CONTRACT FOR PROGRESSIVE DESIGN-BUILD SERVICES

This **CONTRACT FOR PROGRESSIVE DESIGN-BUILD SERVICES** ("Agreement") is entered into this . day of _____, ___ ("Agreement Date") by and between the City of Kansas City, Missouri ("Owner") and _____ ("Design-Builder"). In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder hereby agree as follows:

WITNESSETH:

WHEREAS, on or about _____, 2024, Owner issued a Request for Qualifications ("RFQ") soliciting interested parties to submit a Statement of Qualifications ("SOQ") to serve as the design-builder for the Project; and

WHEREAS, on or about _____, ("Proposal Submittal Date"), Design-Builder submitted its proposal ("Proposal") in response to the RFP; and

WHEREAS, on or about _____, Owner notified Design-Builder that it was the successful proposer; and

WHEREAS, on or about _____, Owner awarded Design- Builder this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder hereby agree as follows:

Article 1
The Project

1.1 The Project is generally referred as the Blue River WWTP Grit Removal and Fine Screens Project (Project No. 81000999)/Contract #1751, and is specifically defined in the Contract Documents.

Article 2
The Work

2.1 General Services

2.1.1 Design-Builder shall complete all Work as specified or indicated in the Contract Documents.

2.1.2 Owner shall provide Design-Builder with Owner's project criteria and preferences during Phase 1 and as comments to design documents or other written means.

2.2. Phased Services

2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's project criteria and preferences, in accordance with Section 2.1 hereof, and as set forth in Exhibit 2.2.1, Phase 1 Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish

the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 4.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit 2.2.1, Phase 1 Scope of Services.

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

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

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

(a) The Contract Price;

(b) The Design Documents, which are set forth in detail and are attached to the Phase 2 Proposal;

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

(d) The Scheduled Substantial Completion Date and a Baseline Schedule for the Work;

(e) If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

(f) If applicable, a schedule of alternate prices;

(g) If applicable, a schedule of unit prices;

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

(i) The time limit for acceptance of the Phase 2 Proposal;

(j) If applicable, a permit and easement list, detailing the individual permits and governmental approvals that Owner and Design-Builder will each bear responsibility to obtain; and

(k) A Schedule of Values for Phase 2.

2.3.2 Review and Adjustment to Phase 2 Proposal

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

(b) Acceptance of Phase 2 Proposal. If Owner accepts the Phase 2 Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Phase 2 Contract Price Amendment). The Phase 2 Proposal will become Exhibit 2.3.2 Phase 2 Services. Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Phase 2 Contract Price Amendment, as it may be revised.

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

i. Owner may suggest modifications to the Phase 2 Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Phase 2 Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.b above.

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 4.1.2 hereof without a Contract Price, in which case all reference in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Section 11.6 of the General Conditions of Contract.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to

(a) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, or (b) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.2.c(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 3
Contract Times

3.1 Commencement Date. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. Design-Builder shall commence the Phase 2 Services upon receiptof the Owner's Notice to Proceed for Phase 2 Services ("Commencement Date"). The Commencement Date shall be no later than fifteen (15) days after the Agreement Date, unless the Parties mutually agree otherwise in writing.

3.2 Contract Times

3.2.1 Scheduled Substantial Completion Date. Design-Builder shall achieve Substantial Completion of the Work no later than the date set forth in the Phase 2 Contract Price Amendment ("Scheduled Substantial Completion Date").

3.2.2 Scheduled Final Completion Date. Final Completion of the Work shall be achieved as expeditiously as reasonably practicable, but in no event later than ninety (90) days after the Substantial Completion Date (the last day of such 90-day period being referred to as the "Scheduled Final Completion Date").

3.3 Schedule Adjustments. All of the scheduled completion dates set forth in Section 3.2 above (collectively referred to as "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

3.4 Time of the Essence. Owner and Design-Builder mutually agree that the Scheduled Substantial Completion Date and Scheduled Final Completion Date, individually and collectively, are of the essence of this Agreement.

3.5 Delay Liquidated Damages. Design-Builder understands that if certain of the Contract Time(s) are not attained, Owner will suffer damages which are difficult to determine and accurately specify. To compensate Owner for such damages, Design-Builder hereby agrees to pay Owner Delay Liquidated Damages as follows:

3.5.1 Substantial Completion. If the Substantial Completion Date has not been achieved on or before the Scheduled Substantial Completion Date, then Design-Builder shall pay to Owner Delay Liquidated Damages of __)_____ ($_____) per day for each day between the Scheduled Substantial Completion Date and the Substantial Completion Date.

3.5.2. Final Completion. If the Final Completion Date has not been achieved by the Scheduled Final Completion Date, Designer-Builder shall pay to Owner Delay Liquidated Damages of _____ Dollars ($_____) per day for each day

between the Scheduled Final Completion Date and the Final Completion Date.

3.5.3. Sole and Exclusive Remedy. Delay Liquidated Damages shall be the sole and exclusive liability of Contractor and the sole and exclusive remedy of Owner for Contractor's unexcused delay in performing the Work.

Article 4
Contract Price

4.1 Contract Price.

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

4.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the amount set forth in the Phase 2 Contract Price Amendment, subject to adjustments made in accordance with the General Conditions of Contract. For the avoidance of doubt, when Owner authorizes multiple Phase 2 Contract Price Amendment, Total Contract Price is the summation of each Contract Price as authorized per each Amendment.

4.2 Allowance Payment Items and Allowance Payment Values

4.2.1 General. The Contract Price for the Phase 1 Services includes all Allowance Payment Items, as well as their corresponding Allowance Payment Values, as set forth in Exhibit 2.2.1, Phase 1 Scope of Services. The Contract Price for Phase 2 Services includes all Allowance Payment Items, as well as their corresponding Allowance Payment Values, as set forth in the Phase 2 Contract Price Amendment.

4.2.2 Performance of Work on Allowance Payment Items. No work shall be performed on any Allowance Payment Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

4.2.3 Reconciliation of Allowance Payment Values. If the actual costs for an Allowance Payment Item differ from the stated Allowance Payment Value, the Contract Price shall ultimately be adjusted accordingly by Change Order. If, at the time the Final Application for Payment, the actual costs for any Allowance Payment Value are less than the corresponding Allowance Payment Value, such difference shall be reflected in a Change Order that reduces the Contract Price by such difference.

Article 5
Payment Procedures

5.1 Progress Payments for Phase 1 Services. Design-Builder and Owner agree upon the

following method for partial and final payment to Design-Builder for the services hereunder; Design-Builder will submit an Application for Payment to Owner each month based on work completed during the period since the last Application for Payment was submitted.

5.2 Progress Payments for Phase 2 Services.

5.2.1 Submission. Design-Builder shall submit to Owner on the Fifth (5^{th}) day of each month, beginning with the first month after the Commencement Date, Applications for Payment in accordance with Article 6 of the General Conditions of Contract.

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

5.3 Retainage on Progress Payments.

5.3.1 Retainage. No retainage will be held for Phase 1. For Phase 2, Owner will withhold retainage in the amount of five percent (5%) on progress payments due Design-Builder. After fifty percent (50%) of the Total Contract Price has been completed and requisitioned through Applications for Payment, and two and one-half (2.5%) of the Contract Price has been retained, Owner shall cease withholding any retainage from future progress payments owing to Design-Builder hereunder, *provided, however*, that Design-Builder's performance is deemed satisfactory by Owner, in its sole discretion. If Design-Builder is forecasting Substantial Completion to be forty-five (45) calendar days beyond the Scheduled Substantial Completion Date, the progress will be considered unsatisfactory and Owner shall resume withholding five percent (5%) of each invoiced amount from future payments until Owner and Design-Builder have agreed upon a plan for mitigating such delay.

5.3.2 Reduction of Retainage. Within thirty (30) days after the Substantial Completion Date, Owner shall release to Design-Builder all retainage, less an amount equal to: (a) two hundred percent (200%) of the reasonable value of all remaining Punch List items as of the Substantial Completion Date; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

5.3.3 Letter of Credit. Design-Builder shall have the right to substitute an irrevocable letter of credit in lieu of cash for all or any portion of the retainage, provided that the letter of credit shall: (a) be a direct pay letter of credit payable immediately upon presentation by Owner, issued by a financial institution, and on a form, approved by Owner in its sole discretion; (b) permit partial draws and be in the amount of one hundred percent (100%) of the required retainage amount, or such lesser amount as Owner agrees in writing from time-to-time to reflect reductions in required retainage; and (c) name Owner as sole payee and beneficiary. Owner shall be entitled to draw upon the letter of credit to provide

the requisite cash to satisfy any of Design-Builder's obligations under the Contract Documents. Owner shall further be entitled to draw upon the letter of credit, and hold the proceeds as retainage, if the letter of credit is not renewed or extended at least thirty (30) days prior to its expiration.

5.4 Final Payment. Owner shall pay the outstanding retention at Final Payment, in accordance with Section 6.6 of the General Conditions of Contract.

5.5 Interest. All amounts not paid when due as provided in Article 6 of the General Conditions of Contract shall bear interest in accordance with Mo. Rev. Stat. §34.057, at the rate of one and one-half percent (1.5%) per month.

5.6 Owner's Rights to Offset. Owner shall have the right to withhold Liquidated Damages from any monies unpaid, otherwise due, or to become due, to Design-Builder, to demand and receive payment from Design-Builder of such Liquidated Damages, and to initiate applicable dispute resolution procedures under Article 10 of the General Conditions of Contract to recover such Liquidated Damages. The withholding of such damages from any monies unpaid, otherwise due, or to become due shall be in addition to retainage under the Contract Documents. Owner has the discretion to allow Liquidated Damages to accrue without withholding and by doing so does not waive any rights to withhold them at a later time.

Article 6
Limitations of Liability

6.1 Limitations of Liability.

6.1.1 Limitation of Liability for Liquidated Damages. Design-Builder's total aggregate liability to Owner for the payment of Liquidated Damages under Section 3.5 above shall not exceed an amount equal to five percent (5%) of the Contract Price.

6.1.2 Maximum Liability Cap. Notwithstanding any provision to the contrary herein, in no event shall Design-Builder's total aggregate liability to Owner under the Contract Documents for any and all damages and losses from any and all causes exceed in the total aggregate an amount equal to one hundred percent (100%) of the Total Contract Price ("Maximum Liability Cap"). Owner hereby releases Design-Builder from all liability in excess of the Maximum Liability Cap, whether such liability arises in contract, tort (including negligence) or any other legal theory, except as set forth in Section 6.1.3 below.

6.1.3 Exclusions to the Maximum Liability Cap. Notwithstanding Section 6.1.2 above, or anything else in the Contract Documents, Design-Builder's liability for the following shall not be limited or released in any way for the following liabilities, losses, damages, costs or expenses:

(a) not used;

(b) Any loss, cost or expense arising out of or connected with Design-Builder's fraud, fraudulent misrepresentation, intentional misconduct, Gross Negligence, or criminal acts;

(c) Any loss, cost or expense incurred by Design-Builder in connection with Design-Builder's indemnification obligations for third party claims set forth in Article 7 of the General Conditions of Contract; and

(d) Any loss, cost, expense or penalties incurred by Design-Builder to any person or entity other than Owner in any legal proceedings.

6.2 Consequential Damages.

6.2.1 Waiver of Consequential Damages. To the fullest extent permitted by law, and notwithstanding any other provision of the Contract Documents other than those below in this Section 6.2, in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, indemnity, contribution, or any other cause of or form of action whatsoever, shall either Party be liable to the other for any consequential, incidental, indirect, special, exemplary, or punitive damages (including damages for loss of use, loss of profits or anticipated profits, loss of revenue or anticipated revenue, loss of goodwill, claims from Owner's customers, borrowing or financing, productivity or shop space, increased cost of capital, punitive damages, and loss of business opportunity) arising out of or in connection with the performance or non-performance of its obligations under the Contract Documents.

6.2.2 Exceptions to Waiver. The waiver of consequential damages set forth in Section 6.2.1 above shall not be deemed to affect or waive:

(a) Design-Builder's obligation to pay Liquidated Damages in accordance with Section 3.5 above;

(b) Design-Builder's liability for fraud, fraudulent misrepresentation, intentional misconduct, Gross Negligence, or criminal acts of Design-Builder or any DB-Related Entity; and

(c) Design-Builder's liability for its indemnity obligations for third party claims under Article 7 of the General Conditions of Contract.

6.3 Liability Limitation Period. Notwithstanding anything to the contrary in the Contract Documents, Design-Builder shall not be liable to Owner for any claims, causes of action, or demands: (1) that accrue more than five (5) years from the Substantial Completion Date; or (2) for which Design-Builder has not received written notice from Owner within five (5) years from the Substantial Completion Date, *provided, however*, that the above-referenced liability limitations shall not apply to:

6.3.1 Design-Builder's liability for fraud, fraudulent misrepresentation, intentional misconduct, Gross Negligence, or criminal acts of Design-Builder or any DB-Related Entity; or

6.3.2 Design-Builder's liability for its indemnity obligations under Article 7, but only to the extent that Design-Builder could have been sued directly by, and would have been liable directly to, the third party in the underlying action.

The liability limitation in this Section 6.3 shall not be construed to impact Owner's rights against any Subcontractors for any extended warranty periods that Design-Builder has obtained from Subcontractors.

6.4 Applicability

6.4.1 Other Persons and Entities. The provisions of this Article 6 shall be binding on and extend to the benefit of all successors, assignees, employees, officers, directors and Affiliates of each Party; *provided, however*, that the amount of Design-Builder's liability shall not exceed in the aggregate the limits set forth in Section 6.1.2.

6.4.2 Binding Effect. Except to the extent prohibited by applicable Legal Requirements or specific terms to the contrary in this Article 6, the releases, waivers, limitations of liability and other terms in this Article 6 shall apply even in the event of the fault, negligence (in whole or in part), tort, strict liability, breach of contract or otherwise, of the person or entity in whose favor such provisions operate.

Article 7
Design-Builder's Representations

7.1 Representations. Design-Builder makes the following representations as of the Agreement Date:

1. Design-Builder examined, carefully studied, and thoroughly understood the RFP Documents, including the Addenda.
2. Design-Builder will become familiar with and be satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work as set forth in Section 4.2.1 of the General Conditions of Contract.
3. Design-Builder is familiar with and is satisfied as to all Legal Requirements that may affect cost, progress, or performance of the Work.
4. Design-Builder has examined, carefully studied, and thoroughly understands: (a) the reports and drawings (if any) of explorations and tests of subsurface conditions at or contiguous to the Site; (b) all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified or made available by Owner; (c) environmental reports; and (d) conditions and restrictions of site access and egress.
5. Design-Builder is aware of the nature of other work that will be undertaken by Owner's Separate Contractors, and of the relationship of such other work to the Work as indicated in the Project Requirements.
6. Design-Builder has correlated the Project Requirements with the information known to Design-Builder, information obtained from the geotechnical and environmental reports, observations made during visits to the Site, reports and drawings identified in the RFP Documents, and all additional examinations, investigations, explorations, tests, studies and data made known to Design-Builder.

7. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the RFP Documents as of the Agreement Date and the written resolution thereof by Owner is acceptable to Design-Builder.

8. The RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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

Article 8
Bonds and Insurance

8.1 Insurance.

8.1.1 Insurance Requirements. Design-Builder shall procure and maintain the insurance required by Exhibit 8.1.

8.1.2 Evidence of Insurance. No later than seven (7) days after the Agreement Date, Design-Builder shall deliver to Owner the certificates, endorsements, and other evidence of insurance required to be provided by Design-Builder in accordance with Section 5.1.3(a) of the General Conditions.

8.2 Performance and Maintenance Bond and Payment Bond.

8.2.1 Provision of the Bonds. No later than seven (7) days after execution of the Phase 2 Contract Price Amendment, Design-Builder shall deliver to Owner:

(a) a Performance and Maintenance Bond in the penal amount equal to one hundred percent (100%) of the Contract Price, which bond shall cover the faithful performance of all Design-Builder's obligations under the Contract Documents (the "Performance and Maintenance Bond"); and

(b) a Payment Bond in the penal amount equal to one hundred percent (100%) of the Contract Price (the "Payment Bond").

8.2.2 Surety Rating. The surety for the Performance and Payment Bonds shall: (a) have a rating of A- or better in the latest revision of the A.M. Best Owner's Insurance Report; (b) be authorized by law to do business in Missouri; and (c) be listed in the most recent U.S. Department of Treasury Circular 570.

8.2.3 Form of Bonds. The Performance and Maintenance Bond shall be in the form set forth in Exhibit 8.2.3(a) and the Payment Bond shall be in the form set forth in Exhibit 8.2.3(b).

8.2.4 Duration of Performance Bond. The Performance Bond shall remain valid for a period of two (2) years after Final Completion.

Article 9
Contract Documents

9.1 Contract Documents. The Contract Documents consist of the documents listed below:

9.1.1. This Agreement and all of the Exhibits;

9.1.2. General Conditions of Contract;

9.1.3. Project Requirements;

9.1.4. The following, which shall be designated, completed, delivered, prepared, or issued after the Agreement Date and are not attached hereto:

(a) The Released for Construction Documents.

(b) Any and all written amendments, Change Orders, Work Change Directives, and Minor Changes amending, modifying, or supplementing the Contract Documents.

9.2 Amending the Contract Documents. The Contract Documents may only be amended, modified, or supplemented through a written amendment executed by the Parties or a Change Order, Work Change Directive, or Minor Change issued in accordance with Article 9 of the General Conditions of Contract.

9.3 Order of Precedence of the Contract Documents. The Contract Documents comprise the entire agreement between Owner and Design-Builder governing the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Missouri. The following order of precedence shall apply in the case of direct, irresolvable conflicts between or among Contract Documents:

1. Written amendments and Change Orders
2. Work Change Directives
3. Minor Changes
4. This Agreement, and all of the Exhibits
5. The General Conditions of Contract
6. Released for Construction Documents
7. Project Requirements

Article 10
Miscellaneous

10.1 Defined Terms. Terms used in this Agreement will have the meanings indicated in the General Conditions of Contract.

10.2 Notice. Whenever the Contract Documents require that notice be provided to the other Party, notice will be deemed to have been validly given: (a) if delivered in person to the individual intended to receive such notice; or (b) four (4) days after being sent by

registered or certified mail, postage pre-paid, with return receipt requested, to the address indicated in the Agreement, or (c) one (1) business day after being sent by overnight delivery via a nationally recognized courier service (e.g., FedEx or UPS), postage, transmittal or shipping charges prepaid, to the addresses set forth below:

If to Design-Builder:

_____

If to Owner:

_____

10.3 MBE/WBE Requirements. Owner has adopted a Minority/Women Business Enterprise ("MBE/WBE") Program (Sections 3-421 through 3-469, Code of Ordinances). Design-Builder shall comply with all MBE/WBE requirements set forth in such Program in performing its obligations under the Contract Documents.

10.4 Workforce Program and Prevailing Wage Requirements

10.4.1 Workforce Program Requirements. Owner has adopted a Construction Employment ("Workforce") Program (Sections 3-501 through 3-525, Code of Ordinances). Design-Builder shall comply with all Workforce requirements set forth in such Program in performing its obligations under the Contract Documents.

10.4.2 Prevailing Wages. Design-Builder shall comply and require each of its Subcontractors to comply with:

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

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

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

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

The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof the Contract Documents and shall be collectively referred to in this Section 10.4.2 as the "Prevailing Wage Requirements." Design-Builder shall pay and require each of its Subcontractors to pay to all workers performing the Work not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. Design-Builder shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Design-Builder 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 Design-Builder shall fail to start to

perform Design-Builder's obligations under the Contract Documents within sixty (60) days from the Agreement Date, Design-Builder 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.

10.5 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

10.5.1 that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);

10.5.2 that any sums which would be payable under this Agreement as Delay Liquidated Damages are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure;

10.5.3 that any sums which would be payable under this Agreement as Delay Liquidated Damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by, as applicable, any delay in achieving the applicable Contract Time(s). Notwithstanding the above, Delay Liquidated Damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents; and

10.5.4 that, in recognition of the acknowledgments above, Design-Builder is expressly estopped from arguing, and waives any rights it may have to argue, that the Delay Liquidated Damages are a penalty and that they are not enforceable.

10.6 Exhibits. The following exhibits ("Exhibits") are specifically made part of, and incorporated by reference into, this Agreement:

Exhibit 2.2.1	Phase 1 Scope of Services
Exhibit 2.3.2	Phase 2 Services
Exhibit 8.1	Phase 2 Insurance Requirements
Exhibit 8.2.3(a)	Form of Performance and Maintenance Bond
Exhibit 8.2.3(b)	Form of Payment Bond
Exhibit 10.6(a)	Phase 1 Engineering & Preconstruction Schedule
Exhibit 10.6(b)	Phase 1 Proposed Schedule of Values
Exhibit 10.6(c)	List of Key Personnel and Named Team Members

10.7 Self-Performance Requirements. Design-Builder shall perform with its own organization, or an Affiliate of Design-Builder, not less than thirty-five percent (35%) of the Total Contract Price, exclusive of the Extended Commissioning Phase Services. The dollar value included in the

above percentage shall include the value of labor, equipment and materials directly performed or procured by Design-Builder or its Affiliate and shall not include the value of work performed or provided by Design Consultants or Subcontractors. Owner may require the Design-Builder to competitively bid on the packages identified for self-performance.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design-Builder.

OWNER:	**PROGRESSIVE DESIGN-BUILDER:**
City of Kansas City, Missouri	*Design-Builder firm*
_____	_____
(Signature)	*(Signature)*
_____	_____
(Printed Name)	*(Printed Name)*
_____	_____
(Title)	*(Title)*
Date: _____	Date: _____

Approved as to form:

_____

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

_____

Director of Finance Date

GENERAL CONDITIONS OF CONTRACT

Article 1
General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings), *provided, however*, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document. For convenience, this Section 1.2 includes an index of capitalized terms used in the Agreement and the General Conditions of Contract.

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

Agreement has the meaning set forth in the Preamble, and refers to the document titled "Contract for Progressive Design-Build Services," signed by both Parties, and further includes all Exhibits expressly identified in Section 10.6 of the Agreement.

Agreement Date has the meaning set forth in the Preamble.

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

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

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

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

Baseline Schedule has the meaning set forth in Section 2.1.3 below. The Baseline Schedule, among other things, shall identify certain events that are critical to the orderly progress and timely completion of the Work and the dates by which such events are required to occur.

The Baseline Schedule shall be in a critical path method format, and shall include all information, data, and detail required by the Project Requirements.

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

Builder's Risk Insurance means the policy of insurance required under Exhibit 8.1 of the Agreement identified as the Builder's Risk policy, which policy is intended to provide property insurance for the construction Work in progress and other coverages.

Certificate of Final Completion means a certification issued by Owner to Design-Builder, stating that Design-Builder, to the best of Owner's actual knowledge and belief, has achieved Final Completion, and confirming that date upon which such event occurred as well as other information as more specifically set forth in Section 8.4 below.

Certificate of Substantial Completion means a certification issued by Owner to Design- Builder, stating that Design-Builder, to the best of Owner's actual knowledge and belief, has achieved Substantial Completion, and confirming that date upon which such event occurred as well as other information as more specifically set forth in Section 8.2 below.

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

Commencement Date has the meaning set forth in Section 3.1 of the Agreement.

Compensable Delays has the meaning set forth in Section 8.7.1 below.

Confidential Information has the meaning set forth in Section 15.1.1 below.

Contract Documents means those documents specifically referenced and listed in the Section 9.1 of the Agreement as Contract Documents.

Contract Price has the meaning set forth in Section 4.1 of the

Agreement. *Contract Time(s) has the meaning set forth in Section 3.2 of*

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

9.8.1 below.

COVID-19 Baseline Assumptions means that the Project will not be subject to any physical distancing, restrictions on large gatherings or self-isolation guidelines and requirements under Legal Requirements in effect as of the Agreement Date.

day or *days* mean calendar days unless otherwise specifically noted in the Contract Documents.

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

Delay Liquidated Damages mean those liquidated damages associated with the failure of Design-Builder to achieve Substantial Completion on or before the Scheduled Substantial Completion Date and/or Final Completion on or before the Scheduled Final Completion Date.

Design-Builder has the meaning set forth in the Preamble.

Design-Builder's Project Manager means that person designated by Design-Builder under Section 2.1.4 below, who will be the principal representative of Design-Builder with respect to the performance of the Work.

Design-Builder's Representative means that person designated by Design-Builder under Section 2.1.4 below, who shall be the principal representative of Design-Builder with

respect to contractual matters, and shall have full authority to act on behalf of Design-Builder and make binding decisions on behalf of Design-Builder with respect to any matter arising out of or relating to the Contract Documents.

Design-Builder's Safety Representative means that person designated by Design-Builder under Section 2.8.1 below, whose principal duty shall be the prevention of accidents and the protection of all persons and property located on or adjacent to the Site. Design-Builder's

Safety Representative shall take such action as appropriate to ensure the proper implementation of, and compliance with, safety policies, precautions, procedures and plans.

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

Design Consultant is a qualified, licensed design professional, eligible to provide professional engineering, architectural and/or land surveying services, who may be an employee of Design-Builder, or may be retained by Design-Builder or any DB-Related Entity, to furnish design services required under the Contract Documents.

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

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

Electronic Data has the meaning set forth in Section 13.1.1 below.

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

Excusable Delay has the meaning set forth in Section 8.5.1 below.

Exhibits has the meaning set forth in Section 10.6 of the Agreement.

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

Final Completion has the meaning set forth in Section 8.4 below.

Final Completion Date means the date that Final Completion occurs.

Force Majeure Events are those events that are beyond the reasonable control of Design-Builder, all DB-Related Entities, and Owner, including but not limited to the events of war, terrorism, floods, labor disputes (other than those set forth in Section 8.5.2(b)), earthquakes, fires, hurricanes, tornadoes, epidemics, pandemics, public health emergencies, unusually severe and abnormal weather conditions, and other acts of God.

General Conditions of Contract refers to this document.

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

Governmental Approval means any authorization, consent, approval, license, lease,

ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

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

Gross Negligence means: such wanton or reckless conduct or omissions as constitutes, in effect, a disregard for harmful, foreseeable, and avoidable risks or consequences; provided that Gross Negligence does not include any act or failure to act insofar as it: (i) constituted mere ordinary negligence; or (ii) was done or omitted in accordance with the written instructions or written approval of the Parties.

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

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

Key Personnel means those individuals designated as such in Exhibit 10.6(c) to the Agreement.

Legal Requirements means all applicable federal, state and local laws, codes, ordinances (including the Code of Ordinances of Kansas City, Missouri), rules, statutes, regulations, orders and decrees, and other requirements of any Governmental Unit, including, without limitation, any interpretation of such items by the applicable Governmental Unit.

Liquidated Damages means Delay Liquidated Damages.

Maximum Liability Cap has the meaning set forth in Section 6.1.2 of the Agreement.

Named Team Members means those persons or entities specifically identified in Exhibit 10.6(c) to the Agreement.

Notice of Design-Builder Claim for Change Order has the meaning set forth in Section 9.5.1 below.

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

Operations and Maintenance Data (O&M Data) mean the manual(s) and other information as required by the Project Requirements that provide overall operating approach and strategy for the Project, as well as the Services Manuals required for operating and maintaining the Equipment and Materials, facilities and systems, including the related computer programs prepared by Design-Builder containing detailed standard procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Project, developed and maintained as required by Section 2.10 below.

Overhead and Profit Markup means all field, Project, and home office overhead, including, but not limited to: (a) field supervision and administration above the general foreman level, such as superintendents, assistant superintendents, purchasing agents, accountants, clerks, timekeepers, office managers, and all others on the field staff; (b) office supplies; (c) drinking water; (d) temporary heat, light and power; (e) field toilets; (f) costs of services; (g) small tools and expendable materials required for, or consumed in, the performance of the Work; (h) telephone system and charges; (i) facsimile machines, telephones, telegrams, and the charges associated therewith; (j) photographs; (k) photocopying; (l) postage; (m) insurance; (n) taxes; (o) general and administrative expenses

incurred at the home, branch, and/or district offices; and (p) profit.

Owner is the City of Kansas City, Missouri.

Owner Indemnitee means and includes Owner, Owner's Advisor, and their officers, directors, employees, representatives, and agents.

Owner's Representative means that person designated by Owner under Section 3.2.1 below, who shall have full authority to act on behalf of Owner with respect to the Project.

Party or *Parties* has the meaning set forth in the Preamble.

Payment Bond has the meaning set forth in Section 8.2.1(b) of the Agreement.

Performance and Maintenance Bond has the meaning set forth in Section 8.2.1(a) of the Agreement.

Phase 1 Engineering & Preconstruction Schedule means that schedule attached as Exhibit 10.6(a) to the Agreement.

Phase 2 Contract Price Amendment means the amendment to the Agreement for Phase 2 services comprised of the accepted Proposal as developed by Design-Builder in accordance with Section 2.3 of the Agreement between Owner and Design-Builder.

Phase 2 Proposal means that proposal developed by Design-Builder in accordance with Section 2.3 of the Agreement.

Preamble means the introductory paragraphs of the Agreement that identify, among other things, the Agreement Date, the Parties and the background to the Parties entering into the Agreement.

Pre-Existing Intellectual Property means Design-Builder's proprietary algorithms, software, hardware, databases and other background technology and intellectual property that Design-Builder developed or licensed from third parties prior to the Agreement Date.

Project is the Dr. Jeremiah Cameron Park and Westport Stormwater Improvements Project.

Project Requirements mean any and all the requirements as set forth in the Scope of Services attached as Exhibit 2.2.1 to the Agreement, Division 00 and 01 specifications, and requirements issued with the Request for Proposal.

Project Warranties has the meaning set forth in Section 2.9.1 below.

Project Warranties Term means that period from the Agreement Date through the date that is two (2) years following the Substantial Completion Date, as such period may be extended pursuant to Section 2.9.6, *provided, however*, that if the Contract Documents require a longer warranty period for a specific element of the Work, the Project Warranties Term for such specific element of the Work shall be that longer warranty period.

Proposed Phase 2 Baseline Schedule means that schedule attached to the Phase 2 Proposal.

Proposed Schedule of Values means that schedule of values attached as Exhibit 10.6(b) to the Agreement.

Punch List means that list of Work that has been identified as incomplete in accordance with Section 2.11 below.

Released for Construction Documents mean those final, complete design documents that: (a) are to be used for performing the construction and in correlation with all applicable Governmental Approvals, (b) have been signed and sealed by a properly licensed Design Consultant or a properly licensed employee of Design-Builder; and (c) have been approved by Owner in accordance with Section 2.4.4 below.

Scheduled Final Completion Date means the date that is set forth in Section 3.2.2 of

the Agreement.

Scheduled Substantial Completion Date means the date that is set forth in Section 3.2.1 of the Agreement, and is the date by which Design-Builder is obligated to achieve Substantial Completion of the entire Work.

Schedule of Values means a tabulation or breakdown of the entire Contract Price as estimated, allocating such Contract Price to various portions of the Work and other line-items, prepared by Design-Builder in such form and detail, and supported by such data to substantiate its accuracy, as Owner may require.

Separate Contractor means a person and/or entity, other than Design-Builder, retained by Owner to perform work or to provide services, or Equipment and Materials, in connection with the Project.

Site is the parcels of land or premises on which the Project is located, as more specifically described in the Project Requirements.

Subcontract means any and all agreements between Design-Builder and any DB-Related Entity.

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

Substantial Completion has the meaning set in Section 8.2 below.

Substantial Completion Date means the date on which Substantial Completion occurs.

Sub-Subcontractor is any person or entity (other than a Design Consultant) retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work, including Suppliers.

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

Total Contract Price has the meaning set forth in Section 4.1 of the Agreement.

Training Plan means Design-Builder's plan for the training of Owner employees in the long-term operations and maintenance of the Project, as developed and executed by Design- Builder, in conjunction with the qualified technical trainers of Subcontractors, Sub-Subcontractors and Suppliers, and in accordance with the Project Requirements.

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

Work Change Directive means a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in any Contract Time, Contract Price, or other terms in the Contract Documents pertaining to the change in the Work.

Work Product means all drawings, specifications, calculations, data, models, images, materials, products, and documents identified as deliverables in the Contract Documents, including, without limitation all materials, products, and such items developed or produced by all Design Consultants, Subcontractors and Sub-Subcontractors, whether in hard-copy, digital or electronic data, or any other medium.

Article 2
Design-Builder's Services and Responsibilities

2.1 General.

2.1.1 The parties will meet within seven (7) days after the Commencement Date to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.2 The Phase 1 Engineering and Preconstruction Schedule shall be the basis for monitoring Design-Builder's performance of the Work during Phase 1. Likewise, the Phase 1 Schedule of Values shall be used as the basis for payment for Design-Builder's activities during Phase 1. The Phase 1 Engineering and Preconstruction Schedule will be updated each month to indicate planned and actual progress and forecast activities within Phase 1.

2.1.3 At the time the Design-Builder submits the Phase 2 Proposal, Design-Builder shall submit to Owner, for its review and approval, the following:

(a) A proposed Baseline Schedule that includes, among other things: (1) the order in which Design-Builder proposes to carry out the Work; and (2) the times when submissions and approvals or consents by Owner are required (*provided, however*, that such times shall be no less than Owner's minimum review duration identified in Section 3.1 below). The proposed Baseline Schedule shall meet the format and other requirements established by the Contract Documents to demonstrate that all major Project components, activities, and events are being performed in a logical sequence for Design-Builder to achieve the Contract Times. Owner acknowledges that Design-Builder's schedule margin (e.g., float) shown in the Baseline Schedule is owned and controlled by Design-Builder and may not be used or consumed on account of an event that allows Design-Builder the right to seek a Change Order.

(b) A proposed Phase 2 Schedule of Values that shall consist of a detailed breakdown of the Contract Price into measurable components of the completed Work for the purpose of making payment to Design-Builder during Phase 2. The Phase 2 Schedule of Values shall be compatible with and representative of the Baseline Schedule.

(c) A proposed forecast of monthly cash flow requirements for the entire Project, incorporating the actual cash flow for the time elapsed since the Commencement Date.

(d) If Owner does not approve a proposed submission under Paragraphs (a), (b), or (c) above, Design-Builder shall submit a revised submission to Owner within seven (7) days of its receipt of Owner's comments on such submission. This process shall continue until such time as the submission is so approved by Owner, which submission shall be then deemed, as applicable, the Baseline Schedule, Schedule of Values, and forecast of monthly cash flow Requirements. Design-Builder shall provide Owner with updates of these documents as set forth in the Contract Documents.

(e) Owner's review and approval of the Baseline Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 Design-Builder shall designate a member of its Key Personnel as its Project manager (the "Design-Builder's Project Manager"), who shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager will be stationed in the Design-Builder's Kansas City office and present at all appropriate times. Design-Builder will have a representative at the Site authorized to act on its behalf when Design-Builder's Project Manager is not present. Design-Builder shall also designate a qualified member of its Key Personnel as its Project representative (the "Design-

Builder's Representative"), who shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Neither Design-Builder's Project Manager or Design-Builder's Representative may be replaced without prior written approval of Owner, with such approval not to be unreasonably withheld, and any replacement shall be acceptable to Owner.

2.1.5 Design-Builder shall provide management, supervision and professional staff for the Work in accordance with the organizational chart set forth in Exhibit 10.6(c) referred to as List of Key Personnel. Design-Builder acknowledges the importance of its Key Personnel in successfully performing the Project. Absent separation of employment, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner, with such approval not to be unreasonably withheld. It is understood and agreed that Design-Builder will provide Owner with at least thirty (30) days written notice of any request to withdraw any Key Personnel or Named Team Member. Any replacement personnel shall have equivalent skill, experience and reputation. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Owner has a reasonable objection to such individual.

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

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

2.2 Design Professional Services.

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

2.2.2 Design-Builder shall incorporate all obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant and Subcontractors, including but not limited to the obligations relative to ownership and use of the Work Product set forth in Article 12 below.

2.3 Standard of Care.

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

2.4 Design Development Services.

2.4.1 Design-Builder assumes and shall have exclusive responsibility for the accuracy and efficacy of the Released for Construction Documents. Accordingly, in no event shall Design-Builder be entitled to any price, schedule or performance relief associated with any error, omission or deficiency in the Released For Construction Documents, and shall bear full responsibility for correcting errors and deficiencies in accordance with the Contract Documents.

2.4.2 Design-Builder shall conduct such additional geotechnical evaluations and potholing surveys as are required by Good Engineering and Construction Practices and incorporate such evaluations and surveys into its design.

2.4.3 Owner shall review and act upon design submittals as set forth in the Project Requirements. Notwithstanding anything to the contrary in the Contract Documents, Owner's review, comment and/or approval of any design submittal, including but not limited to the Released for Construction Documents, shall not be deemed to transfer any design liability from Design- Builder to Owner or relieve Design-Builder of any of its obligations under the Contract Documents or liability for the design services that are part of the Work.

2.4.4 The Released for Construction Documents shall be consistent with the latest set of approved interim design submissions, and shall be submitted to Owner and approved by Owner in accordance with the Contract Documents. Design-Builder shall proceed with construction in accordance with the approved Released for Construction Documents. Any modifications to the Released for Construction Documents will constitute a change to the Contract Documents and Design-Builder shall seek Owner approval in advance of issuing such revisions.

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

2.5 Legal Requirements.

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

2.5.2 Design-Builder may request an appropriate Change Order, in accordance with the requirements of Articles 8 and 9 herein, that the Contract Price and/or Contract Time(s) be adjusted to compensate Design-Builder for the impacts of any changes in the Legal Requirements enacted after the Agreement Date. Such impacts may include, without limitation, revisions Design-Builder is required to make to the Released for Construction Documents because of such changes in Legal Requirements. For the avoidance of doubt, any tariff adopted, promulgated, issued, or modified by the U.S. federal government after the Agreement Date shall be treated as a change in Legal Requirements under this Section 2.5.2, provided that such tariff or modification was not scheduled prior to the Agreement Date. Notwithstanding the above, the relief afforded by this Section 2.5.2 shall not apply to changes in Legal Requirements relating to: (a) Design-Builder's or any DB- Related Entity's corporate existence or the maintenance of its business; (b) changes in Legal Requirements affecting payroll taxes or other taxes associated with labor; or (c) changes in Legal Requirements affecting taxes imposed on an entity's gross revenue, income or profits.

2.5.3 Not Used.

2.6 Government Approvals and Permits.

2.6.1 Except as specifically identified in Section 3.4.1 below, Design-Builder shall obtain, maintain, and pay for all costs to obtain and maintain (including all application, permit and filing fees) for all necessary Governmental Approvals from or by any Governmental Unit that may be

required for the proper prosecution and execution of the Work, including any additional Governmental Approval identified in the Project Requirements as the responsibility of Design-Builder. If any such Governmental Approval is required to be formally issued in the name of Owner, Design-Builder shall undertake all commercially reasonable efforts to obtain such Governmental Approvals with Owner's reasonable support and cooperation. Design-Builder shall develop all data and technical documents for Governmental Approval submittals, prepare and submit all applications, participate in meetings with Governmental Units and Owner as required, and expedite all Governmental Approvals to meet Project schedule requirements. Governmental Approval applications and other documentation required in connection with a Governmental Approval shall be subject to approval by Owner. Design-Builder shall deliver to Owner, promptly after Design- Builder's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by the Contract Documents.

2.6.2 Design-Builder shall provide all commercially reasonable assistance to Owner to obtain those Governmental Approvals that are the responsibility of Owner under Section 3.4.1 below. No construction activity will commence until: (a) all Governmental Approvals required for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (b) Owner has been notified that such Governmental Approvals have been obtained; and (c) Owner has, after reviewing the validity and scope of the Governmental Approval, authorized Design-Builder to proceed.

2.6.3 Design-Builder shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals. Design-Builder shall not be entitled to an adjustment in the Contract Price and/or Contract Time(s) for any events arising from or related to Design-Builder or any DB- Related Entity violating or failing to comply with any Governmental Approval, including but not limited to suspensions arising therefrom. Such violations and failures to comply shall be at the sole risk of Design-Builder.

2.7 Design-Builder's Construction Services.

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

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed in Missouri and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor. Those Subcontractors who are Key Personnel or Named Team Members shall be deemed acceptable to Owner for the scope of Work designated in Design-Builder's Named Team Members.

2.7.4 Design-Builder shall coordinate the activities of all Subcontractors. If any Separate Contractor performs work on, adjacent, or in proximity to the Project or the Site, or has any element of work that interfaces or affects the Work, Design-Builder agrees to reasonably

cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Design-Builder specifically agrees to attend and participate in any coordination meetings that are held by Owner to manage and coordinate the work of Design-Builder and Separate Contractors.

2.7.5 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, Design- Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work.

2.7.6 Subject to Section 4.3 below, Design-Builder shall be responsible for all utility relocations necessary or convenient to its performance of the Work. For all such relocations, Design-Builder will meet all of Owner's requirements, procedures and standards.

2.7.7 Design-Builder shall be responsible for making arrangements to obtain, provide and pay for all temporary and permanent utilities associated with the Work, except for those utilities specifically identified in the Contract Documents as being provided by Owner and furnished without cost to Design-Builder.

2.7.8 During any adverse weather (including but not limited to unusually severe and abnormal weather conditions as referenced in Section 8.5.3 below), Design-Builder shall take commercially reasonable precautions so that the Work may progress properly.

2.8 Design-Builder's Responsibility for Project Safety.

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

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

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors of any tier of their own contractual and legal obligations and responsibility for: (a) complying with all Legal Requirements, including those related to health

and safety matters; and (b) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Project Warranties.

2.9.1 Design-Builder warrants to Owner that the Work shall, through the Project Warranties Term: (1) be new and of good quality; (2) conform to the requirements of the Contract Documents; and (3) be free of construction faults or defects, as established by the Project Requirements (collectively the "Project Warranties"). The Project Warranties are subject to the following:

(a) The Project Warranties include remedy for damages or defects caused by testing performed by Design-Builder.

(b) The Project Warranties exclude remedy for damages or defects caused by modifications not undertaken or executed by Design-Builder under this Agreement. In addition, the Project Warranties exclude remedy for damages or defects caused by Owner's improper or insufficient maintenance, Owner's improper operation, or normal wear and tear under normal usage.

2.9.2 Design-Builder shall perform or cause to be performed all warranty work in a manner that will minimize interference with the ongoing operations of the Project. Design-Builder shall provide a written plan for all proposed warranty work, unless expressly waived by Owner.

2.9.3 If Owner determines at any time during the Project Warranties Term that any of the Work is not in conformance with the requirements of the Project Warranties, it shall provide written notice to Design-Builder of such determination. Design-Builder shall, within seven (7) days of receipt of such written notice, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. Notwithstanding the above, Design-Builder shall respond to a verbal or electronic notification from Owner of an emergency warranty condition that could cause serious loss or damage within twenty-four (24) hours of such notification. Such response shall require that a competent representative or representatives of Design-Builder familiar with the Project, including its specific equipment, design and operational requirements, inspect the Work and, while on Site: (a) correct the problem; (b) if the problem cannot be corrected while on Site, mitigate while on Site the imminent harm from the emergency; and (c)fully correct the problem within a reasonable period of time. If Design-Builder fails to commence the necessary steps within, as applicable, such seven (7) day period (or in the event of any emergency warranty condition, respond within a twenty-four (24) hour period and correct and/or mitigate the problem as set forth in the preceding sentence), Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces or with third party contractors. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction, including but not limited to any retesting and reinspection costs.

2.9.4 Owner may, based on good cause, direct Design-Builder to perform a "root cause" analysis of any defect in the Work. If Design-Builder fails to perform such analysis as directed by Owner, or if Owner concludes that the "root cause" analysis is flawed, Owner may elect to conduct an independent analysis of the alleged defect, whereupon Design-Builder shall cooperate with Owner and provide such information relevant to the alleged defect as Owner

may request. If the “root cause” or independent analysis reveals a defect or defects in any part of the Work, Design-Builder shall be responsible for the costs and expenses of remedying such defects, including the costs of the “root cause” or independent analysis. If the “root cause” or independent analysis demonstrates that there is no defect, then Owner shall bear the reasonable costs and expenses of such analyses. All remedial measures related to defects revealed by any “root cause” or independent analysis must be approved by Owner prior to implementation by Design-Builder.

2.9.5 Nothing contained in this Section 2.9 shall be construed to establish a period of limitation with respect to other obligations that Design-Builder has under the Contract Documents.

2.9.6 If, after the Substantial Completion Date, any Work is modified, corrected, repaired, replaced and/or reperformed by Design-Builder pursuant to Section 2.9.3, then the Project Warranties Term applicable to such portion of the Work that has been modified, corrected, repaired, replaced and/or reperformed shall be extended for one year from the date of completion of the modification, correction, repair, replacement or reperformance, but in no event longer than three
(3) years after the Substantial Completion Date.

2.9.7 During the Project Warranties Term, Design-Builder and Owner shall be permitted to enforce all warranties provided by Suppliers with respect to the Work. However, no such warranty shall relieve Design-Builder of any obligation with respect to the Project Warranties.

2.9.8 Design-Builder acknowledges and agrees that:

(a) It shall be fully responsible for the costs associated with all warranty work as provided in Section 2.9.3, and shall reimburse Owner for its costs resulting from a breach of its obligations under Section 2.9.3 with respect to the Project Warranties, subject to the terms and conditions of the Contract Documents.

(b) The provisions of this Section 2.9 shall survive the termination of the Agreement.

2.9.9 Without limiting any of the Project Warranties, Design-Builder shall, for the protection of Owner, obtain from all Subcontractors and Suppliers from which Design-Builder procures Equipment and Materials such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Documents, each of which shall be assigned to Owner to the full extent of the terms thereof. No such warranty or guarantee shall relieve Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, or Equipment or Materials shall be the cause for any increase in the Contract Price or otherwise excuse Design-Builder from the performance of any Work or warranty obligation. For the avoidance of doubt, disclaimers and limitations in specific Equipment and Materials that conflict with this Section 2.9 shall not be construed to limit Design-Builder’s obligations or Owner’s rights under this Section 2.9.

2.9.10 Nothing in the Contract Documents is intended to limit any third party warranty that provides Owner with greater warranty rights than those provided under the Project Warranties.

2.9.11 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE CONTRACT DOCUMENTS, DESIGN-BUILDER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, LATENT OR PATENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE RELATING TO THE WORK PERFORMED UNDER THE CONTRACT DOCUMENTS, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. THE REMEDIES SET FORTH IN THIS SECTION 2.9 ARE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER FOR ANY NONCONFORMING WORK,

WHETHER DESIGN-BUILDER'S LIABILITY IS BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

2.10 O&M Data.

2.10.1 Design-Builder shall develop comprehensive O&M Data in accordance with the Project Requirements. The O&M Data shall: (a) contain a detailed description of the means and methods of properly operating and maintaining the Project; (b) document standard operating procedures and predictive, preventive and corrective maintenance procedures, practices and schedules; and (c) otherwise be sufficiently detailed to permit the Project to be operated and maintained by Owner's operations and maintenance staff.

2.10.2 Design-Builder shall submit O&M Data in accordance with the Project Requirements.

2.11 Punch List Requirements.

2.11.1 Design-Builder shall submit a proposed Punch List to Owner when Design-Builder believes that the Work has achieved Substantial Completion in compliance with the Contract Documents. Owner shall have the right to approve each Punch List in its reasonable discretion. The failure to include any items on such list does not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents.

2.11.2 Design-Builder shall promptly complete all items on the Punch List. Owner shall have the option to correct or otherwise resolve any and all Punch List items not promptly completed by Design-Builder by using its own forces or by hiring others. The reasonable cost of such correction or resolution of remaining punch list items by Owner or others shall be deducted from the final payment to Design-Builder.

2.12 Care, Custody and Control, Risk of Loss and Damage to Owner Property

2.12.1 Design-Builder shall have care, custody, and control of the Work (including but not limited to having responsibility for the security of the Site) until the Substantial Completion Date.

2.12.2 Design-Builder shall bear all risk of loss concerning the Work until the Substantial Completion Date, regardless of: (a) subject to the extent to which the loss was insured or the availability of insurance proceeds; and/or (b) whether Owner had title to the Work or paid for any of the Work that was subject to a loss. After Substantial Completion, Owner shall bear all risk of loss for the Work and shall have care, custody and control of the Project (including but not limited to having responsibility for the security of the Site) and shall be accountable and responsible for any loss or damage to any part of the Work, including property of any kind and including uninsured losses and deductibles. Owner will cause its property insurers to issue a waiver of subrogation in favor of Design-Builder and its Subcontractors while Work is being performed and after Substantial Completion consistent with the rights and obligations of this Section.

2.12.3 Notwithstanding anything in the Contract Documents to the contrary, after the Substantial Completion Date, Design-Builder's total liability to Owner for the repair and/or replacement of

Owner's existing property, structures, materials or equipment (other than the Work itself) shall be limited to One Million Dollars ($1,000,000) per occurrence and in the aggregate, to the extent the damage is caused by Design-Builder, and Owner shall release Design-Builder from liability for any claim, loss or damage exceeding such amount. Owner will cause its insurers to issue a waiver of subrogation in favor of Design-Builder and any other DB-Related Entity consistent with the rights and obligations of this Section 2.12.3.

Article 3
Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide Design-Builder with reasonable access to the Site, including land rights and areas for storage reasonably sufficient that Design-Builder may perform the Work in accordance with the Contract Times.

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

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

3.2 Owner's Representative.

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

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

3.2.3 Owner's Representative may be replaced with seven (7) days' prior written notice to Design-Builder, and may delegate its authority and responsibilities to assistants with written notice to Design-Builder.

3.3 Government Approvals.

3.3.1 Owner shall obtain and pay for only the Governmental Approvals expressly set forth in

the Project Requirements as being the sole responsibility of Owner.

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

3.4 Separate Contractors.

3.4.1 Owner is responsible for all work performed on the Project or at the Site by Separate Contractors with whom Owner has contracted. Owner shall contractually require its Separate Contractors to cooperate, 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 4
Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions.

4.1.1 Owner has advised Design-Builder of any known Hazardous Materials or Hazardous Environmental Conditions at the Site.

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

4.1.3 Unless mutually agreed by Design-Builder, Owner shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Legal Requirements.

4.1.4 Except for those Hazardous Materials and Hazardous Environmental Conditions set forth in Section 4.1.6 below, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design- Builder's cost and/or time of performance have been adversely impacted by the presence of unknown Hazardous Environmental Conditions.

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

4.1.6 Notwithstanding anything to the contrary in this Section 4.1, Design-Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Material brought to the Site by Design-Builder or any DB-Related Entity; and (b) the exacerbation of a Hazardous Environmental Condition of which Owner notified Design-Builder pursuant to Section 4.1.1, to the extent caused by the breach of contract, negligence, recklessness or willful misconduct of Design-Builder or any DB-Related Entity. To the fullest extent permitted by Legal Requirements, Design-Builder shall indemnify, defend and hold harmless

each Owner Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Items (a) and (b) above.

4.1.7 As between Owner and Design-Builder, Owner is the generator of any pre-existing Hazardous Materials or Hazardous Environmental Condition.

4.1.8 Owner represents that the Site has not been designated as a "Superfund" site by the United States Environmental Protection Agency.

4.2 Inspection of Site Conditions.

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

4.2.2 Design-Builder shall, after the Agreement Date, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to Owner promptly after such reports or analyses are generated.

4.3 Differing Site Conditions.

4.3.1 Concealed or latent physical conditions or subsurface conditions at the Site that: (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design- Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. The term "Differing Site Conditions" excludes: (a) conditions of which Design-Builder had actual knowledge as of the Agreement Date; and (b) conditions that should have been discovered through a reasonable Site investigation performed in accordance with Section 4.2. For the avoidance of doubt, Hazardous Environmental Conditions are not deemed Differing Site Conditions, and shall be treated as set forth under Section 4.1 above.

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

Article 5
Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall obtain and maintain, at its own cost and expense, the insurance coverages specified in Exhibit 8.1 of the Agreement, which insurance shall be in accordance with this Section 5.1.

5.1.2 All insurance required by Section 5.1 shall be from insurance companies that are authorized to do business in the state of Missouri, and have a current policyholder's management and financial size category rating of not less than "A-:VIII" according to A.M. Best's Financial Strength and Financial Size Category.

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

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

(b) Upon request by Owner or any additional insured, evidence of such required insurance on an Acord certificate insurance as evidence of insurance required to be purchased and maintained by Design-Builder, Design Consultants, or Subcontractors.

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

5.1.4 Design-Builder shall use commercially reasonable efforts to require its Design Consultants and Subcontractors to purchase and maintain adequate insurance coverages specific to their scope of Work.

5.1.5 Owner does not represent that insurance coverage and limits established in Section 8.1 of the Agreement will be adequate to protect the interests of Design-Builder, Design Consultants, or Subcontractors. Each such party is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Design-Builder deems necessary.

5.1.6 Design-Builder, Design Consultants, and Subcontractors shall be solely responsible for any and all deductibles or self-insured retentions that shall apply under any required, or otherwise purchased, insurances and shall have no recourse against Owner for any such costs.

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

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

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

(c) Other than for professional liability insurance, workers compensation/employer's liability insurance and builder's risk insurance, where additional

insured coverage is required include cross-liability clauses allowing one insured to bring a claim against another insured party. With regard to pollution liability insurance, a cross-liability clause will be allowed as long as it does not impact Owner's ability to sue another insured party and collect under the policy.

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

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

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

(g) Design-Builder's required commercial general liability, automobile liability, umbrella or excess, and pollution liability must:

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

2. Afford primary coverage to these additional insureds for claims covered thereby (for those claims caused by Design-Builder's Work including both ongoing and completed operations coverage);

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

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

5.2 Performance and Maintenance Bonds and Payment Bond.

5.2.1 Design-Builder shall provide Owner with the Performance and Maintenance Bond and Payment Bond in accordance with Section 8.2 of the Agreement.

Article 6
Payment

6.1 General.

6.1.1 Owner shall pay Design-Builder for the Work in accordance with Articles 4 and 5 of the Agreement and this Article 6.

6.1.2 Owner shall pay Design-Builder through monthly progress payments described in Section 6.2 below, with payments to be based upon the Schedule of Values agreed upon by the Parties pursuant to Section 2.1.3 above. In making such progress payments, Owner shall retain the amounts set forth in Section 5.3.1 of the Agreement, as well as other amounts permitted under

the Contract Documents or at law.

6.2 Monthly Progress Payments.

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

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

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

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the Parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 below.

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

6.4 Right to Stop Work and Interest.

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

6.5 Design-Builder's Payment Obligations.

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

6.6 Final Payment.

6.6.1 Upon achieving Final Completion in accordance with Section 8.4 below, Design-Builder shall provide Owner with a Final Application for Payment. The Final Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, including, without limitation the following:

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

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

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

(d) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

(e) Final Project Workforce Monthly Report and Final Companywide Workforce Monthly Report.

6.6.2 After receipt of a proper Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement. If Owner is not in agreement with said Application, Owner shall return the final Application for Payment to Design-Builder, indicating in writing the reasons for not recommending final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Final Application for Payment.

6.6.3 Final payment shall be an absolute bar to the assertion of any claim of any type by Design- Builder other than those expressly set forth in the attachment set forth in Section 6.6.1(b) above.

Article 7
Indemnification

7.1 Intellectual Property Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against any Owner Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement or unauthorized use of any patent, trademark, copyright, or trade secret now or hereafter issued. Owner shall give prompt written notice to Design- Builder of any such action or proceeding and will reasonably provide authority,

information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep all Owner Indemnitees regularly informed of all developments in the defense of such actions.

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

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

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

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

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

7.5 Defense and Indemnification Procedures.

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

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

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

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

7.5.5 Owner Indemnitee shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (a) the defense is tendered to Design-Builder and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (b) Owner Indemnitee, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (i) a conflict

exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (ii) Design-Builder is otherwise not providing an effective defense in connection with the claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. Owner Indemnitee may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons thereof.

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

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

7.6 Survival.

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

Article 8
Contract Times

8.1 General.

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

8.1.2 Design-Builder shall perform the Work, as applicable, in accordance with the Phase 1 Engineering and Preconstruction Schedule and the Baseline Schedule. Design-Builder shall provide Owner with monthly updates, or more frequently as required by conditions and progress of the Work, comparing actual progress to the Baseline Schedule, but such updates shall not be deemed to modify the Baseline Schedule or Contract Time(s), nor relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as may be adjusted in accordance with this Article 8.

8.1.3 The conditions for Substantial Completion of the entire Work are set forth in Sections 8.2 below. Design-Builder acknowledges that Owner may want to take-over and operate some elements of the Work before Substantial Completion of the entire Work. To accomplish this, the Parties will discuss and agree upon the terms upon which Owner may do so, including but not limited to the impact of such on Design-Builder's responsibility for risk of loss, insurance and warranty.

8.2 Substantial Completion.

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

(a) Design-Builder has submitted and Owner has approved in writing, such approval not to be unreasonably withheld or delayed, a certification by Design-Builder that, except for the items on the Punch List, all physical Work is complete and in compliance with the Contract Documents.

(b) Design-Builder has completed all testing required by the Contract Documents associated with Substantial Completion.

(c) Design-Builder and Owner have agreed in writing upon the Punch List (or, if they are unable to agree, Owner shall have prepared and issued the Punch List to Design-Builder within thirty (30) days of Design-Builder having submitted its proposed Punch List to Owner).

(d) Design-Builder has delivered to Owner written certification from the Equipment manufacturers (including information technology systems and instrumentation and controls) that all major Equipment included in the Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements.

(e) Design-Builder shall be in possession of, and shall have delivered to Owner, copies of the warranties of Equipment and Materials, together with copies of all related operating manuals provided by Suppliers.

(f) Design-Builder has delivered to Owner and Owner has approved in writing, such approval not to be unreasonably withheld or delayed, all O&M Data required by the Contract Documents as a condition of Substantial Completion.

(g) Design-Builder has delivered to Owner all applicable draft Record Documents and other closeout documents required by the Project Requirements, as applicable to Substantial Completion.

(h) Design-Builder has satisfied all of the requirements for Substantial Completion set forth in the Phase 2 Contract Price Amendment.

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

8.2.2 When Design-Builder considers that the Work has achieved Substantial Completion, Design-Builder shall request in writing that Owner perform a Substantial Completion inspection. Design-Builder shall give Owner at least thirty (30) days' prior written notice of the expected date of Substantial Completion. Owner shall determine, within seven (7) days of its inspection, whether it concurs that Substantial Completion has been achieved. If Owner disagrees, it shall promptly send written notice to Design-Builder of the basis for its disagreement. Design-Builder shall expeditiously complete the Work and shall re-request in writing that Owner perform a Substantial Completion inspection. The preceding process will be repeated until Owner determines that Substantial Completion has been achieved.

8.2.3 The Substantial Completion Date shall be the day on which Design-Builder has given Owner notice pursuant to Section 8.2.2 and the Owner has concurred that Substantial Completion has been achieved.

8.3 NOT USED.

8.4 Final Completion.

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

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

(b) All Work (including all repairs and Work identified on the Punch List and all clean- up and removal of construction materials, demolition debris and temporary facilities) is complete, and in all respects is in compliance with the Contract Documents.

(c) Design-Builder shall have delivered to Owner all final Record Documents, the final BIM model, and all closeout documents and other deliverables required by the Contract Documents.

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

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

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

(g) Design-Builder has satisfied all of the requirements for Final Completion set forth in Division 01s..

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

8.4.2 When Design-Builder considers that Final Completion has been achieved, it shall so notify Owner in writing. Owner shall determine, within twenty-one (21) days following its receipt of such notice, whether it concurs that Final Completion has been achieved. If Owner disagrees, it shall promptly send written notice to Design-Builder of the basis for its disagreement. Design-Builder shall expeditiously correct the conditions raised by Owner in order to achieve Final Completion. The preceding process will continue until Owner determines that Final Completion has been achieved

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

8.5 Excusable Delays.

8.5.1 The term "Excusable Delay" shall refer to delays in or other adverse impacts on the performance of the Work to the extent caused directly by acts, omissions, conditions, events, or circumstances beyond the reasonable control of Design-Builder and all DB-Related Entities, including, by way of example, acts or omissions of Owner or anyone under Owner's control (including Owner's Separate Contractors), changes in the Work, Differing Site Conditions, unknown Hazardous Environmental Conditions, Force Majeure Events, a change in Legal Requirements, and suspensions of work under Section 11.1 below.

8.5.2 Notwithstanding Section 8.5.1 above, all cost, time, and other risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be

deemed Excusable Delays, and shall not be the basis for any relief, monetary or otherwise, to Design-Builder:

(a) general market and economic conditions affecting the availability, supply or cost of labor, Equipment and Materials, construction equipment, supplies, or commodities, provided, however, that the term "general market and economic conditions shall not be deemed to include the effects on market or economic conditions arising from epidemics or pandemics or other Force Majeure Events;

(b) strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect a specific trade on a national or regional level and were not caused by the improper acts or omissions of Design-Builder or any DB-Related Entity;

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

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

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

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

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

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

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

8.6 Adjustment of Contract Time(s).

8.6.1 Design-Builder shall be entitled to request a Change Order adjusting the Contract Time(s) to reflect not more than the amount of time Design-Builder is actually delayed by an Excusable Delay, expressly conditioned upon Design-Builder demonstrating that: (a) Design-Builder has complied with the procedural requirements of Section 8.5 and this Section 8.6; (b) the delay impacts the critical path of the Work as demonstrated by Section 8.6.3 below; (c) the delay was not foreseeable as of the Agreement Date by Design-Builder, and would not have been foreseen as of the Agreement Date by a reasonably experienced design-builder; (d) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid and mitigate the delay and did not, through itself or any DB-Related Entity, cause the delay; and (e) the delay for which relief is requested is not within the scope of those events or circumstances described in Section 8.5.2.

8.6.2 If Design-Builder intends to seek an adjustment in the Contract Time(s) as the result of an Excusable Delay, it shall comply with Sections 8.6.3 and 9.4 below.

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

8.7 Compensation for Delays

8.7.1 Design-Builder shall be entitled to request an adjustment of the Contract Price pursuant to the provisions of Article 9 for all Excusable Delays for which Design-Builder is entitled to a time extension pursuant to Section 8.6 above ("Compensable Delays"), *provided, however*, that Compensable Delays shall not be deemed to include: (a) the Force Majeure Reserve; or (b) Excusable Delays where Design-Builder's performance was or would have been concurrently delayed or interrupted by any event that does not otherwise qualify as an Excusable Delay ("Concurrent Delay"). Design-Builder's sole remedy for a Concurrent Delay is an extension of the Contract Time(s), provided that Design-Builder has complied with the requirements of Section 8.6 above.

8.8 Recovery Schedules

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

Article 9
Changes to the Contract Price and Contract Times

9.1 Right of Owner to Make Changes.

9.1.1 Without invalidating the Agreement, Owner may by written order, at any time and from time-to-time, authorize and/or request changes in, additions to, or deletions in the Work, including but not limited to those involving: (a) changes in, additions to, or deletions in the Contract Documents; (b) changes in the method, manner, sequence and time of performance of the Work (provided that Design-Builder retains and accepts full responsibility for all associated construction means, methods, techniques, sequences, and procedures); (c) changes in Owner-furnished services or deliverables, or (d) a direction to accelerate performance of the Work. If Owner proposes making a change in the Work, Owner shall advise Design-Builder and Design-Builder shall follow the processes set forth in Section 9.2 below.

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

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

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

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

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

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

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.

9.3.2 Owner may request minor changes in the Work that do not involve an adjustment in the Contract Price or Contract Time(s), and do not materially or adversely affect the Work. If Design- Builder disputes that such order involves a minor change, Design-Builder shall notify Owner in accordance with Section 9.4 below.

9.3.3 Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, *provided, however*, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Procedures Following Owner's Notice of Proposed Change.

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

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

9.5 Design-Builder Proposed Change Orders.

9.5.1 If Design-Builder believes that it is entitled under the Contract Documents to an adjustment to the Contract Price, Contract Time(s), or other relief due to any event or situation arising out of or related to the Work (including but not limited to alleged Excusable Delays, disputes over Owner's instructions or interpretation of the Contract Documents), Design-Builder shall, within seven (7) days after Design-Builder knows, or should have reasonably known, the impact of such event or situation giving rise to the requested relief, submit to Owner a written notice labeled "Notice of Design-Builder Proposed Change Order." The Notice of Design-Builder Proposed Change Order shall describe the general nature of the event or situation and, if such Notice involves an Excusable Delay, the probable duration thereof.

9.5.2 Design-Builder shall, within fourteen (14) days after providing Owner with a Notice of Design-Builder Proposed Change Order, submit to Owner in writing: (a) a description of the facts, circumstances and contractual basis for the relief sought, with sufficient specificity for Owner to assess the matter; (b) the cost data supporting any proposed adjustments to the Contract Price; and (c) the scheduling information and analysis required under Section 8.6.3 above to support any request for adjustment to the Contract Time(s).

9.5.3 Owner shall endeavor to review Design-Builder's submittal under Section 9.5.2 above within fourteen (14) days of its receipt of such submittal. If Owner believes that Design-Builder's

request is justified, in whole or in part, Owner shall advise Design-Builder and an appropriate Change Order shall be executed. If Owner disputes Design-Builder's request, and the Parties are unable to resolve the dispute, such dispute shall be resolved in accordance with Article 10 below. Owner may request clarifications and/or additional information to assist with its decision to such proposed change order.

9.6 Owner Directive Letters

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

9.7 Contract Price Adjustments.

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

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

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

(c) If the Parties have not reached agreement on the basis of (a) or (b) above, the Contract Price shall be adjusted based upon the Cost of the Work and Overhead and Profit Markup as set forth in Section 9.8 below.

9.8 Cost of the Work and Overhead and Profit Markup.

9.8.1 The term "Cost of the Work" shall mean costs: (i) reasonably, actually and properly incurred by Design-Builder in the proper performance of the Work associated with the change; (ii) reasonably documented; and (iii) that would not have been incurred but for the change in the Work.

The Cost of the Work shall include only the following:

(a) Craft Labor.

(1) Actual wages shall be computed on the base hourly rates paid by Design-Builder to its craft labor for all levels general foreman (or equivalent level) and below to perform the changed Work at the Site or, with Owner's agreement, at locations off the Site. No supervision or project management time above the general foreman level shall be included by Design-Builder as a direct labor cost, as this is covered by the Overhead Markup.

(2) Labor burden shall be established as a percent of the actual wages paid for each craft under (a) above. The burden shall be limited to payment for: vacation allowance, health and welfare, pension, apprenticeship programs and other similar programs as required for each craft, social security, unemployment insurance, and workers' compensation insurance. Labor burden shall not include expenses relating to employee profit sharing plans, bonuses, voluntary employee contributions to charities, savings plans, or general liability insurance

(b) Equipment and Materials. Design-Builder's net cost, including freight and transportation F.O.B Site, for all Equipment and Materials. All actually received quantity discounts and prompt payment discounts shall be reflected as credits for any Equipment and Materials purchased.

(c) Small Tools and Supplies. Small tools and supplies shall be paid based on five percent (5%) of the labor costs allowed in Item .1 above. Equipment and tools having a replacement value of $500 or less, whether or not consumed or used, shall be considered small tools compensated by the preceding percentage and no separate payment will be made therefor under any other category of cost.

(d) Construction Equipment.

(1) All construction equipment leased specifically for changes in the Work shall be at Design-Builder's net invoiced cost.

(2) If construction equipment is owned and actually engaged in the performance of the change in the Work, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. In the case of any machinery or equipment not referred to in the Blue Book Rental Rates, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of 3% of the purchased price of such equipment. The hourly rate in such cases will be determined by dividing the monthly rate by 176 when actually operating. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 40% of the rate determined herein, without inclusion of operating costs.

(e) Subcontractors. Payments properly made by Design-Builder to Subcontractors for performance of portions of the Work, including any bond premiums incurred by Subcontractors. Each Subcontractor will price its change in the Work based upon the requirements set forth in Items
(a) through (d) above.

(f) Design and Engineering Changes.

(1) Payment will be made for the cost of labor for design and engineering services, whether provided by Design-Builder or a Design Consultant, equal to the sum of the following: (i) the hourly rates established in Design-Builder's Phase 2 Proposal; plus (ii) an overhead rate to be agreed-upon between Owner and Design-Builder, not to exceed the applicable audited overhead rate. For Design Consultants, up to an additional ten percent (10%) on the total of such labor and overhead costs may be allowed to account for profit on design and engineering service labor.

(2) Payment will be made for the recovery of necessary expenses for other direct costs incurred in performing the work of a design and/or engineering change order, whether incurred by Design-Builder or a Design Consultant, provided that such costs are not included in Design-Builder's or Design Consultant's indirect cost or overhead rate. Costs for travel, meals and lodging shall be reimbursed in accordance with Owner's Travel Reimbursement Guidelines.

(g) Bond and Builder's Risk Insurance. Payment for additional bond cost will be based upon a rate that reflects the actual additional bond premiums. Payment for additional Builder's Risk Insurance premiums will be based on the actual additional premium for the

change.

(h) Miscellaneous. Other costs reasonably and properly incurred in the performance of the Work may be considered Cost of the Work to the extent approved in writing by Owner.

9.8.2 The Overhead and Profit Markup to be applied to the Cost of the Work for a change shall be as follows:

.1 For: (a) craft labor engaged under Section 9.8.1(a) above; (b) Equipment and Materials furnished under Section 9.8.1(b) above; (c) small tools and supplies furnished under Section 9.8.1(c) above; (d) rented and owned construction equipment under Section 9.8.1(d) above; and (e) miscellaneous costs under Section 9.8.1 (h) above, an Overhead and Profit Markup of ten percent (10%) will be applied.

.2 For design professional services labor engaged under Section 9.8.1(f) above, an Overhead and Profit Markup of ten percent (10%) will be applied.

.3 For bonds and Builder's Risk Insurance under Section 9.8.1(g) above, no Overhead and Profit Markup will be applied.

.4 Contractor and each higher-tier Subcontractor not performing the Work will be allowed to apply an Overhead and Profit Markup of five percent (5%) on the lower-tier Subcontractor's direct costs (i.e., excluding the lower-tier Subcontractor's Overhead and Profit Markup, regardless of the tier of the Subcontractor.

9.8.3 In the event of a Compensable Delay, Design-Builder will be entitled to recover for its time- related Project overhead costs that would not have been incurred but for the Excusable Delay. Overhead and Profit Markup of ten percent (10%) will be applied to such Project overhead costs.

9.9 Emergencies.

9.9.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

9.10 Duty to Proceed.

9.10.1 Except only for Design-Builder's right to stop work under Section 11.3.1 below, no dispute between Design-Builder and Owner, including but not limited to those relating to the entitlement, cost or time associated with a notice of proposed Owner change or Design-Builder Notice of Proposed Change Order, shall interfere with the progress of the Work. Design-Builder shall have the duty to diligently proceed with the Work in accordance with Owner's instructions despite any dispute, including but not limited to those events where the Parties are in disagreement as to whether instructions from Owner constitute a change to the Work and justify adjustments to the Contract Price and/or Contract Time(s). Design-Builder's sole recourse in the event of such a dispute will be to pursue its rights under Article 10 below.

9.11 Burden of Proof.

9.11.1 Design-Builder shall bear the burden of proof in establishing its entitlement to relief under this Article 9, including but not limited to adjustments in the Contract Price and Contract

Time(s).

Article 10
Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such Party shall provide written notice to the other Party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming Party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other Party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

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

10.2.2 Design-Builder and Owner will first attempt to resolve disputes at the field level through discussions between Design-Builder's Project Manager and Owner's Representative. Such discussions shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute is not resolved at the field level within fourteen (14) days of the written notice provided for in Section 10.1.1, then, upon the written request of either Party, the dispute shall be elevated to Design-Builder's senior representative and Owner's Director or designee. Such individuals shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute. Five (5) days prior to any meetings between such individuals, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

10.2.4 Either Party shall have the right to exercise its right to initiate its rights to litigation under Section 10.4 below if a dispute has not been resolved within sixty (60) days of the request of a Party under Section 10.2.3 above to elevate the dispute to the individuals set forth in Section 10.2.3 above.

10.3 Mediation.

10.3.1 If, after the meeting set forth in Section 10.2.3 above, the senior representatives determine that the dispute cannot be resolved on terms satisfactory to both Parties, the Parties may mutually agree to mediate the dispute. For the avoidance of doubt, mediation is voluntary and will not be a condition precedent to the initiation of litigation. Any mediation will be based upon a process mutually agreed upon by the Parties.

10.4 Litigation.

10.4.1 Any and all legal proceedings between the Parties shall be solely and exclusively initiated and maintained in the state or federal courts of Jackson County, Missouri. Owner and Design- Builder each irrevocably consents to the jurisdiction of such courts in any such proceeding and each Party waives any objection it may have to the jurisdiction of any such proceeding. Any legal proceedings shall consist of a bench trial and not a trial by jury, and each party hereby waives its right to a jury trial in connection with any legal proceedings.

10.4.2 Notwithstanding Section 10.4.1 above, any prevailing Party may seek enforcement of any judgment rendered in a court in any jurisdiction where the non-prevailing Party or its property may be located.

10.5 Duty to Continue Performance.

10.5.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any Dispute between Design-Builder and Owner.

Article 11
Stop Work and Termination Rights

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, at any time, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed either sixty (60) consecutive days or in the aggregate more than ninety (90) days.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) under Articles 8 and 9 above if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by Owner under Section 11.1.1.

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

11.2.1 If Design-Builder, at any time, fails to: (a) provide a sufficient number of skilled workers to meet the Contract Times and Baseline Schedule; (b) supply the Equipment and Materials required by the Contract Documents; (c) comply with applicable Legal Requirements; (d) timely pay, without cause, Design Consultants or Subcontractors; (e) achieve Substantial Completion by the time the Limitation of Liability for Liquidated Damages has been reached, as such date may be adjusted pursuant to Article 8 above; or (f) perform material obligations under the Contract Documents that are not subject to Liquidated Damages, then Owner, in addition to any other rights and remedies provided in the Contract Documents, by Legal Requirements, or at law or in equity, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below, and as provided at law.

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

further obligation to provide Design-Builder with an opportunity to cure, and may terminate the Agreement for cause as set forth in a written notice from Owner.

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

11.2.4 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, excluding Liquidated Damages, Design-Builder will only be entitled to be paid for Work performed prior to its default (unless otherwise agreed to by the Parties), and the balance will be for the account of and retained by Owner. If the actual and reasonable costs of finishing the Work exceed the unpaid balance, Design-Builder shall, within thirty (30) days of receipt of written notice setting out the amount of the excess costs, pay the difference to Owner. Such costs and expense shall include the reasonable cost of completing the Work (including costs to accelerate the Work as necessary to achieve Substantial Completion as near as possible to the Scheduled Substantial Completion Date), subject to the waiver of consequential damages and limitations of liability set forth in Article 6 of the Agreement.

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

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work if Owner has failed to pay amounts properly due under Design-Builder's Application for Payment, *provided, however*, that amounts subject to a good faith dispute shall not be deemed properly due.

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

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

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

(a) The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days in the aggregate, because of a Force Majeure Event, including a court order, any Government Unit having jurisdiction over the Work, failure of Owner to obtain Governmental

Approvals that are Owner's responsibility under the Contract Documents, or orders by Owner under Section 11.1.1 above, provided that such stoppages are not due to the acts or omissions of Design-Builder or any DB-Related Entity; and

(b) Owner's failure to cure the problems set forth in Section 11.3.1 above within sixty (60) days after Design-Builder has stopped the Work.

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

11.5 Bankruptcy of Owner or Design-Builder.

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

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

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

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

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

11.6 Owner's Right to Terminate for Convenience.

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

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

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

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

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

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

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

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

(g) Deliver to Owner all Work Product produced during the period commencing on the Agreement Date to the date of the termination, which Work Product shall, for the avoidance of doubt, become the property of Owner (except for the intellectual property set forth in Section 12.3 below), to the extent that it may not have been the property of Owner before the date of termination.

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

11.6.3 In the event of a termination for convenience, Design-Builder shall be entitled to receive only the following with respect to the terminated portion of the Project (to the extent not previously paid or subject to a good faith dispute) as its sole and exclusive remedy for such termination:

(a) Its costs performed through the date of termination in accordance with the Schedule of Values;

(b) The reasonable costs incurred by Design-Builder in the performance of its obligations under Section 11.6.2 above directly resulting directly from such termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts; and

(c) A fair and reasonable Overhead and Profit Markup attributable to the Work performed on the terminated portion of the Work up to the time of termination.

Design-Builder shall not be entitled to recover any overhead costs or profit on unperformed portions of the Work. In no case shall Design-Builder or any DB-Related Entity be entitled to

anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section 11.6.

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

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

Article 12
Ownership of Work Product

12.1 Ownership of Work Product

12.1.1 Owner shall own all rights, title and interest in the Work Product upon its receipt of and compensation for such Work Product. Owner's ownership rights, include without restriction or limitation, the right of Owner, and anyone contracting with Owner, to incorporate any ideas or information from the Work Product into any other contract awarded in reference to the Project. The rights conferred herein to Owner include, without limitation, Owner's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

12.2 Use of Work Product at Owner's Risk

12.2.1 Owner's use of the Work Product on any subsequent procurement by Owner on another project shall be at Owner's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. Design-Builder shall have no liability for errors or omissions in any designs, documents or other Work Product that is not completed due to a termination by either party prior to final completion of Design-Builder's Work. Owner waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from Owner's use of the Work Product on another project or use of incomplete Work Product.

12.3 Pre-Existing Intellectual Property

12.3.1 Owner acknowledges and agrees that in the performance of the Work hereunder Design- Builder will use Pre-Existing Intellectual Property. Design-Builder shall retain all right, title and interest in Pre-Existing Intellectual Property used or modified in the performance of the Work. Design-Builder hereby grants to Owner licenses to the Pre-Existing Intellectual Property on a non- exclusive, cost free, irrevocable, perpetual basis for use by Owner. Owner shall not license, transfer or otherwise make available Pre-Existing Intellectual Property to any third-party without the written consent of Design-Builder, which consent is hereby granted for purposes of completing, operating, maintaining or repairing the Project following the termination or completion of this Agreement. Owner's use of any such Pre-Existing Intellectual Property for purposes other than in connection with the Project shall be at its own risk and Design-Builder shall have no liability therefor.

Article 13

Electronic Data

13.1 Electronic Data.

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

13.2 Transmission of Electronic Data.

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

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

13.2.3 By transmitting Work Product in electronic form, the transmitting Party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 12 above. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting Party of tangible goods.

13.3 Electronic Data Protocol.

13.3.1 The Parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the Parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 13.3.

13.3.2 Electronic Data will be transmitted in the format agreed upon in Section 13.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

13.3.4 The transmitting Party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to

the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving Party, and the transmitting Party did not participate in such change or alteration.

Article 14
Retention and Owner's Access to Books and Records

14.1 Owner's Right to Examine, Copy and Audit.

14.1.1 Owner shall have the right to examine, copy and audit all Books and Records in connection with Work to be performed on a Cost of the Work or similar basis, including adjustments for Compensable Delays under Section 9.8.3 and disputes. In the event that Design-Builder is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the Books and Records of the joint venture sponsor, and those of each individual joint venture member. No audit rights shall extend to any lump-sum amount, rates, or unit price once the parties have agreed upon such amount, rates, or price.

14.1.2 Upon written notice by Owner, Design-Builder immediately shall make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five (5) days' notice of the examination and/or audit. Owner may take possession of such Books and Records

by reproducing such Books and Records for off-site review or audit. When requested in Owner's written notice of examination and/or audit, Design-Builder shall provide Owner with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows Owner to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, Design-Builder shall provide Owner with two licenses with maintenance agreements authorizing Owner to access and analyze all such Books and Records. If Design-Builder is unable to provide the licenses, Design-Builder shall provide Owner with access to Design-Builder's project accounting system whereby Owner can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, manhour reports, and the like.

14.1.3 Owner has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

14.1.4 Design-Builder shall preserve all of its Books and Records, and Owner may examine, audit, or reproduce the Books and Records, from the Agreement Date until the later of three (3) years after: (a) final payment under this Contract; (b) final settlement of a termination for convenience under Section 11.6; or, in the event of litigation between the Parties, (c) the final resolution of any such litigation.

14.1.5 Failure by Design-Builder to make available to Owner its Books and Records or Design-Builder's refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for termination.

14.1.6 Design-Builder shall insert a clause containing all the provisions of this Article 14 in all Subcontracts over $10,000.

Article 15
Miscellaneous

15.1 Confidential Information.

15.1.1 Confidential Information is defined as information which is determined by the transmitting Party to be of a confidential or proprietary nature and: (a) the transmitting Party identifies as either confidential or proprietary; (b) the transmitting Party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain, and was not available to the receiving Party prior to its disclosure on a non-confidential basis (provided that the source of the information is not known by the receiving Party to be bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal or fiduciary duty), or was not independently developed by the receiving Party without the use of any Confidential Information by the disclosing Party. The receiving Party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

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

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

15.2 Assignment.

15.2.1 Neither the Agreement nor any right, privilege, delegation, or interest thereunder may be assigned or transferred in whole or in part by Owner or Design-Builder without the prior written consent of the other Party, and any attempted assignment or transfer without such written consent shall be void, except as set forth in Section 15.3 below.

15.3 Successorship.

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

15.4 Governing Law.

15.4.1 This Agreement and all Contract Documents shall be governed by the laws of Missouri, without giving effect to its conflict of law principles or any provision of the laws of Missouri that would void or make unenforceable any waiver, release or limitation on liability or remedies set forth in or required by this Agreement or the Contract Documents.

15.5 Severability.

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

15.6 Third Party Rights.

15.6.1 Except as set forth below, this Agreement is exclusively for the benefit of Owner and Design-Builder and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights. Notwithstanding the above, it is understood and

agreed that: (a) Owner is an intended third-party beneficiary of all Subcontracts; (b) Owner Indemnitees are intended beneficiaries of the indemnification rights afforded to them under the Contract Documents; and (c) nothing shall impair the rights of any DB-Related Entity to seek recovery under Builder's Risk Insurance.

15.7 No Waiver.

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

15.8 Headings.

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

15.9 Amendments.

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

END OF GENERAL CONDITIONS OF CONTRACT

Exhibit 2.2.1
Phase 1 Scope of Services

Project Number: 81000999 – Contract Number: 1751
Project Title: Blue River WWTP Grit Removal and Fine Screens Project

This Phase 1 Scope of Services will further define the requirements for the 'Contract Price' and open-book requirements. It will be provided as draft by addendum to the RFQ.

Exhibit 8.1
Insurance Requirements

A. Design-Builder's Insurance Coverages

Design-Builder shall obtain and maintain the following insurance coverages during the performance of the Work. Policy coverage limits may be achieved through a combination of insurance policies (e.g., primary and/or excess). Owner and all additional insureds identified in Article 5 of the General Conditions of Contract shall be included as additional insureds on a primary, non-contributory basis for the coverages set forth in Paragraphs 2, 3, 4, and 7 below.

1. **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $1 million bodily injury by accident, each accident, and $1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. §30104).

2. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of $2 million per occurrence and $4 million annual aggregate. Completed operations coverage shall continue to be carried for a period of five (5) years after the Substantial Completion Date.

3. **Automobile Liability Insurance** with a limit of $2 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.

4. **Builder's Risk Insurance** on an "all risks" completed value basis, including permanent and temporary works, site preparation, and foundations. Covered causes of loss shall include, but not be limited to, fire, explosion, collapse, earth movement (including subsidence, sinkhole and collapse), flood, windstorm, theft, collapse, terrorism and vandalism. The Builder's Risk insurance must be project-specific and will cover Owner, Design-Builder and all DB-Related Entities during construction of the Work through the Acceptance Date, with a limit equal to the full value of the Contract Price. Further, the policy shall include extensions of coverage with minimum sub-limits as follows: (a) $10 million for off-site storage and transit; (b) 20% for debris removal and demolition; and (c) $5 million for increased costs of construction, expediting expenses, soft costs (including $2 million for Owner's continuing project administration expenses), professional fees and loss adjustment expenses. The policy also will include replacement cost coverage for the Work, including any buildings, structures, materials, supplies, equipment, machinery, and fixtures that will become a part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonably sub-limits will be accepted where typical): right to partial occupancy; London Engineering Group (LEG) 2 type or equivalent coverage for damages resulting from Design-Builder's design error, faulty workmanship, and/or faulty materials, testing, and change in ordinance or law.

Builder's Risk Insurance must be in place before the commencement of construction activities and through the Acceptance Date. Design-Builder shall submit to Owner on or before the Agreement Date: (a) a letter of certification from Design-Builder or Design-Builder's insurance broker confirming that Builder's Risk Insurance compliant with the requirements contained herein will be placed prior to the commencement of construction of the Work; and (b) a specimen Builder's Risk Insurance policy, including all attachments and sub-limits. Upon placement, Design-Builder shall submit a copy of the full Builder's Risk Insurance policy, including all attachments and sub-limits.

5. **Contractor's Equipment** to include "all-risk" insurance covering all risk of physical damage to equipment to be used at the Site by Design-Builder, whether leased, rented, borrowed, or used at the Site, unless covered under the Builder's Risk Insurance policy described above. Such coverage shall have limits equal to the replacement cost of such equipment unless Owner approves lower limits.

6. **Contractor's Pollution Liability Insurance** includes coverage for bodily injury, property damage, cleanup/remediation costs or other amounts which Design-Builder is legally obligated to pay arising out of the Work. Such insurance will have limits of $5 million any one claim and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year extended reporting period after the Acceptance Date.

7. **Professional Liability Insurance** covering Design-Builder's negligent acts, errors, or omissions caused by the Work, for $4 million any one claim and in the aggregate. This insurance may be on a "claims-made" basis and, if so, shall have an extended reporting or discovery "tail" period, or be renewed for a period, of 5 years after the Substantial Completion. It shall also have a retroactive date effective before the commencement of any design, and shall not include any exclusionary language relating to joint ventures or partnerships or both.

8. **Cyber Liability Insurance**, if applicable, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Design Professional in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

B. Insurance to be Maintained by Design Consultants and Subcontractors

Design-Builder will cause all of its Design Consultants and Subcontractors to obtain and maintain the following insurance coverages or be responsible for maintaining such coverages on behalf of each party. Owner and all additional insureds identified in Article 5 of the General Conditions of Contract shall be included as additional insureds on a primary, non-contributory basis for the coverages set forth in Paragraphs 2, 3 and 4 below.

1. **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits

of $500,000 bodily injury by accident, each accident, and $500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

2. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability. Limits for Design Consultants and Subcontractors with contracts valued at less than or equal to $1 million shall be $1 million per occurrence and $1 million in the aggregate annually. For those Design Consultants and Subcontractors with contracts valued at greater than $1 million, such coverage shall have limits of $1 million per occurrence and $2 million in the aggregate annually.

3. **Automobile Liability Insurance** with a limit of $1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. Should Design-Builder implement a CCIP, all Design Consultants and Subcontractors shall nevertheless comply with this requirement.

4. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of $1 million per occurrence and in the aggregate. For contracts valued at more than $1 million, coverage shall be in the amount of $4 million per occurrence and in the aggregate.

Should Design-Builder implement a contractor-controlled insurance program (CCIP) providing compliant insurance for all participants with regard to on-site activities, all Construction Subcontractors enrolled in the CCIP shall still be responsible for procuring and maintaining automobile liability insurance and the other insurance coverages noted above with regard to off- site work. Owner and all additional insureds identified in Article 5 of the General Conditions of Contract shall be included as additional insureds on a primary, non-contributory basis for the applicable insurance coverages set forth in Paragraphs 2, 3 and 4 above.