as provided below:

1. DESIGN-BUILDER shall provide, at least once every thirty (30) calendar days, updated information on the project schedule, including thirty (30) day look ahead schedules, projected variances per event category and per Subcontractor, identification of all variances and calculation of the number of Days difference between the as-built critical path and the project schedule critical path

2. DESIGN-BUILDER shall, with each application for payment, provide completed monthly updated status report for the previous month on the project schedule and updated information indicating as-built and as-planned conditions. The updated information on the project schedule shall not modify any Milestone dates in the project schedule that CITY has previously approved. The updated information required is a condition precedent to payment pursuant to paragraph 14.02 and shall include at a minimum:

a. a concise statement of the outlook for meeting project schedule dates and the reasons for any change in outlook from the previous report;

b. a review of any significant technical problems encountered during the month;

c. an explanation of any corrective action taken or proposed; and

d. a summary of any Claims anticipated by DESIGN-BUILDER with respect to the Work, including the anticipated costs and schedule impacts of any such Claims.

6.06 Recovery Schedules

A. If the DESIGN-BUILDER should:

1. fail, refuse or neglect to supply a sufficient number of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work;

2. fail in any respect to commence and diligently prosecute the Work in accordance with the approved baseline project schedule in order to achieve substantial completion;

3. fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as specified in the approved baseline project schedule; or

4. fail in the performance of any of the material covenants of the Contract Documents;

CITY shall have the right to direct the DESIGN-BUILDER, upon seven (7) calendar days notice, to prepare a written recovery plan, for CITY's approval, to accelerate the Work in order to conform to the approved baseline project schedule, including, without limitation, providing additional labor or expediting delivery of materials, performing overtime or re-sequencing the Work without adjustments to the Contract value. Upon CITY's approval of the recovery plan, DESIGN-BUILDER shall accelerate the Work in accordance with the plan.

B. Proposed recovery schedules shall be submitted to the CITY as a separate project plan for review and approval by CITY prior to incorporation into the approved baseline schedule. The recovery schedule shall be submitted in a format compatible with the baseline schedule format. Each proposed revision shall be submitted as a separate schedule, with the following minimum requirements:

1. A critical path method diagram showing revised and affected activities or Milestones.
2. An activity report for all revised and affected activities or Milestones.

C. Upon acceptance of the recovery schedule by CITY, data shall be added or revised for all new or revised activities and incorporated into the approved baseline project schedule.

6.07 Detailed Design Services

A. Interim Design Submissions. At the meeting contemplated by Section 6.07.B of these General Conditions of Contract, CITY and DESIGN-BUILDER shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that CITY may wish to review, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements.

B. Design Review Meetings. On or about the time of scheduled design submissions, DESIGN-BUILDER's Project Manager and Lead Architect shall convene design review meetings with CITY to confer about the submissions. At the meetings, DESIGN-BUILDER shall identify, among other things, the evolution of the design and any significant changes or deviations from CITY's Project Design and Construction Criteria or the Contract Documents, or, if applicable, previously submitted design submissions. In the event DESIGN-BUILDER believes that any changes requested by CITY at such meetings are inconsistent with CITY's Project Design and Construction Criteria or earlier approvals such that DESIGN-BUILDER's compliance with same may have an adverse impact on the Contract Price and/or the Contract Time(s), DESIGN-BUILDER shall submit its written notice to CITY specifying such impact within seven (7) days after such meeting, or DESIGN-BUILDER shall be deemed to have waived any claim for adjustment to the Contract Price and/or the Contract Time(s) arising out of such meeting or request.

C. Approval of Interim Design Submissions. Following each design review meeting, DESIGN-BUILDER shall prepare and maintain meeting minutes and shall provide copies to all attendees for review. CITY shall review and approve the interim design submissions in a time that is consistent with the reasonable turnaround times set forth in DESIGN-BUILDER's approved schedule. Any such review and approval by CITY shall be only for purposes of determining the interim design submissions' apparent general consistency with CITY's Project Design and Construction Criteria, and shall not relieve DESIGN-BUILDER from any responsibility or liability for its complete and exclusive control and responsibility for providing complete and accurate design and construction services as required to achieve CITY's objectives, including, without limitation, the use, operation, and maintenance of the Project in conformance with CITY's Project Design and Construction Criteria, the Contract Documents, Legal Requirements, and applicable guidelines, requirements, and standards.

D. Construction Documents. DESIGN-BUILDER shall submit to CITY those Construction Documents consisting of drawings and specifications that describe and set forth in detail the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting and approved by CITY. The parties shall have a design review meeting to discuss, and CITY shall review and approve, the Construction Documents in accordance with the procedures and consistent with the purposes set forth in Sections 6.07.B. and 6.07.C. above and Section 6.07.E. below.

Upon CITY's issuance of the Construction Notice to Proceed, DESIGN-BUILDER shall proceed with construction in accordance with the approved Construction Documents and shall submit to CITY, prior to commencement of construction, the number of copies of the approved Construction Documents, in the required form, as set forth in the Supplementary Conditions.

E. Approval of Construction Documents. CITY's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of CITY's Project Design and Construction Criteria. Neither CITY's review and approval of any interim design submissions nor CITY's review and approval of the Construction Documents shall be deemed to transfer from DESIGN-BUILDER to CITY any of DESIGN-BUILDER's exclusive responsibility, control, and liability for the design and construction required under the Contract Documents.

F. Design Packages. To the extent not prohibited by the Contract Documents or Legal Requirements and with CITY's written approval, DESIGN-BUILDER may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

6.08 Legal Requirements

A. General. DESIGN-BUILDER shall perform the Work in accordance with the Contract Documents and Legal Requirements, and shall provide all notices applicable to the Work as required by the Contract Documents and the Legal Requirements

B. Changes in Legal Requirements. The Contract Price and/or Contract Time(s) may be equitably adjusted to compensate DESIGN-BUILDER for the effects of any changes in Legal Requirements enacted after CITY's execution of the Contract that affect the performance of the Work. Such effects may include, without limitation, revisions DESIGN-BUILDER is required to make to the Construction Documents because of changes in Legal Requirements.

C. Americans with Disabilities Act. DESIGN-BUILDER agrees to comply, during the course of this Contract, with all provisions of the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq., as well as 28 C.F.R. Parts 35 and 36 and 29 C.F.R. Part 1630, as applicable and as amended from time to time.

D. Minority and Women's Business Enterprises. CITY is committed to ensuring that minority business enterprises (MBE) and women's business enterprises (WBE) participate to the maximum extent possible in the performance of CITY contracts. DESIGN-BUILDER shall comply with all requirements of CITY's Minority and Women's Business Enterprise Program as enacted in CITY's Code, Sections 38-84 through 38-100.4 and as hereinafter amended. DESIGN-BUILDER shall achieve the MBE/WBE participation goals set forth in DESIGN-BUILDER's Construction Contractor Utilization Plan/Request for Waiver (CITY's HRD Form 8-DB). DESIGN-BUILDER's compliance with this provision is a material part of this Contract.

E. Audit. The City Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations, and the CITY Department administering this Contract shall have the right to audit this Contract and all books, documents, and records relating thereto.

1. DESIGN-BUILDER shall maintain all of its books, documents, and records relating to this Contract during the Contract period and for three (3) years after the

date of final payment or earlier termination of the Contract.

2. DESIGN-BUILDER shall make such books, documents, and records available to the City Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations, and the CITY Department administering this Contract, within ten (10) days after written request.

F. Prevailing Wage.

1. GENERAL CONTRACTOR shall comply and require its Subcontractors to comply with;

a. sections 290.210 to 290.340, RSMO the State of Missouri Prevailing Wage Law (the "Law"); and

b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and

c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and

d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements."

3. GENERAL CONTRACTOR shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. GENERAL CONTRACTOR shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for GENERAL CONTRACTOR and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. If GENERAL CONTRACTOR shall fail to start to perform GENERAL CONTRACTOR's obligations under the Contract Documents within sixty (60) days from the date on which the Contract Times commenced to run, as indicated in the Notice to Proceed, GENERAL CONTRACTOR and each of its subcontractors shall be obligated to pay all workers in accordance with any new Wage Order, as subsequently amended by any applicable Wage Increase, issued by the Department of Labor and Industrial Relations within the aforementioned sixty (60) day period. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached or incorporated in the Contract Documents.

4. Prior to each of its Subcontractors beginning Work on the Site, GENERAL CONTRACTOR shall require each Subcontractor to complete CITY's Form 00490 entitled "Pre-contract Certification" that sets forth the Subcontractor's prevailing wage and tax compliance history for the two (2) years prior to the bid. GENERAL CONTRACTOR shall retain one (1) year and make the Pre-contract Certifications available to CITY within five (5) days after written request.

5. GENERAL CONTRACTOR shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on CITY's:

a. "Certified Payroll Report" Form indicating the worker's name, address, social security number, occupation(s) and craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project; and

b. "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group & skill and the workers' hours. CITY shall furnish blank copies of the Daily Labor Force Report Form to GENERAL CONTRACTOR for its use and for distribution to Subcontractors; and

c. "Payroll Certification" Form. GENERAL CONTRACTOR shall prepare and shall require each Subcontractor to prepare a "Payroll Certification" Form to accompany the Certified Payroll Report. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the GENERAL CONTRACTOR and each Subcontractor.

d. Copies of CITY's "Certified Payroll Report" form, the Daily Labor Force Report and Payroll Certification Form are included in the Project Manual and are collectively referred to in this Section as the "Records."

6. GENERAL CONTRACTOR shall submit its and its Subcontractors Daily Labor Force Reports to CITY each day. GENERAL CONTRACTOR shall make all of CONTRACTOR's and Subcontractors' Records open to inspection by any authorized representatives of OWNER and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. GENERAL CONTRACTOR shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the GENERAL CONTRACTOR's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and GENERAL CONTRACTOR shall provide the Records to the CITY in the format required by the CITY within three (3) working days of any request by CITY at the GENERAL CONTRACTOR's cost. CITY, in its sole discretion, may require GENERAL CONTRACTOR to send any of the Records directly to the person who requested the Record at GENERAL CONTRACTOR's expense.

7. GENERAL CONTRACTOR shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by GENERAL CONTRACTOR and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds \$250,000.00, GENERAL CONTRACTOR shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the GENERAL CONTRACTOR or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the GENERAL CONTRACTOR may place a temporary stationary sign, with the

information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. GENERAL CONTRACTOR must correct any errors in GENERAL CONTRACTOR's or any Subcontractors' Records, or GENERAL CONTRACTOR's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from CITY.

10. GENERAL CONTRACTOR shall and shall require its Subcontractors to cooperate with the CITY and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. GENERAL CONTRACTOR shall and shall require its Subcontractors to permit CITY and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at GENERAL CONTRACTOR's sole cost and expense.

11. GENERAL CONTRACTOR shall file with CITY, upon completion of the Project and prior to final payment therefore, affidavits from GENERAL CONTRACTOR and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. CITY shall not make final payment until the affidavits, in proper form and order, from GENERAL CONTRACTOR and each of its Subcontractors, are filed by GENERAL CONTRACTOR.

12. GENERAL CONTRACTOR shall forfeit as a statutory penalty to the CITY one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by GENERAL CONTRACTOR or by any of GENERAL CONTRACTOR's Subcontractors. If GENERAL CONTRACTOR or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, CITY shall when making payments to the GENERAL CONTRACTOR becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

G. Prevailing Wage Damages. GENERAL CONTRACTOR acknowledges and agrees that, based on the experience of CITY, violations of the Missouri Prevailing Wage Act, whether by GENERAL CONTRACTOR or its Subcontractors, commonly result in additional costs to CITY. GENERAL CONTRACTOR agrees that additional costs to CITY for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for CITY, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by GENERAL CONTRACTOR or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, CITY shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. CITY shall give written notice to GENERAL CONTRACTOR setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph J. GENERAL CONTRACTOR shall have fourteen (14) calendar days to respond, which time may be extended by CITY upon written request. If GENERAL CONTRACTOR fails to respond within the specified time, the CITY's original notice shall be deemed final. If GENERAL CONTRACTOR responds to CITY's notice, CITY will furnish GENERAL CONTRACTOR a final decision in writing within five (5) days of completing any investigation.

H. Missouri Secretary of State Business Entity Registration. DESIGN-BUILDER shall obtain, from all Subcontractors and Sub-Subcontractors for the Project, a copy of their current certificate of good standing or fictitious name registration from the Missouri Secretary of State before they begin work on the Site. DESIGN-BUILDER shall retain such documents in its files and shall make them available to CITY within ten (10) days after written request.

I. Tropical Hardwoods. The provisions of Code Section 2-1872, restricting the use of tropical hardwoods, shall apply to this Contract.

J. Preference for Missouri Products. Pursuant to Section 71.140, RSMo, preference shall be given to materials, products, supplies, and all other articles produced, manufactured, made, or grown within the State of Missouri.

K. Open Excavations. DESIGN-BUILDER shall comply, and shall cause each of its Subcontractors to comply, with Legal Requirements and with the following specific requirements relating to open excavations; provided, however, that inclusion of these requirements in the Contract Documents shall in no event result in CITY's responsibility or liability for any safety programs or precautions in connection with the Work, the Site, or the Project, as such responsibility and liability are exclusively those of DESIGN-BUILDER.

1. Protecting Excavations. DESIGN-BUILDER shall restore all required excavations to the level of the adjacent surfaces as soon as practicable. Unsupervised open excavations on public properties are discouraged at all times. If DESIGN-BUILDER, in performance of the Work, makes or causes to be made any excavation in, upon, under, through, or adjoining any street, sidewalk, alley, park, boulevard, parkway, or any other public properties, and leaves any part or portion thereof open, DESIGN-BUILDER shall provide effective protection for the public.

2. Securing Excavations. DESIGN-BUILDER shall protect and secure all excavations in roadways in compliance with existing federal, state, and local codes and standards, including, but not limited to, the most current edition of the Manual of Uniform Traffic Control Devices. DESIGN-BUILDER shall protect and secure all unsupervised excavations that are not within roadways, either by covering or fencing, in compliance with the following:

a. Covering. A protective cover that can sustain the weight of persons or objects placed upon it may be installed over an unsupervised excavation. The cover shall be secured to the ground to prevent movement. Protective covers shall have no opening(s) or protuberance(s) of sufficient size to cause or allow a fall and/or injury. Advance warning devices shall be installed as necessary.

b. Fencing. Fencing to prevent entry may be installed surrounding an unsupervised excavation that is not protectively covered in its entirety. The

fencing shall be a minimum of 42” in height. The fencing shall be constructed in such a manner that it is adequately secured and will remain upright at all times under normal Site conditions.

c. Inspections. All protective coverings and fences over and around excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary.

L. Notification of Utilities. DESIGN-BUILDER shall adhere to the provisions of Sections 319.010 et seq., RSMo, which provide that a person or firm making an excavation in any public street, road or alley, right of way dedicated to public use, utility easement of record, or within any private street or private property may do so only after giving notice to, and obtaining information from, owners of Underground Facilities. Missouri’s 24-hour toll-free accident-prevention hotline number is 1-800-344-7483 (1-800-DIG-RITE).

M. Missouri Sales Tax Exemption. CITY is a Missouri exempt entity pursuant to Section 144.062, RSMo, and tangible personal property to be incorporated or consumed in the construction of the Project may be purchased without the payment of sales tax. CITY shall furnish to DESIGN-BUILDER a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

N. Clean Air Act and Clean Water Act. DESIGN-BUILDER shall comply with requirements of the Clean Air Act (42 U.S.C. 7401 et seq.); Clean Water Act (33 U.S.C. 1251 et seq.), Missouri Clean Water Law (Chapter 644 RSMo), Code of Federal regulations (Title 40: Protection of Environment, Title 33: Navigation and Navigable Waters) and the rules of the Missouri Code of State Regulations (CSR Title 10).

O. OSHA 10-Hour Training Requirement. DESIGN-BUILDER and any subcontractor working under this Contract shall require every employee on the Site to complete a ten-hour construction safety program which meets the requirements of Section 292.675, RSMo, except for those employees who shall have previously completed the required program and hold documentation to that effect. DESIGN-BUILDER shall remove or require the removal of any person from the Site who is subject to this requirement and who does not complete or is unable to produce documentation of their successful completion of the required program within the time limitations prescribed by Section 292.675, RSMo. DESIGN-BUILDER shall forfeit the sum of two thousand five hundred dollars (\$2,500.00), in addition to one hundred dollars (\$100.00) per employee each calendar day, or portion thereof, the employee(s) shall continue to be employed without having completed the required program within the time limitations prescribed by Section 292.675, RSMo. CITY shall be entitled to withhold and retain any amounts due and owing hereunder when making payment to DESIGN-BUILDER.

P. Affirmative Action. If the Contract Price exceeds \$300,000.00 and DESIGN-BUILDER employs fifty (50) or more people, DESIGN-BUILDER shall comply with City’s Affirmative Action requirements in accordance with the provisions of Chapter 38 of City’s Code, the rules and regulations relating to those sections, and any additions or amendments thereto. DESIGN-BUILDER shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City’s Code.

DESIGN-BUILDER shall:

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Contract Central

1. Submit, in print or electronic format, a copy of DESIGN-BUILDER'S current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, DESIGN-BUILDER does not possess a current certification of compliance, DESIGN-BUILDER shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, DESIGN-BUILDER shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If DESIGN-BUILDER fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and DESIGN-BUILDER may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Q. Contract Information Management System. If applicable, DESIGN-BUILDER shall comply with CITY's Contract Information Management System requirements. DESIGN-BUILDER shall use CITY's Internet web based Contract Information Management System/Project Management Communications Tool provided by CITY, and protocols included in that software during the term of this Contract. DESIGN-BUILDER shall maintain user applications to CITY's provided system for all personnel, subcontractors or suppliers as applicable and shall require subcontractors/subconsultants to maintain same.

6.09 Government Approvals and Permits

A. DESIGN-BUILDER's Responsibility. DESIGN-BUILDER, at its own expense, shall secure all occupational and professional licenses; shall pay all Code application costs, Code review costs, governmental charges, and inspection fees; and shall secure from public or private sources or from any government or quasi-government entity having jurisdiction over the Project all necessary permits, approvals, and licenses required for the prosecution of the Work and necessary for the fulfillment of DESIGN-BUILDER's obligations under the Contract Documents.

B. DESIGN-BUILDER, at its own expense, shall comply with all Federal, State and local laws and regulations, including, but not limited to the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits, together with any CITY Provisions during the life of this Contract including but not limited to:

- 1 Approvals and permits as required for construction or land disturbance activities.

2. Compliance with the State of Missouri – Department of Natural Resources (“MDNR”) Missouri State Operating Permit (“Land Disturbance Permit”), MO-R100006 for all construction or land disturbance activity.
3. Development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).
 - a. DESIGN-BUILDER shall not commence land disturbance activity until the initial SWPPP has been finalized.
 - b. Preparation and submittal of all applications, documentation and exhibits required to obtain MDNR approvals for uninterrupted Work at the Site.
 - c. Amending/Updating SWPPP.
 - d. Site Inspections and submittal of Inspection Reports
 - e. Proper Operation and Maintenance to achieve compliance with the terms of the Permit.
 - f. Maintenance of required records in accordance with MDNR requirements and requirements included in Article 6 of these Contract Documents.
4. In addition to requirements of Article 6, DESIGN-BUILDER shall also provide record access to Missouri Department of Natural Resources (MDNR).
5. No additional Contract time will be granted to obtain approvals or permits or for coordination with that agency

C. Subcontractors' Licenses. Before Subcontractors begin Work at the Site, DESIGN-BUILDER shall obtain copies of all licenses required of such Subcontractors by these Contract Documents. DESIGN-BUILDER shall retain such evidence in its files and make it available to CITY within ten (10) days after written request.

D. No Release from Responsibility. No review, inspection, or approval of any of the Work by any government or quasi-government entity having jurisdiction over the Project shall relieve DESIGN-BUILDER of its exclusive responsibility and liability for the performance of its obligations in accordance with the Contract Documents and Legal Requirements.

6.10 Construction Phase Services

A. DESIGN-BUILDER's Responsibility. Unless otherwise provided in the Contract Documents to be the responsibility of CITY or a separate contractor under CITY's control, DESIGN-BUILDER shall provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, and all other items or services necessary to permit DESIGN-BUILDER to perform and complete the construction of the Project consistent with the Contract Documents and Legal Requirements.

B. DESIGN-BUILDER's Skill and Control. DESIGN-BUILDER shall perform all construction activities efficiently, in a workmanlike manner, and with the requisite expertise, skill, and competence to satisfy the Contract Documents and Legal Requirements. DESIGN-BUILDER shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction, and all safety precautions and programs in connection with the performance of the Work.

C. Uncovering Work

1. Work Covered Improperly. If any Work (or the work of others at the Site) is covered contrary to the written request of CITY, DESIGN-BUILDER must uncover it at CITY's request for CITY's observation and replace it at DESIGN-BUILDER's expense.

2. Work Covered Properly. If CITY considers it necessary or advisable that covered Work be observed by CITY or be inspected or tested by others, DESIGN-BUILDER, at CITY's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

a. Defective Work. If it is found that such Work is defective, DESIGN-BUILDER shall pay all costs, losses, and damages (including, but not limited to, all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) caused by, arising out of, or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

b. Non-Defective Work. If, however, such Work is not found to be defective, DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Time(s) (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, DESIGN-BUILDER may make a Claim therefore.

D. Subcontractors

1. CITY's Approval. DESIGN-BUILDER shall engage only Subcontractors and Sub-subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents and Legal Requirements. Upon execution of the Contract and at such later times as CITY may request, DESIGN-BUILDER shall furnish, in writing, information about DESIGN-BUILDER's proposed Subcontractors and Sub-subcontractors. CITY shall promptly provide in writing any reasonable objections it may have to any such Subcontractor or Sub-subcontractor, in which case DESIGN-BUILDER shall submit an acceptable replacement. DESIGN-BUILDER shall not contract with any Subcontractor or Sub-subcontractor to which CITY objects, provided that the Contract Price and/or Contract Time(s) shall be equitably adjusted to the extent CITY's objection actually impacts DESIGN-BUILDER's cost and/or time of performance. DESIGN-BUILDER shall not be required to contract with any Subcontractor or Sub-Subcontractor against whom DESIGN-BUILDER has reasonable objection. CITY's consent or failure to object to any Subcontractor or Sub-subcontractor shall neither constitute any waiver by CITY of any of its rights and remedies under the Contract Documents or Legal Requirements, nor relieve DESIGN-BUILDER of any of its duties, obligations, liabilities, or warranties under the Contract Documents or Legal Requirements.

2. DESIGN-BUILDER's Subcontractors. DESIGN-BUILDER acknowledges its responsibility to CITY for the proper performance of the Work by DESIGN-

BUILDER's Subcontractors and Sub-subcontractors and its responsibility for any of their acts or omissions in connection with the Work, and acknowledges that such subcontracting shall in no way relieve DESIGN-BUILDER of its obligations and liabilities under the Contract Documents and Legal Requirements.

3. Written Agreements. All Work performed by any Subcontractor or Sub-Subcontractor shall be pursuant to a written agreement or purchase order that specifically binds such Subcontractor or Sub-Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY, and that affords to DESIGN-BUILDER the same rights against such Subcontractors and Sub-subcontractors as the Contract Documents afford to CITY against DESIGN-BUILDER. Nothing in the Contract Documents is intended or shall be construed to create any legal or contractual relationship between CITY and any Subcontractor or Sub-Subcontractor, nor to confer any benefit from CITY upon any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights, and a provision to such effect shall be inserted into all subcontracts and purchase orders between DESIGN-BUILDER and its Subcontractors and Sub-subcontractors.

4. Contingent Assignment. Each agreement and purchase order referenced in Section 6.10.D.3 above shall include an express assignment to CITY upon the conditions that (1) such assignment is effective only in the event of CITY's termination of the Contract for cause pursuant to Section 12.3 of these General Conditions of Contract, (2) such assignment is effective only with respect to those agreements and purchase orders CITY accepts in writing, and (3) such assignment is subject to any prior rights of the surety obligated under the Bonds.

E. Coordination

1. DESIGN-BUILDER's Forces. DESIGN-BUILDER shall coordinate the activities of the DOR, the GC, all Design Subconsultants, all Subcontractors, and all Sub-subcontractors with respect to the Work. Such coordination shall include, but not be limited to, jobsite meetings involving all such Project participants, at dates and times mutually agreed upon in advance with CITY's Representative.

2. CITY's Forces. If CITY performs any work on the Project or at the Site with CITY's own forces or with separate contractors under CITY's control, DESIGN-BUILDER shall reasonably cooperate and coordinate its activities with those of such separate forces or contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption, delay, or damage to any party.

F. Supervision and Superintendence

1. DESIGN-BUILDER shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

2. At all times during the progress of the Work, DESIGN-BUILDER shall assign a competent resident superintendent of the Work, who shall not be replaced without written request to and written approval by CITY except under extraordinary circumstances. The superintendent will be DESIGN-BUILDER's representative at the Site and shall have authority to act on behalf of DESIGN-BUILDER. All

communications given to or received from the superintendent shall be binding on DESIGN-BUILDER.

G. Services, Working Hours, Labor, Materials, and Equipment

1. DESIGN-BUILDER shall provide competent, suitably qualified personnel to survey, layout, and construct the Work as required by the Contract Documents. DESIGN-BUILDER shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto. CITY's prior written approval shall be required in the event DESIGN-BUILDER intends to perform Work at the Site outside regular working hours.

2. Unless otherwise specified in the Contract Documents, DESIGN-BUILDER shall furnish 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 furnishing, performance, testing, start-up and completion of the Work.

3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees shall expressly run to the benefit of CITY. If required by CITY, DESIGN-BUILDER shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's instructions except as may be otherwise provided in the Contract Documents.

H. Use of Site and Other Areas

1. DESIGN-BUILDER shall confine its construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas identified in and permitted by the Contract Documents and other areas permitted by Legal Requirements. DESIGN-BUILDER shall not unreasonably encumber the Site and the other areas with construction equipment or other materials or equipment. DESIGN-BUILDER shall assume full responsibility for any damage to the Site or the other areas, or to the owner(s) or occupant(s) 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(s) or occupant(s) because of the performance of the Work, DESIGN-BUILDER shall promptly resolve such claim. In case of a failure on the part of DESIGN-BUILDER to restore such property or to make good such damage or injuries, CITY may, upon forty-eight (48) hours' written notice to DESIGN-BUILDER, repair, rebuild, or otherwise restore such property as CITY may deem necessary, and the cost thereof will be deducted from any moneys due or which may become due to DESIGN-BUILDER under this Contract.

3. DESIGN-BUILDER shall, to the fullest extent permitted by Legal Requirements, defend, indemnify, and hold harmless CITY, its Consultant(s), and its or their officials, officers, directors, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or resulting from any claim or action,

legal or equitable, brought by any such owner(s) or occupant(s) against CITY or any other party indemnified hereunder to the extent caused by or based upon DESIGN-BUILDER's performance of the Work.

4. During the progress of the Work, DESIGN-BUILDER shall keep the Site and the other areas free from accumulations of waste materials, rubbish, and other debris resulting from the Work. DESIGN-BUILDER shall leave the Site clean and ready for utilization or occupancy by CITY at Substantial Completion of the Work. At the completion of the Work, DESIGN-BUILDER shall remove all waste materials, rubbish, and debris from the Site and the other areas, as well as all tools, appliances, construction equipment and machinery, and surplus materials. DESIGN-BUILDER shall restore to its pre-Work condition all property not designated for alteration by the Contract Documents.

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 Site, the Work or adjacent property to stresses or pressures that will endanger it or them.

I. Emergencies

1. In the event of emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, DESIGN-BUILDER, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury, or loss. DESIGN-BUILDER shall give prompt written notice to CITY 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 CITY determines that a change in the Contract Documents is required because of the action taken by DESIGN-BUILDER in response to an emergency, a Work Change Directive or Change Order will be issued.

2. A change in the Contract Documents pursuant to Section 6.10.I will not be an automatic authorization of, nor a condition precedent to, entitlement to adjustment to the Contract Price and/or Contract Time(s). If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment to the Contract Price and/or Contract Time(s), a Claim may be made therefore. However, neither CITY nor its Consultant(s) shall be liable to DESIGN-BUILDER for any costs, losses, or damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

J. Access to the Work

1. CITY, its Consultant(s), other CITY representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspection, and testing of the Work. DESIGN-BUILDER shall afford proper and safe conditions for such access and shall advise of DESIGN-BUILDER's Site safety procedures and programs so that such persons and entities may comport themselves therewith as may be applicable.

K. Tests and Inspections

1. DESIGN-BUILDER shall give to CITY's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals, and DESIGN-BUILDER shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
2. If any Work (or the work of others at the Site) that is to be inspected, tested, or approved is covered by DESIGN-BUILDER without written approval required by Sections 6.10.K.4 or 6.10.A, it must, if requested by CITY's Representative, be uncovered for observation.
3. Uncovering Work as provided in Section 6.10.K.2 shall be at DESIGN-BUILDER's expense unless DESIGN-BUILDER gave timely notice to CITY's Representative of DESIGN-BUILDER's intention to cover the same and CITY's Representative failed to act with reasonable promptness in response to such notice.
4. If Legal Requirements of any public body (including CITY) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, DESIGN-BUILDER shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the required certificates of inspection or approval to CITY's Representative.
5. DESIGN-BUILDER shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for CITY's acceptance of materials or equipment to be incorporated into the Work, or acceptance of materials, mix designs, or equipment submitted for approval prior to DESIGN-BUILDER's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY.
6. CITY shall engage and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - a. for inspections, tests or approvals covered by Sections 6.10.K.4 and 6.10.K.5;
 - b. that costs incurred in connection with tests or inspections conducted pursuant to Section 6.10.K.2 shall be paid as provided in Section 6.10.K.3; and
 - c. as otherwise specifically provided in the Contract Documents.

L. Clean Up

1. **General.** DESIGN-BUILDER shall keep the Site, including adjacent land areas and roads, reasonably free from debris, trash, mud, and construction wastes to permit DESIGN-BUILDER to perform its construction services efficiently and safely, and without interfering with the use of adjacent land areas and roads.
2. **Regular Clean-Up Required.** On a regular basis agreeable to CITY, DESIGN-BUILDER shall remove from CITY's property and from adjacent land areas and roads, and shall legally dispose of, all waste, trash, mud, and debris generated as a result of the Work performed under this Contract.
3. **Disposal Records.** DESIGN-BUILDER shall maintain written records of

disposal methods and disposal sites, including, without limitation, copies of dump receipts or other forms provided by licensed landfills or agreements with property owners on whose property such waste materials are placed. DESIGN-BUILDER shall make such disposal records available to CITY within ten (10) working days from the date of CITY's written request therefore.

4. Substantial Completion. Upon Substantial Completion of the Work, or a portion of the Work, DESIGN-BUILDER shall remove all debris, trash, mud, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof and shall leave the area "broom clean," to permit CITY to use or occupy the Project or a portion of the Project for its intended use.

5. CITY's Right to Clean Up. If DESIGN-BUILDER fails to provide the clean-up of the Site as required by this Section 6.10.L, CITY, in its sole option, may have the required clean-up performed. All costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) caused by or resulting from such clean-up or other costs, losses, and damages incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER.

6.11 DESIGN-BUILDER's Responsibility for Project Safety

A. Exclusive Responsibility. DESIGN-BUILDER recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury, or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. DESIGN-BUILDER assumes complete and exclusive responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. DESIGN-BUILDER's Safety Officer identified in the Technical Approach Submittal of DESIGN-BUILDER's Bid shall supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, DESIGN-BUILDER's Safety Officer shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Officer shall make routine daily inspections of the Site and shall hold weekly safety meetings with DESIGN-BUILDER's personnel, Subcontractors, and others as applicable. CITY may attend such meetings in its sole discretion, but CITY shall have no obligation to do so, and no responsibility or liability shall be imposed upon CITY for its attendance or failure to attend such meetings.

B. Accident Reporting. DESIGN-BUILDER and Subcontractors shall comply with Legal Requirements relating to safety, as well as any CITY-specific safety requirements set forth in the Contract Documents provided that such CITY-specific requirements do not violate any applicable Legal Requirements. DESIGN-BUILDER will immediately report in writing to CITY's Representative any safety-related injury, loss, damage, or accident arising from the Work and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

C. Subcontractors' Responsibility. DESIGN-BUILDER's responsibility for safety under this Section 6.9 and the Contract Documents and Legal Requirements is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own

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

6.12 DESIGN-BUILDER's Warranty

A. DESIGN-BUILDER warrants to CITY that the Work, including all workmanship, materials, and equipment furnished as part of the Work, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship. DESIGN-BUILDER's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than DESIGN-BUILDER or anyone for whose acts DESIGN-BUILDER may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty providing CITY with greater warranty rights than set forth in this Section 6.10 or the Contract Documents. Upon Substantial Completion, DESIGN-BUILDER will provide CITY with all manufacturers' and products warranties associated with the Work, and shall provide assignments of such warranties to CITY if necessary.

6.13 DESIGN-BUILDER's Correction of Defective Work

A. One-Year Correction Period. If, (i) during the course of DESIGN-BUILDER's performance of its obligations under the Contract Documents; or (ii) within one (1) year after the date of Substantial Completion, or (iii) within such longer period of time as may be prescribed by Legal Requirements, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the Site or other areas made available for DESIGN-BUILDER's use by CITY or permitted by Legal Requirements as contemplated in Section 6.08 is found to be defective, CITY shall give written notice thereof to DESIGN-BUILDER. Within seven (7) days after the date of CITY's written notice, DESIGN-BUILDER shall, without cost to CITY and in accordance with CITY's written instructions, complete the following corrective Work or, if such corrective Work cannot be completed within seven (7) days, DESIGN-BUILDER shall reasonably commence to perform, and shall complete within a reasonable time thereafter, the following corrective Work:

1. Correct the repair of damages to the Site or other areas; or
2. Correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and
3. Satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom.

B. Early Use of Equipment. In special circumstances where a particular item of equipment is placed into continuous service before Substantial Completion of all of the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.

C. Additional One-Year Correction Period. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Section 6.13, the correction period with respect to such corrected or replaced Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Section 6.13.A, after such correction or removal and replacement

has been satisfactorily completed.

6.14 CITY's Acceptance of Defective Work

A. CITY's Sole Option. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept such defective Work, CITY may do so, in its sole discretion.

B. DESIGN-BUILDER's Costs. In the event CITY decides to accept such defective Work, DESIGN-BUILDER shall pay all costs, losses, and damages (including, but not limited to, all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) attributable to CITY's evaluation of and determination to accept such defective Work, and in addition DESIGN-BUILDER shall pay CITY for the diminished value of the Work.

C. Deductive Change Order. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work; CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

D. Payment by DESIGN-BUILDER. If the acceptance of defective Work occurs after final payment, DESIGN-BUILDER shall pay the appropriate amount to CITY.

6.15 CITY's Correction of Defective Work

A. CITY's Right to Correct Work. If DESIGN-BUILDER fails, within the time period set forth in Section 6.13. above after written notice from CITY, to correct, or commence to correct, defective Work or to remove and replace, or commence to remove and replace, rejected Work as required by CITY, or if DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents and Legal Requirements, or if DESIGN-BUILDER fails to comply with any other provision of the Contract Documents or Legal Requirements, or in the event of an emergency where delay by DESIGN-BUILDER would cause serious risk of loss or damage, CITY, in its sole option, may have the defective Work corrected or the rejected Work removed and replaced.

B. CITY's Right to Take Possession. In connection with such corrective and remedial action, CITY may exclude DESIGN-BUILDER from all or part of the Site; take possession of all or part of the Work and suspend DESIGN-BUILDER's services related thereto; take possession of DESIGN-BUILDER's tools, appliances, construction equipment, and machinery at the Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere. DESIGN-BUILDER shall allow CITY, its Consultants, CITY's other contractors, and its or their agents and employees, access to the Site to enable CITY to exercise the rights and remedies under this Section 6.13.

C. DESIGN-BUILDER's Costs. All costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) caused by or resulting from such removal and replacement (including, but not limited to, all costs of repair or replacement of work of others destroyed or damaged by the correction, removal, and replacement of such defective or rejected Work) or other costs, losses, and damages incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER.

D. Deductive Change Order. If such removal and replacement occurs prior to final payment, a Change Order will be issued and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

E. Payment by DESIGN-BUILDER. If such removal and replacement occurs after final payment, DESIGN-BUILDER shall pay the appropriate amount to CITY.

6.16 No Time Extension

A. DESIGN-BUILDER shall not be allowed an extension of the Contract Time(s) (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Sections 6.13, 6.14, and/or 6.15.

6.17. No Effect on Legal Requirements

A. The one-year period referenced in Section 6.13 applies only to DESIGN-BUILDER's obligation to correct defective or nonconforming Work, and such obligations are in addition to any other obligation or warranty imposed under the Contract Documents, Legal Requirements, or applicable law.

B. The provisions of Section 6.13 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitations or repose, and the time period set forth in Section 6.13 does not constitute a period of limitations or repose for any other rights or remedies CITY may have under the Contract Documents, Legal Requirements, or applicable law with respect to enforcement of DESIGN-BUILDER's obligations.

6.18 Indemnification

A. For purposes of this Paragraph 6.18 only, the following terms shall have the meanings listed:

1. Claims means all claims, damages, liability, losses, costs and expenses, including court costs and reasonable attorneys' fees, including attorney's fees incurred by the CITY in the enforcement of this indemnity obligation.
2. DESIGN BUILDER'S Agents means DESIGN BUILDER's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.
3. CITY means CITY, its Program Manager/Construction Advisor and any of their agents, officials, officers, employees and program managers or construction advisors.

B. DESIGN BUILDER's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that DESIGN BUILDER is required to procure and maintain under this Contract. DESIGN BUILDER affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. DESIGN BUILDER shall defend, indemnify and hold harmless CITY from and against all Claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by DESIGN BUILDER or DESIGN BUILDER's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of OWNER.

D. In any and all Claims against CITY, DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of DESIGN BUILDER, any

Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.18 C shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for DESIGN BUILDER or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. The indemnification obligations of DESIGN BUILDER under Paragraph 6.18 C shall not extend to liability arising out of, resulting from, or caused by the professional negligence, errors or omissions of DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees.

ARTICLE 7 OTHER WORK

7.01 Related Work at Site

A. CITY may perform other work related to the Project at the Site by CITY's own forces, or let other direct contracts therefore, or have other work performed by utility owners. If such other work is to be performed and such fact was not noted in the Contract Documents, then:

1. Written notice thereof will be given to DESIGN-BUILDER prior to starting any such other work, and
2. DESIGN-BUILDER may make a Claim therefore as provided in Article 15 if DESIGN-BUILDER believes that such performance involves additional expense to DESIGN-BUILDER or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. DESIGN-BUILDER shall afford each other contractor who is a party to such a direct contract, and each utility owner (and CITY, if CITY is performing the additional work with CITY's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, DESIGN-BUILDER shall do all cutting, fitting and patching of the Work that may be required to 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 their work and will only cut or alter their work with the written consent of CITY and the others whose work will be affected. The duties and responsibilities of DESIGN-BUILDER under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of DESIGN-BUILDER in said direct contracts between CITY and such utility owners and other contractors.

C. If the proper execution or results of any part of DESIGN-BUILDER's Work depends upon work performed by others under this Article 7, DESIGN-BUILDER shall inspect such other work and promptly report to CITY and CITY in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution or results of DESIGN-BUILDER's Work. DESIGN-BUILDER's failure to report same will constitute an acceptance of such other work as fit and proper for integration with DESIGN-BUILDER's Work, except for latent or non-apparent defects and deficiencies in such other work.

7.02 Coordination

A. If CITY contracts with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, CITY shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 CITY'S RESPONSIBILITIES

8.01 Duty to Cooperate

A. CITY shall, throughout the performance of the Work, cooperate with DESIGN-BUILDER and perform CITY's responsibilities, obligations, and services in a reasonably timely manner to facilitate DESIGN-BUILDER's timely and efficient performance of the Work and so as not to unreasonably delay or interfere with DESIGN-BUILDER's performance of its obligations under the Contract Documents.

B. CITY shall provide DESIGN-BUILDER access to the Site, and CITY shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the reasonable turnaround times set forth in DESIGN-BUILDER's schedule approved in writing by CITY as referenced in Section 2.5 of these General Conditions of Contract.

8.02 Furnishing of Services and Information

A. Unless stated to the contrary in the Contract Documents (including, without limitation, Article 4 hereof), CITY shall provide, at its own cost and expense, for DESIGN-BUILDER's information and use, the following, upon which DESIGN-BUILDER is entitled to rely in performing the Work unless otherwise stated in the information provided or in the Supplementary Conditions:

1. To the extent available, surveys describing the property, boundaries, topography, and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning, and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project and enable DESIGN-BUILDER to perform the Work;
3. A legal description of the Site;
4. To the extent available, as-built and record drawings of any existing structures at the Site.

B. CITY is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable DESIGN-BUILDER to perform the Work. CITY is further responsible for all costs, including attorneys' fees, incurred in securing such agreements.

8.03 CITY's Representative

A. CITY's Representative shall be responsible for providing CITY-supplied information and approvals in a reasonably timely manner to permit DESIGN-BUILDER to fulfill its obligations under the Contract Documents. CITY's Representative shall also provide DESIGN-BUILDER with prompt notice if CITY's Representative observes any material failure on the part of DESIGN-BUILDER to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work.

8.04 CITY's Separate Contractors

A. CITY is responsible for all work performed on the Project or at the Site by separate contractors under CITY's control (including, without limitation, separate architects and engineers CITY has engaged for the Project). CITY shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, DESIGN-BUILDER in order to enable DESIGN-BUILDER to timely complete the Work consistent with the Contract Documents.

ARTICLE 9 CHANGES IN THE WORK

9.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, DESIGN-BUILDER shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents.

B. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price pursuant to Article 10 or an adjustment of the Contract Times pursuant to Article 11 or both that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Article 15.

9.02 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 amended, modified or supplemented, except in the case of an emergency or in the case of uncovering Work.

9.03 Signing of Change Orders

A. CITY and DESIGN-BUILDER, shall sign appropriate Change Orders covering:

1. changes in the Work which are:

a. ordered by CITY or

b. required because of acceptance of defective Work or correcting defective Work.; or

c. agreed to by the parties;

2. changes in the Contract Price or Contract Times or both 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; and

3. changes in the Contract Price or Contract Times or both which embody the substance of any written decision approved by CITY, provided that, in lieu of

signing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws or Regulations, but during any such appeal, DESIGN-BUILDER shall carry on the Work and adhere to the progress schedule..

9.04 Notification to Surety

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 or both) 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, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 10 CHANGE OF CONTRACT PRICE

10.01 Change of Contract Price

A. The Contract Price constitutes the total compensation payable to DESIGN-BUILDER for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by DESIGN-BUILDER shall be at DESIGN-BUILDER's expense without change in the Contract Price.

B. The Contract Price may only be changed by a Change Order. Any request for an adjustment in the Contract Price shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Prior notice is not required for requests or claims relating to an emergency endangering life or property as described in Paragraph 6.16. Thereafter, the DESIGN-BUILDER shall submit written documentation of its request, including appropriate supporting documentation, within ten (10) calendar days after giving notice, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted.

C. The value of any Work covered by a Change Order or of any request for an 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 10.04); or
2. where the Work involved is not covered by Unit Prices contained in the Contract Documents, by a mutually agreed lump sum; 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 10.01 C.2, on the basis of the Cost of the Work (determined as provided in Paragraphs 10.02 A and B) plus a DESIGN-BUILDER's fee for overhead and profit (determined as provided in Paragraph 10.01 D).

D. The DESIGN-BUILDER's fee allowed to DESIGN-BUILDER for overhead and profit 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 10.02 A.1 and 10.02 A.2, the DESIGN-
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BUILDER's fee shall be ten percent (10%);

b. for costs incurred under Paragraph 10.02 A.3, the DESIGN-BUILDER's fee shall be five percent (5%);

c. where one or more tiers of subcontracts are on the basis of the Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 10.01 D.2 and 10.02 A.1 through A.3 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 10.02 A.1 and 10.02 A.2 and that any higher tier Subcontractor and DESIGN-BUILDER will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 10.02 A.4, 10.02 A.5 and 10.02 B;

e. the amount of credit to be allowed by DESIGN-BUILDER to CITY for any change which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a deduction in DESIGN-BUILDER's fee by an amount equal to five percent (5%) of such net decrease; and

f. 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 10.01 D.2.a through 10.01 D.2.e, inclusive.

E. Whenever the Cost of the Work is to be determined pursuant to Paragraphs 10.02 A and B, DESIGN-BUILDER shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

10.02 Cost of the Work

A. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by DESIGN-BUILDER in the proper performance of the Work. When the value of any Work covered by a Change Order or when a request for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to DESIGN-BUILDER will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the request. Except as otherwise agreed to in writing by CITY, costs covered by Change Orders or requests shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any costs itemized in 10.02 B:

1. Payroll costs for employees in the direct employ of DESIGN-BUILDER in the performance of the Work, using occupational titles and job classifications agreed upon by CITY and DESIGN-BUILDER. Such employees shall include, without limitation, job Site superintendents, foremen and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing the Work after regular working hours, on Saturdays, Sundays or legal

holidays shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated into the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to DESIGN-BUILDER unless CITY deposits funds with DESIGN-BUILDER with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to CITY, and DESIGN-BUILDER shall make provisions so that they may be obtained.

3. Payments made by DESIGN-BUILDER to Subcontractors for Work performed or furnished by Subcontractors. If required by CITY, DESIGN-BUILDER shall obtain competitive bids from Subcontractors acceptable to OWNER and DESIGN-BUILDER and shall deliver such bids to CITY who will then determine, with the advice of CITY, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of the Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as DESIGN-BUILDER's Cost of the Work and fee as provided in Paragraphs 10.01 D and E and 10.02 A and B. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work when such services are approved in advance by CITY in writing.

5. Other costs including the following:

a. The proportion of necessary transportation, travel and subsistence expenses of DESIGN-BUILDER's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value of such items used but not consumed which remain the property of DESIGN-BUILDER.

c. Rentals of all construction equipment and machinery and the parts thereof whether rented from DESIGN-BUILDER or others in accordance with rental agreements approved by CITY, and the costs of transportation, loading, unloading, installation, assembly, dismantling and removal thereof, all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Applicable sales, consumer, use or similar taxes related to the Work, and for which DESIGN-BUILDER is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of DESIGN-BUILDER, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses required to perform the Work.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by DESIGN-BUILDER in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by CITY in accordance with Article 5), provided they have resulted from causes other than the negligence of DESIGN-BUILDER, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining DESIGN-BUILDER's fee. If, however, any such loss or damage requires reconstruction and DESIGN-BUILDER is placed in charge thereof, DESIGN-BUILDER shall be paid for those services a fee proportionate to that stated in Paragraph 10.01 D.2.

g. The cost of utilities, fuel and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

i. Cost of premiums for additional or increased Bonds, or for insurance required because of approved changes in the Work.

B. Costs excluded: The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of DESIGN-BUILDER's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by DESIGN-BUILDER whether at the Site or in DESIGN-BUILDER's principal or a branch office for general administration of the Work (if not specifically included in the agreed upon occupational titles and job classifications referred to in Paragraph 10.02 A.1 or specifically covered by Paragraph 10.02 A.4), all of which are to be considered administrative costs covered by the DESIGN-BUILDER's fee.

2. Expenses of DESIGN-BUILDER's principal and branch offices other than DESIGN-BUILDER's office at the Site.

3. Any part of DESIGN-BUILDER's capital expenses, including interest on DESIGN-BUILDER's capital employed for the Work and charges against DESIGN-BUILDER for delinquent payments.

4. Costs due to the negligence of DESIGN-BUILDER, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials, or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.02 A.

10.03 Cash Allowances

A. It is understood that DESIGN-BUILDER has included in the Contract Price all

allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to CITY. DESIGN-BUILDER agrees that:

1. the allowances include the cost to DESIGN-BUILDER (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. DESIGN-BUILDER's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued by CITY to reflect actual amounts due DESIGN-BUILDER on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.04 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 Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.

B. Each unit price will be deemed to include an amount considered by DESIGN-BUILDER to be adequate to cover DESIGN-BUILDER's overhead and profit for each separately identified item.

C. CITY or DESIGN-BUILDER may negotiate an adjustment of the price per unit of Unit Price Work stated in the Contract if:

1. the quantity of any item of Unit Price Work performed by DESIGN-BUILDER differs by twenty percent (20%) or more from the estimated quantity of such item indicated in the Contract; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. DESIGN-BUILDER believes that DESIGN-BUILDER is entitled to an increase in Contract Price as a result of having incurred additional expense or CITY believes that CITY is entitled to a decrease in Contract Price.

10.05 Dispute Resolution

A. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price in accordance with Article 10 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 10.01.B., unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 15.

ARTICLE 11 CONTRACT TIMES

11.01 Time of the Essence

A. All times stated in the Contract Documents are of the essence of the Contract.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any request for an adjustment in the Contract Times shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Thereafter, the DESIGN-BUILDER shall submit written documentation of its requests, including appropriate supporting documentation, within ten (10) days after giving notice, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted.

11.03 Proof Required To Justify An Extension of Time For Excusable and Compensable Delays

A. In support of any request for an extension of the Contract Times pursuant to this Article, DESIGN-BUILDER must demonstrate to the reasonable satisfaction of the CITY that the critical path of the approved baseline project schedule was delayed. DESIGN-BUILDER shall be entitled to an increase in contract time for the number of days that the critical path was delayed solely as a result of the compensable or excusable event. A compensable or excusable event includes, but is not limited to:

1. unreasonable delay of issuance of Notice to Proceed by CITY;
2. CITY's unreasonable delay of delivery furnished materials, equipment, or work;
3. unreasonable delay responding to shop drawings and submittals;
4. CITY's unreasonable delay in issuing a Change Order;
5. an order by the CITY to stop the Work where the DESIGN-BUILDER was not at fault; and
6. other reasonable grounds as determined by the CITY in its sole discretion.

B. DESIGN-BUILDER shall compare the critical path of the approved baseline project schedule to the actual critical path of the Work, identifying the specific impact of the compensable or excusable event.

C. DESIGN-BUILDER shall submit to the CITY a written time impact analysis illustrating the influence of each compensable or excusable event on the date of Substantial Completion. The time impact analysis shall demonstrate the time impact based on the date of the delay in time and the event time computations or all affected activities.

D. If the critical path of the Work is delayed by "Force Majeure", the DESIGN-BUILDER shall be entitled only to an extension of the Contract Times for the number of days of delay to the critical path. For purposes of this paragraph, "Force Majeure" shall mean fire, tornado, flood, earthquake, war, act of terrorism, civil disturbance, or labor strikes away from the project site.

E. Extensions of contract time pursuant to the this section will be granted only to the extent that the time adjustments exceed the total float time available when the event causing the delay occurred.

11.04 Delays Within DESIGN-BUILDER's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of DESIGN-BUILDER. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of DESIGN-BUILDER.

11.05 Delays Beyond the CITY's and DESIGN-BUILDER's Control

A. Where DESIGN-BUILDER is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and DESIGN-BUILDER, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be DESIGN-BUILDER's sole and exclusive remedy for such delay.

11.06 Delay Damages

A. In no event shall CITY be liable to DESIGN-BUILDER, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of DESIGN-BUILDER, or
2. delays beyond the control of CITY or DESIGN-BUILDER including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this Paragraph 11.06 bars a change in Contract Price pursuant to this Article 11 to compensate DESIGN-BUILDER due to delay, interference, or disruption directly attributable to actions or inaction of CITY, CITY's Consultant or anyone for whom CITY, or CITY's Consultant is responsible.

11.07 Dispute Resolution

A. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Time in accordance with Article 11 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 11.02, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 15.

ARTICLE 12 TESTS AND INSPECTIONS;

CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 Access to Work

A. CITY, CITY's Consultants, other representatives and personnel of CITY, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspecting and testing. DESIGN-BUILDER shall provide them proper and safe conditions for such access and advise them of DESIGN-BUILDER's Site safety procedures and programs so

that they may comply therewith as applicable.

12.02 Tests and Inspections

A. DESIGN-BUILDER shall give CITY and CITY's Representative timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. If any Work (or the work of others at the Site) that is to be inspected, tested or approved is covered by DESIGN-BUILDER without written approval required by Paragraphs 12.02 D or 12.02 E, it must, if requested by CITY's Representative, be uncovered for observation.

C. Uncovering Work as provided in Paragraph 12.02 B, shall be at DESIGN-BUILDER's expense unless DESIGN-BUILDER has given CITY and CITY's Representative timely notice of DESIGN-BUILDER's intention to cover the same and CITY and CITY's Representative have not acted with reasonable promptness in response to such notice.

D. If Laws or Regulations of any public body (including CITY) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, DESIGN-BUILDER shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish CITY and CITY's Representative the required certificates of inspection or approval.

E. DESIGN-BUILDER shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for CITY's and CITY's acceptance of materials or equipment to be incorporated into the Work, or acceptance of materials, mix designs, or equipment submitted for approval prior to DESIGN-BUILDER's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY.

F. CITY shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests or approvals covered by Paragraph 12.02 D and E;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.04 B shall be paid as provided in said Paragraph 12.04 B; and
3. as otherwise specifically provided in the Contract Documents.

12.03 Notice of Defects

A. Prompt notice of all defective Work of which the CITY has actual knowledge will be given to DESIGN-BUILDER. Defective Work may be rejected, corrected or accepted as provided in this Article 12.

12.04 Uncovering Work

A. If any Work (or the work of others at the Site) is covered contrary to the written request of CITY or CITY's Representative, it must, if requested by CITY's Representative, be uncovered for CITY's or CITY's Representative's observation and replaced at DESIGN-BUILDER's expense.

B. If CITY considers it necessary or advisable that covered Work be observed by CITY or CITY's Representative or be inspected or tested by others, DESIGN-BUILDER, at

CITY's request, shall uncover, expose or otherwise make available for observation, inspection or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, 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) caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. If, however, such Work is not found to be defective, DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, DESIGN-BUILDER may make a Claim therefore as provided in Article 15.

12.05 CITY May Stop the Work

A. If the Work is defective, or DESIGN-BUILDER fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of DESIGN-BUILDER, any SubDESIGN-BUILDER, Supplier, other individual or entity or any surety or employee or agent of any of them.

12.06 Correction or Removal of Defective Work

A. If required by CITY, DESIGN-BUILDER shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by either CITY or CITY's Representative, remove it and replace it with Work that is not defective. 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) caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

12.07 Correction Period

A. If within one (1) year after the date of Substantial Completion, or such longer period of time as may be prescribed by Laws or Regulations, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for DESIGN-BUILDER's use by CITY or permitted by Laws and Regulations as contemplated in Paragraph 6.10 is found to be defective, DESIGN-BUILDER shall promptly, without cost to CITY and in accordance with CITY's written instructions:

1. correct the repair of damages to such land or areas; or
2. correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and

3. satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom. If DESIGN-BUILDER does not promptly comply with the terms of such instructions, or in the event of an emergency where delay by DESIGN-BUILDER would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and 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) caused by or resulting from such removal and replacement (including but not limited to 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 Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 12.07, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Paragraph 12.07 A, after such correction or removal and replacement has been satisfactorily completed.

D. DESIGN-BUILDER's obligations under this Paragraph 12.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 12.07 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitation or repose.

12.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. DESIGN-BUILDER shall pay all 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 CITY's evaluation of and determination to accept such defective Work and shall pay OWNER for the diminished value of the Work. If any such acceptance occurs prior to CITY's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work, CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. If the acceptance of defective Work occurs after such recommendation, an appropriate amount shall be paid by DESIGN-BUILDER to CITY.

12.09 CITY May Correct Defective Work

A. If DESIGN-BUILDER fails within a reasonable time after written notice from CITY or CITY's Representative to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 12.06, or if DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents, or if DESIGN-BUILDER fails to comply with any other provision of the Contract Documents, CITY may, after seven (7) days written notice to DESIGN-BUILDER, correct and remedy any such deficiency.

B. CITY shall proceed expeditiously when exercising the rights and remedies under

this Paragraph 12.09. In connection with such corrective and remedial action, CITY may exclude DESIGN-BUILDER from all or part of the Site; take possession of all or part of the Work and suspend DESIGN-BUILDER's services related thereto; take possession of DESIGN-BUILDER's tools, appliances, construction equipment and machinery at the Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere. DESIGN-BUILDER shall allow CITY, CITY's Representative, agents and employees, CITY's other contractors, CITY and Consultants access to the Site to enable CITY to exercise the rights and remedies under this Paragraph 12.09.

C. 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) incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price. If CITY and DESIGN-BUILDER are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. Such Claims for costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal and replacement of DESIGN-BUILDER's defective or rejected Work.

D. DESIGN-BUILDER shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Paragraphs 12.06 and 12.09.

ARTICLE 13 PAYMENTS TO DESIGN-BUILDER AND COMPLETION

13.01 Schedule of Values

A. Pursuant to Paragraph 2.06.A.3, DESIGN-BUILDER shall submit to CITY a Schedule of Values allocating the Contract Price among the various elements of the construction portion of the Work. The Schedule of Values shall be prepared on CITY's form, with such detail and supported by such data and documentation as CITY may require. The Schedule of Values shall be used as a guideline for CITY's review of DESIGN-BUILDER's Applications for Payment for the construction portion of the Work.

13.02 Monthly Progress Payments

A. On or before the date established in the Contract Documents, DESIGN-BUILDER shall submit, for CITY's review and approval, DESIGN-BUILDER's Application for Payment, on CITY's form, requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be complete and accurate and accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting contemplated by Section 6.01.B of these General Conditions of Contract, including, without limitation, certified payrolls in form and substance acceptable to CITY. CITY shall have the right to review all design services and construction services, performed at the Site or elsewhere, to determine whether the quantity and quality of labor, services, equipment, and materials are as required by the Contract Documents and as represented in the Application for Payment.

B. If payment is requested on the basis of materials and equipment not incorporated into 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, paid

invoice, or other documentation warranting that CITY has received the materials and equipment free and clear of all liens and claims, and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect CITY's interest therein, all of which will be subject to CITY's approval.

C. The Application for Payment shall constitute DESIGN-BUILDER's representation that the Work has been performed consistent with the Contract Documents and Legal Requirements, has progressed to the Design Milestone or portion of the Schedule of Values indicated in the Application for Payment, and that title to all Work will pass to CITY free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon DESIGN-BUILDER's receipt of payment under the Application for Payment for that portion of the Work, whichever occurs earlier.

13.03 Payment; Withholding of Payment

A. On or before the date established in the Contract Documents, CITY shall pay DESIGN-BUILDER all amounts properly due under the Application for Payment. No payment to DESIGN-BUILDER by CITY, nor any use or occupancy of the Project or any part thereof by CITY, shall be interpreted or construed to constitute CITY's acceptance of any Work not in conformance with the Contract Documents or Legal Requirements, and shall not be held to prevent the maintenance of an action on DESIGN-BUILDER's Bonds or insurance, or against DESIGN-BUILDER directly, for failure to perform said Work in conformance with the Contract Documents and Legal Requirements. DESIGN-BUILDER expressly accepts the risk that defective Work may not be detected (1) during any review by CITY, (2) prior to CITY making any payment to DESIGN-BUILDER, or (3) prior to CITY's occupancy of the Project or any part thereof.

B. If CITY determines that DESIGN-BUILDER is not entitled to payment for all or part of an Application for Payment, CITY will notify DESIGN-BUILDER in writing. The notice shall indicate the specific amounts withheld, the reasons and contractual basis for the withholding, and the specific measures DESIGN-BUILDER must take to rectify CITY's concerns. Such reasons for withholding payment under an interim Application for Payment or under the Application for Final Payment shall include, but not be limited to, the following acts or omissions: (i) the assessment of liquidated damages; (ii) unsatisfactory Project progress; (iii) defective design or construction Work or materials not remedied; (iv) disputed Work; (v) failure to comply with any material provision of the Contract Documents or Legal Requirements; (vi) third party claims filed or reasonable evidence that a claim will be filed; (vii) failure to make timely payments for labor, services, equipment, or materials; (viii) damage to CITY's separate contractor, or to a Design Subconsultant, Subcontractor, or Sub-subcontractor, (ix) reasonable evidence that a Design Subconsultant, a Subcontractor, or a Sub-subcontractor cannot be fully compensated under its contract with the DESIGN-BUILDER; (x) evidence that the remaining portion of the Work cannot be completed in accordance with the Contract Documents and Legal Requirements for the unpaid balance of the Contract Price, (xi) overstatement of amounts included in any Application for Payment, (xii) losses caused by DESIGN-BUILDER, (xiii) DESIGN-BUILDER's failure or refusal to perform any of its obligations to CITY, (xiv) citation by any enforcing authority for acts or omissions of the DESIGN-BUILDER which do not comply with the Contract Documents and/or which result in a violation of any Legal Requirements, or (xv) any other reason listed in the Prompt Pay Act. In the event an insufficient amount is due to DESIGN-BUILDER under the current Application for Payment, CITY may make written demand for the return of an

amount believed by CITY to be adequate to cover CITY's potential liabilities and damages arising from DESIGN-BUILDER's specified act or omission, and DESIGN-BUILDER shall promptly comply with such demand. DESIGN-BUILDER and CITY will attempt to resolve CITY's concerns prior to the date payment is due.

C. CITY shall pay DESIGN-BUILDER all undisputed amounts in an Application for Payment within the times required by the Contract Documents and applicable law, including the Prompt Pay Act.

13.04 DESIGN-BUILDER's Payment Obligations

A. In accordance with its contractual obligations to such parties and in conformance with Missouri law, including, without limitation, the Prompt Pay Act, DESIGN-BUILDER will pay to Design Consultants and Subcontractors all amounts received by DESIGN-BUILDER from CITY on account of their services and work. DESIGN-BUILDER will impose similar requirements on its Design Subconsultants and Subcontractors to pay those parties with whom they have contracted. No subcontract or other agreement arising from this Contract shall include, by either express or implied terms, a "pay when paid" or "pay if paid" clause. Any such clause is against CITY policy and shall be considered null and void.

B. To the fullest extent permitted by Legal Requirements, DESIGN-BUILDER shall defend, indemnify, and hold harmless CITY, its Consultant(s), and its or their officials, officers, directors, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or resulting from any claims for payment and/or mechanic's liens.

13.05 Substantial Completion

A. DESIGN-BUILDER shall notify City in writing when DESIGN-BUILDER believes the Work or, to the extent permitted in the Contract Documents, a portion of the Work, has achieved Substantial Completion, and shall submit to CITY a list of items remaining to be completed or corrected. Within ten (10) working days after CITY's receipt of DESIGN-BUILDER's notice, CITY and DESIGN-BUILDER will jointly inspect such Work to determine whether it is substantially complete in accordance with the requirements of the Contract Documents and Legal Requirements, including the issuance of all necessary certificates of occupancy or other authorizations for the use or occupancy of the Project required by any government or quasi-government authority having jurisdiction over the Project.

B. If CITY determines that such Work is substantially complete, CITY shall prepare and issue a Certificate of Substantial Completion, signed by DESIGN-BUILDER to acknowledge the responsibilities assigned to it, that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work and the date on which they must be completed or corrected before final payment shall become due, (iii) provisions (to the extent not already set forth in the Contract Documents) establishing CITY's and DESIGN-BUILDER's responsibility for the Project's security, maintenance, utilities, damage to the Work, and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

C. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, and upon receipt and approval of DESIGN-BUILDER's Application for Payment

therefor, CITY shall release to DESIGN-BUILDER all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less all offsets and deductions authorized by the Contract Documents or by applicable law, and less an amount equal to two hundred percent (200%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

D. Prior to Substantial Completion of all of the Work, CITY, at its sole option, may use or occupy a portion of the Work which has been determined to have achieved Substantial Completion provided that (i) a Certificate of Substantial Completion has been issued for that portion of Work, (ii) DESIGN-BUILDER and CITY have obtained the consent of their sureties and insurers, and, to the extent applicable, the appropriate government or quasi-government authorities having jurisdiction over the Project, including, without limitation, the issuance of all necessary certificates of occupancy, and (iii) CITY and DESIGN-BUILDER agree that CITY's use or occupancy will not interfere with DESIGN-BUILDER's completion of the remaining Work. Such partial use or occupancy shall not be construed to mean that the entire Project has achieved Substantial Completion.

13.06 Final Completion; Final Payment

A. DESIGN-BUILDER shall notify CITY in writing when DESIGN-BUILDER believes that all of the Work is finally complete and ready for CITY's final inspection. Within ten (10) working days after CITY's receipt of DESIGN-BUILDER's notice, CITY and DESIGN-BUILDER will jointly inspect the Work to determine whether the Work is finally complete in accordance with the requirements of the Contract Documents and Legal Requirements and whether the Contract has been fully performed.

B. At the time of submission of its Application for Final Payment, and as a condition precedent to final payment, DESIGN-BUILDER shall provide the following, in form and substance acceptable to CITY:

1. An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Work which might in any way affect CITY's interests, and an agreement to defend and indemnify CITY against any of same.
2. A general release executed by DESIGN-BUILDER under oath, waiving, upon receipt of final payment, all claims against CITY, except those claims previously made in writing to CITY by DESIGN-BUILDER, still pending at the time of the Application for Final Payment, and specifically identified in the general release as unsettled at the time of the Application for Final Payment;
3. Consent of DESIGN-BUILDER's surety to final payment;
4. One complete record set, both in electronic form and on a reproducible medium acceptable to CITY, of all Contract Documents and submittals;
5. All operating manuals, instruction manuals, maintenance manuals, product and manufacturers' warranties, and other documents, things, and deliverables required by the Contract Documents;
6. Certificates of insurance confirming that required coverages and limits of liability are and will remain in effect consistent with the requirements of the Contract Documents; and
7. A "Contractor Affidavit for Final Payment" from DESIGN-BUILDER and a

“Subcontractor Affidavit for Final Payment” from all Subcontractors and Sub-subcontractors, regardless of tier.

C. After receipt of DESIGN-BUILDER's Application for Final Payment, and provided that DESIGN-BUILDER has completed all of the Work and provided all documents and information in conformance with the Contract Documents and Legal Requirements, CITY shall make final payment to DESIGN-BUILDER within the time required in the Contract Documents and pursuant to applicable Missouri law.

D. Upon making final payment, CITY waives all claims against DESIGN-BUILDER except claims relating to (i) DESIGN-BUILDER's failure to satisfy its payment obligations, if such failure affects CITY's interests, (ii) DESIGN-BUILDER's failure to perform and complete the Work consistent with the Contract Documents and Legal Requirements, including defects appearing after Substantial Completion, and (iii) the terms of any special warranties required by the Contract Documents.

ARTICLE 14 SUSPENSION OF WORK AND TERMINATION

14.01 CITY May Suspend Work

A. Notwithstanding any other provision of this Contract, at any time and without cause, and at its sole and absolute discretion, CITY, may suspend the Work or any portion of the Work by written notice to CONTRACTOR, which will initially fix the date on which Work will be resumed. DESIGN-BUILDER shall resume the Work on the date so fixed in the notice unless the date is changed by a subsequent written notice from CITY. DESIGN-BUILDER may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if DESIGN-BUILDER makes a Claim therefore in accordance with Article 15.

B. DESIGN-BUILDER will not be allowed an adjustment in the Contract Price or an extension of the Contract Times if CITY suspends the Work because DESIGN-BUILDER's acts or omissions create or cause an emergency that CITY believes affects the safety or protection of persons, the Work, or property at the Site or adjacent thereto. CITY may order DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been adequately addressed by DESIGN-BUILDER; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of DESIGN-BUILDER, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

14.02 CITY May Terminate for Default

A. DESIGN-BUILDER may be deemed in default and CITY may terminate the services of DESIGN-BUILDER upon the occurrence of any one or more of the following events:

1. DESIGN-BUILDER fails 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 established under Paragraph 2.06 and 2.07 as adjusted from time to time pursuant to Paragraphs 6.05, 6.06, 11.02 and 11.03);
2. DESIGN-BUILDER abandons the Work or declares its intention to abandon the work;

3. DESIGN-BUILDER assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third party without the prior written consent of CITY;
4. DESIGN-BUILDER fails to make prompt payment duly owing to any subcontractor or material supplier within thirty (30) calendar days after payment was due;
5. DESIGN-BUILDER fails to achieve the required dates of substantial and final completion;
6. DESIGN-BUILDER disregards Laws or Regulations of any public body having jurisdiction;
7. DESIGN-BUILDER disregards the authority of CITY or OWNER; or
8. DESIGN-BUILDER otherwise violates in any substantial way any provisions of the Contract Documents.

B. CITY may, after giving DESIGN-BUILDER (and the surety) seven (7) days written notice and to the extent permitted by Laws or Regulations, terminate the services of DESIGN-BUILDER, exclude DESIGN-BUILDER from the Site and take possession of the Work and of all DESIGN-BUILDER's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by DESIGN-BUILDER (without liability to DESIGN-BUILDER for trespass or conversion), incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere, and finish the Work as CITY 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 (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 CITY arising out of or resulting from completing the Work, such excess may be paid to DESIGN-BUILDER. If such costs, losses and damages exceed such unpaid balance, DESIGN-BUILDER shall pay the difference to CITY within fourteen (14) calendar days of CITY'S demand for payment. When exercising any rights or remedies under this Paragraph CITY shall not be required to competitively bid this work unless required by law.

C. Where DESIGN-BUILDER's services have been so terminated by CITY, the termination will not affect any rights or remedies of CITY against DESIGN-BUILDER then existing or which may thereafter accrue. Any retention or payment of moneys due DESIGN-BUILDER by CITY will not release DESIGN-BUILDER from liability.

D. If, after a default termination, it is determined that the DESIGN-BUILDER was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY. The CITY shall then be liable to DESIGN-BUILDER for only those costs enumerated in paragraph 14.03.

14.03 CITY May Terminate for Convenience

A. Notwithstanding any other provision of this Contract, upon seven (7) calendar days written notice to DESIGN-BUILDER, CITY may, at its sole and absolute discretion, without cause and without prejudice to any other right or remedy of CITY, elect to terminate the Contract. In such case, DESIGN-BUILDER shall, with thirty (30) calendar days of receiving notice of termination under this paragraph, submit to CITY its statement

of costs and expenses and shall be paid:

1. for 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. for 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. for all costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
4. for reasonable expenses directly attributable to termination if approved in advance by CITY.

B. DESIGN-BUILDER shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. DESIGN-BUILDER waives any costs not submitted to CITY pursuant to paragraph 14.03.A.

D. CITY shall, within thirty (30) calendar days after receipt of DESIGN-BUILDER's statement, pay DESIGN-BUILDER all amounts it determines are properly determined.

ARTICLE 15 CLAIMS AND DISPUTES

15.01 Definition

A. A Claim is a demand or assertion by the DESIGN-BUILDER seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

15.02 Written Notice and Burden of Proof

A. Claims must be made by written notice pursuant to Article 16.01. The written notice shall clearly indicate that the DESIGN-BUILDER is making a claim. The responsibility to substantiate Claims shall rest with the DESIGN-BUILDER. No Claim may be made under this Contract except as provided in this Article.

B. Certification of Claim: The written notice of Claim shall include the following statement signed by the DESIGN-BUILDER's representative: "The DESIGN-BUILDER certifies that all statements made and the facts set out in this claim are true and correct and that no false records have been submitted in support of this claim." **Strict compliance with this paragraph shall be a condition precedent to the creation, existence or validity of any Claim.**

15.03 Time Limits on Claims

A. The DESIGN-BUILDER must give notice to the CITY within fourteen (14) calendar days after the denial of a request for or failure to reach an agreement on a change in Contract Price and/or change in Contract Time pursuant to Article 10 and Article 11 respectively. After the fourteen (14) day period for making Claims has expired, the Claim shall be considered waived.

B. The DESIGN-BUILDER shall submit the Claim to the CITY's Representative.

15.04 Continuing Contract Performance

A. Pending final resolution of a Claim, unless otherwise agreed in writing, the DESIGN-BUILDER shall proceed diligently with performance of the Work and the CITY

shall continue to make payments in accordance with the Contract Documents. The CITY may, but is not obligated to, notify the Surety of the nature and amount of the Claim.

15.05 Injury or Damage to Person or Property

A. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts that party is legally liable, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty (30) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

15.06 Initial Resolution of Claims and Disputes

A. After the DESIGN-BUILDER has submitted the Claim to the CITY's Representative, the CITY'S Representative and DESIGN-BUILDER'S Representative shall conduct a settlement conference within fourteen (14) calendar days from the date of receipt of the Claim. If the Claim is not settled within seven (7) calendar days following the date of the settlement conference, the CITY'S Representative and the DESIGN-BUILDER's Representative shall state, in writing, following the conclusion of the seven (7) calendar day period, their respective position as to the matters in dispute.

B. The CITY'S and DESIGN-BUILDER'S statement of positions shall state all known factual grounds for each party's position. If the dispute remains unresolved at the end of the seven (7) calendar days from submission of the parties' written position statements, the DESIGN-BUILDER shall have the right to proceed with the pursuit of Claims pursuant to paragraph 15.07.

C. If a Claim has been resolved, the OWNER will prepare or obtain appropriate documentation.

15.07 Final Resolution of Claims and Disputes

A. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

B. If the CITY'S Representative and the DESIGN-BUILDER'S Representative are unable to resolve the dispute pursuant to 15.06, the parties must submit their statements of position to the Director, who shall review the Claim and make a decision within fourteen (14) calendar days.

C. Absent fraud, gross mistake or bad faith, the Director's decision shall be final and binding on CITY and DESIGN-BUILDER within fourteen (14) calendar days after issuance. The DESIGN-BUILDER shall give written notice to the CITY stating its intent to submit its Claim to a court of law pursuant to paragraph 16.05.A. within thirty (30) calendar days after notice of Director's decision.

D. The time frames for the Director's decision and for DESIGN-BUILDER'S written notice of intent may be by participation in voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of the mediator shall be shared equally among the parties participating in the mediation. In no event shall any time frame be tolled more than 30 days for mediation. However, mediation may be employed at any time at the discretion and mutual agreement of the parties.

E. If the dispute is not resolved during voluntary mediation, The DESIGN-BUILDER agrees that it will file no suit based on facts or evidentiary materials that were not

presented for consideration to the CITY during the mediation process or of which the DESIGN-BUILDER had knowledge and failed to present during the administrative procedures.

ARTICLE 16 MISCELLANEOUS

16.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be given by personal delivery, by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice or by confirmed electronic facsimile transmission. Notice is effective on the date of personal delivery, deposit of registered or certified mail, postage prepaid, or confirmed electronic facsimile transmission.

16.02 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 calendar day of such period. If the last day of 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.

16.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon DESIGN-BUILDER and all of the rights and remedies available to CITY and CITY hereunder are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 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 or termination or completion of the Contract.

16.05 Controlling Law

A. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and DESIGN-BUILDER: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non-conveniens as an objection to the location of any litigation.