

Article 14
Attachment A (F)
Supplemental General Conditions to Design-Build Agreement

These are the Supplemental General Conditions to the Design-Build Agreement between The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) (“Owner”) and **TBD after review of RFP’s** (“Design-Builder”) dated for the CTUIR design build 33,000 sf warehouse on lot 2 of Coyote Business Park South.

In the event of any conflict or overlap between these Supplemental General Conditions and any other provision of the Agreement, Design-Builder is responsible for securing clarification and reconciliation from Owner as to the prevailing provision before proceeding with the work at issue. Any such conflict or overlap otherwise will be resolved in the manner that provides more complete or better service to Owner.

§ 14 General

§ 14.1 The Design-Builder’s Design Services consist of those described in this Attachment, and otherwise described in this Agreement without limitation structural, mechanical, and electrical engineering services.

§ 14.1.1 The Design-Builder shall manage its and its consultants’ services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Design-Builder shall coordinate the designs and other services of its consultants and correlate the design documents to be consistent with each other. The Design-Builder shall provide the Owner with the rates for all of its consultants.

§ 14.1.2 The Design-Builder shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Design-Builder shall provide prompt written notice to the Owner if the Design-Builder becomes aware of any error, omission, or inconsistency in such services or information.

§ 14.1.3 The Design-Builder shall contact government authorities and agencies and utility companies required to approve the Construction Documents and entities providing utility services to the Project. The Design-Builder shall respond to and comply with applicable design requirements imposed by those authorities, agencies and entities.

§ 14.1.4 The Design-Builder shall assist the Owner in connection with the Owner’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 14.1.5 The Design-Builder shall cooperate with and assist the Owner in any appeal or challenge to code or inspection requirements.

§ 14.1.6 Throughout the Project, the Design-Builder shall:

- .1 Advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required by law or that should otherwise be procured;
- .2 Recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not contract with the engineers or consultants;
- .3 Assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports of any errors or inconsistencies discovered;
- .5 Obtain from the Owner’s consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Design-Builder’s designs and Construction Documents; and
- .6 Request verification of this information as necessary to perform its services.

§ 14.1.7 The Design-Builder shall review and comply with all laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to the Design-Builder's services. Design-Builder shall, in accordance with applicable professional standards, inquire into, anticipate, and incorporate into its services, without additional charge, changes to such requirements that will be in effect at the time of applicable permitting, construction and inspections. If a conflict arises between these requirements, the Design-Builder will notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 14.1.8 Throughout the design process, The Design-Builder shall as a Basic Service review, propose, and comment on value engineering proposals as requested by Owner. If the Owner procures value engineering services, directly or indirectly, the Design-Builder and its consultants shall coordinate with the value engineering efforts by briefing the value engineering consultant, answering its questions, and meeting with the Owner's representatives and the value engineer to determine the advisability of changes in the Design-Builder's design as recommended by the value engineer. The Design-Builder shall make such changes as the Owner directs after such consultation.

§ 14.1.9 The Design-Builder shall coordinate the preparation of plans, specifications, and drawings among those preparing the same to avoid inconsistencies, omissions, or failure of integration among the same.

§ 14.1.10 The Design-Builder shall attend all Project meetings.

§ 14.1.11 The Design-Builder shall provide the Owner with digital records in nonproprietary pdf format, and paper records, of compiled record drawings showing significant approved changes to the Construction Drawings during the Construction Phase.

§ 14.1.12 The Design-Builder shall evaluate work fabricated off the site, including precast components to the same extent as Design-Builder is required to evaluate on-site Work.

§ 14.1.13 The Design-Builder shall assist the Owner in any negotiations with authorities or others in achieving a certificate of occupancy or completion certification, as applicable.

§ 14.1.14 The Design-Builder shall participate in a meeting just prior to the warranty expiration for the purpose of resolving warranty deficiencies.

§ 14.1.15 The Design-Builder shall provide graphic design materials to assist the Owner in preparation of project signage.

§ 14.1.16 The Design-Builder and consultants shall comply with the Owner's Design Guidelines as provided to the Design-Builder by the Owner. Neither any Owner design nor the Owner's review or approval of any design documents shall not relieve the Design-Builder of its responsibility for the accuracy and completeness of such documents.

§ 14.1.17 Reserved.

§ 14.1.18 To the extent applicable pursuant to ORS 279C.530, employees working under this Contract are subject to employers that will comply with ORS 279C.656 (Workers' Compensation) or employers that are exempt under ORS 656.126, and the Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Design-Builder's employees, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law or Contract for the purposes of providing or paying for such services.

§ 14.1.19 To the extent applicable pursuant to ORS 279C.530, all subject employers working under the contract are either employers that will comply with ORS 656.017 (Employer required to pay compensation and perform other duties) or employers that are exempt under ORS 656.126 (Coverage while temporarily in or out of state). The Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Design-Builder's employees, of all sums which the Design-Builder agrees to pay for such services and all moneys

and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law or Contract for the purposes of providing or paying for such services.

§ 14.1.20 The Design-Builder and its consultants shall comply with all virus protection, access control, back-up, password, and other security and other information technology policies of the Owner when using, having access to, or creating systems for any of the Owners' computers, data systems, personnel, or other information sources.

§ 14.1.21 The Design-Builder agrees that each of its employees, consultants' employees and principals/owners involved in the Work, may, at the option of the Owner, be subject to a security background check, at any time. The Owner retains the option to require immediate removal of any sub-consultant, employee or agent. Notwithstanding the foregoing, the Design-Builder and not the Owner remains solely responsible for performing background checks on and screening for public safety, all consultants and employees and, to the extent allowed by law, shall provide such screening methodologies and information to Owner upon request.

§ 14.1.22 The Design-Builder shall, and shall cause its employees and subconsultants to, familiarize themselves with and comply with (i) all Owner property access rules, policies and regulations, and (ii) all Owner rules, policies and regulations regarding Covid-19 and regarding political signage, if any.

§ 14.2 Phase 1 Services

§ 14.2.1 The Design-Builder shall review the program and other information furnished by the Owner, and shall review laws, codes, regulations, and any certification criteria applicable to the Design-Builder's services.

§ 14.2.2 The Design-Builder shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Design-Builder shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 14.2.3 The Design-Builder shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Design-Builder shall reach an understanding with the Owner regarding the requirements of the Project.

§ 14.2.4 Based on the Project requirements agreed upon with the Owner, the Design-Builder shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 14.2.5 Based on the Owner's approval of the preliminary design, the Design-Builder shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling or representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 14.2.5.1 The Design-Builder shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service.

§ 14.2.5.2 The Design-Builder shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 14.2.5.3 The Design-Builder shall provide a written description of the Project's responsiveness to the specifications of the Owner.

§ 14.2.5.4 The Design-Builder shall provide a written description of possible alternatives for the Project.

§ 14.2.6 The Design-Builder shall submit to the Owner an estimate of the Cost of the Work.

§ 14.2.7 The Design-Builder shall submit the Schematic Design Documents to the Owner, prior to final presentation and submission, and attend at least one (1) meeting with the Owner and any of its designees, to discuss any opportunities to maximize the value of the Project components, after which the Design-Builder shall incorporate any changes in the final Schematic Design Documents and submit to the Owner.

§ 14.2.8 The Design-Builder shall submit the Schematic Design Documents to the Owner in person, and request the Owner's approval.

§ 14.2.9 The Schematic Design Phase shall include a thorough code and certification requirement search by Design-Builder identifying in writing all applicable building codes and ordinances and certification requirements, including but not limited to fire, life safety, security, and accessibility requirements.

§ 14.2.10 The Design-Builder shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services upon which proper development of design and construction documents is dependent.

§ 14.2.11 The Design-Builder shall submit the Schematic Design Documents to the Owner and request the Owner's approval.

§ 14.2.12 The Schematic Design Documents will identify any systems, materials or equipment for which contractors hired separately by Owner, if any, must provide design services or certifications ("Delegated Design Components"), which Delegated Design Components shall be consistent with this Agreement and subject to Owner's approval.

§ 14.2.13 Following the approval of the Owner, the Design-Builder shall seek and secure review of Schematic Design Documents by all regulatory and certification agencies as may be necessary or appropriate and obtain approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 14.3 Design Development Phase Services

§ 14.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to Design-Builder, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 14.3.2 The Design-Builder shall update the estimate of the Cost of the Work.

§ 14.3.3 The Design-Builder shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Before the Design-Builder proceeds with the Construction Document Phase, the Design-Builder shall make a presentation of its Design Development Documents to the Owner including, but not limited to, explaining its conformance with and any approved exceptions to the Owner's design guidelines.

§ 14.3.4 The Design-Builder shall submit the Design Development documents to the Owner, prior to final presentation and submission, and attend one (1) meeting with the Owner and any of its designees, to discuss any opportunities to maximize the value of the Project components, after which the Design-Builder shall incorporate any changes in the final Design Development documents and submit them to the Owner.

§ 14.3.5 Following the approval of the Owner, the Design-Builder shall seek and secure review of Design Development Documents by all regulatory and certification agencies as may be necessary or appropriate and obtain ultimate approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 14.3.6 The Design-Builder shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 14.2.14 Following the approval of the Owner of the Design Development Documents and pricing, the Design-Builder shall submit their Proposal for the completion of the design and construction for the Project for the Contract Price, which shall be based on Design-Builder's Fee and Cost of the Work with a Guaranteed Maximum Price (GMP).

§ 14.4 Phase 2 Design Services

§ 14.4.1 Based on the Owner's approval of the Design-Builder's Proposal, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall commence Phase 2 services and prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work.

- .1 The Construction Documents shall be provided to the Owner for review and comment at the following points of completion: 50%, 80%, 98%, and 100%. Design-Builder shall incorporate or address Owner comments, as applicable, in the Construction Documents not later than the next required iteration.
- .2 When Construction Documents are 80% complete, the Design-Builder shall make a presentation to the Owner which will include, but not be limited to, explaining its conformance with and any approved exceptions to the Owner's guidelines. The Owner's approval shall not be deemed approval of the construction means, methods or techniques, which are the responsibility of the contractor.
- .2 The Design-Builder will submit the required number of plans and specifications to the permitting jurisdictions for plan review and approval and file applications on behalf of the Owner for such permits, in accordance with the Project Schedule.

§ 14.4.2 The Design-Builder shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents to meet all requirements of the most recent applicable codes, regulations, and industry standards adopted in the jurisdiction. The Design-Builder will respond to all comments, requests, or changes requested by federal, state and local governments, or certification agencies with jurisdiction over the Project or its use, including, when required, filing and prosecuting routine appeals and modifying Construction Documents. If a conflict arises between any of these requirements, the Design-Builder will identify the conflict and so notify the Owner and will resolve the conflict and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 14.4.3 During the development of the Construction Documents, the Design-Builder shall also compile a project manual that includes the Conditions of the Plans and Specifications and may include bidding requirements and sample forms.

§ 14.4.4 The Design-Builder shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. The Construction Documents delivered to the Owner shall be effectively complete, coordinated, and internally consistent, and shall contain no undisclosed missing elements. With submission of the complete set, the Design-Builder certifies that the Construction Documents are following all applicable laws and codes, and are sufficient for permits. The Owner's review of any Construction Document set does not relieve the Design-Builder of its independent obligations for the accuracy and completeness of the documents.

§ 14.4.6 The Design-Builder will provide documents to the Owner in electronic (PDF) format.

§ 14.4.5 The Design-Builder shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 14.4.6 The Design-Builder shall seek and secure review of Construction Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies, including all necessary permit filings. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies. Owner's approval shall not relieve Design-Builder of its obligations hereunder.

§ 14.4.7 Statutory Requirements. In addition to all other applicable legal requirements and professional standards:

- .1 Pursuant to ORS 671.020, all Drawings and the title page of all specifications intended to be used as construction documents shall bear the stamp of a registered Design-Builder and shall be signed by the Design-Builder.
- .2 Pursuant to ORS 671.025, the plans and specifications shall bear identification which shall include without limitation the Project name and location, the name, address and telephone number of the person responsible for the preparation of the documents, the name, address and telephone number of the Owner, and the date the document was issued.
- .3 All Drawings and plans as required in ORS 455.645 for the structure shall be certified by a qualified professional engineer or qualified Design-Builder. The design shall provide for resistance to lateral forces including wind and earthquakes, as well as gravity loads, in accordance with accepted engineering practice and governing building codes. The design shall be accompanied by supporting lateral load calculations.
- .4 Design-Builder shall cause all Plans and Specifications to conform to the other applicable requirements of ORS 279C.

§ 14.5 Project Schedule

The Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal); components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. Thereafter, Design-Builder shall revise and update the Project Schedule every other week to show the progress of design and construction of the Project. Design-Builder shall also make formal submissions of the Project Schedule with each Application for Payment delivered to Owner. The Project Schedule shall not exceed the required dates for Substantial Completion and Final Completion. In addition to achieving Substantial Completion and Final Completion by the dates required herein, if the Project Schedule provides for Owner's access to the Project prior to Substantial Completion for the purpose of Owner's installation of furniture, fixtures, cabling, equipment or other items, the Design-Builder shall achieve sufficient completion of the Work prior to Substantial Completion so that Owner has such access as scheduled.

§ 14.5.2 The Project Schedule shall be prepared by Design-Builder in a detailed precedence-style critical path method (CPM) format satisfactory to Owner which shall (in accordance with industry CPM standards):

- (a) provide a graphic representation of all activities and events (including obtaining all necessary permits and/or approvals) that will occur during performance of the Work;
- (b) identify each phase of construction and occupancy (including commencement and completion dates of each stage of the Work of each Trade), and include detailed work tasks in accordance with the work breakdown structure, to produce a Level 3 CPM schedule;
- (c) identify deadlines for electing alternates under Trade Agreements;
- (d) set forth Design-Builder's estimated monthly cash flow projection for Requisitions during the period reflected in such Project Schedule;
- (e) prior to the time a subcontractor starts Work, depict in detail the time for such subcontractor's Work and show week by week progress for each trade in a manner consistent with the most recent cash flow projection;
- (f) identify major equipment orders and delivery deadlines.
- (g) resource-load all activities.

§ 14.5.3 Prior to the commencement of Phase 2 and during final preparation, each update of the Project Schedule shall also include the status of cost estimates, document preparation and regulatory agency approvals. During the bidding stage, the monthly update shall include the status of bidding activity. During the Construction Phase, each updated Project Schedule shall contain detailed progress schedules of the Work by Trade. If Design-Builder becomes aware of any delay or problem arising in connection with the progress of the Work, Design-Builder shall promptly notify Owner thereof.

§ 14.5.4 The Design-Builder shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Design-Builder shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 14.5.5 The Design-Builder shall not be entitled to any adjustment in the Contract Time or in the Contract Sum, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time between the Design-Builder's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Design-Builder's Construction Schedule.

§ 14.6 Phased Construction

The Design-Builder, in consultation with Owner, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Design-Builder shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 14.7 Cost Estimates Generally

§ 14.7.1 Based on the preliminary design and other design criteria prepared by the Design-Builder, the Design-Builder shall prepare, for Owner's approval, estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Design-Builder suggests alternative materials and systems, the Design-Builder shall provide cost evaluations of those alternative materials and systems.

§ 14.7.2 Throughout the Project, the Design-Builder shall prepare and update, at appropriate intervals agreed to by the Owner and Design-Builder, an estimate of the Cost of the Work with increasing detail and refinement. The Design-Builder shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Design-Builder agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the review by Owner's cost consultants, and for the Owner's approval. If the Owner procures the services of an independent cost consultant, the Design-Builder shall align its estimate format with that cost consultant's estimate format. The Design-Builder shall cooperate to reconcile Design-Builder's cost estimates to those of Owner's cost consultant. The Design-Builder shall inform the Owner in the event that the estimate of the Cost of the Work and Fee exceeds the latest Owner's MACC and make recommendations for corrective action. At each stage of design, Design-Builder shall provide value engineering services for keeping the cost of design within the parameters of the MACC. Toward this end, Design-Builder shall periodically identify alternatives to the Project design and make timely recommendations for cost saving options, and respond promptly to Owner's recommendations regarding cost saving options.

If a discrepancy exists between the Design-Builder's cost estimates and the Owner's consultants' cost estimates, the Design-Builder shall work together with the Owner to reconcile the cost estimates.

§ 14.7.4 After its preparation, Owner shall deliver to Design-Builder Owner's initial Project Budget(s) including the latest MACC. The initial Project Budget(s) may be in the alternative, until Owner has selected either option. Promptly after the date of this Agreement, Design-Builder shall provide detailed comments on that Project Budget(s), covering all categories of construction cost at a level commensurate with the level of detail available at the time, cost evaluations of alternate construction methods and systems (including the phasing and sequencing of the Work), consideration of alternative components, communications and data requirements and (if applicable) salvage or re-use of Owner's existing equipment. Each version of the Project Budget shall be in form (and include documentation) satisfactory to Owner.

§ 14.7.5 Design-Builder shall deliver to Owner Cost Estimates at intervals acceptable to Owner. Cost Estimates submitted by Design-Builder shall be prepared independently of any prepared by Owner and its consultants and shall be in Construction Specifications Institute ("CSI") Format or in another format otherwise approved by Owner. Design-Builder's Cost Estimates shall include all elements of the scope of the Project reflected on Design-Builder's most recent drawings and specifications. Design-Builder shall participate in meetings with Owner and the Owner's cost consultant (if any) to reconcile differences in their Cost Estimates. Design-Builder shall promptly prepare and submit to Owner a final reconciled version of each estimate for record purposes.

§ 14.7.6 Design-Builder shall identify discrepancies between actual and estimated costs and advise Owner whenever costs exceed budgets, estimates or the MACC.

§ 14.7.7 Design-Builder on request shall prepare, deliver, and update to Owner and Owner's representative a cash flow projection and an anticipated cost report for the Project, in a format approved by the Owner and keyed to the Project Budget and MACC, showing estimated monthly cash payments to each trade, and breaking out major expenditure categories, costs of permits, and other likely causes of material cash outlay. Also, Design-Builder shall submit updates of the cash flow projection with each monthly billing and with each update of the Project Budget, showing changes in requirements and amounts previously paid.

§ 14.8 As the Design-Builder progresses with Phase 1 design, the Design-Builder shall consult with the Owner and make recommendations regarding constructability and schedules, for the Owner's approval.

§ 14.9 The Design-Builder shall provide recommendations and information to the Owner regarding equipment, materials, services, and temporary Project facilities.

§ 14.10 Reserved

§ 14.11 Reserved

§ 14.12 Subcontractors and Suppliers

§ 14.12.1 If the Owner has provided requirements for subcontractor procurement in this Agreement, the Design-Builder shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 14.12.2 The Design-Builder shall develop subcontractor and supplier interest in the Project.

Article 15

§ 15 Procurement

§ 15.1.1 The Design-Builder shall prepare, for the Owner's review and acceptance, and well in advance of construction, a procurement schedule for items that must be ordered in advance of construction. The Design-Builder shall expedite and coordinate the ordering, procurement and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to the Design-Builder's procurement of any items prior to the commencement of Phase 2 services, the Design-Builder shall procure the items on terms and conditions acceptable to the Owner. The Owner shall not be obligated to pay for such items until bonded, insured, and confirmed as owned by Owner on terms satisfactory to Owner. If Owner decides not to engage the Design-Builder for construction, or otherwise at Owner's written request, the Design-Builder shall assign all contracts for these items to the Owner, conditioned on the Owner's payment for the items, and the Owner shall thereafter accept responsibility for them.

§ 15.1.2 Reserved

§ 15.3 Compliance with Laws

The Design-Builder shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 15.4 Reserved

§ 15.5 Design-Builder's Proposal

As used herein, "Design-Builder's Proposal" or "Guaranteed Maximum Price" means the maximum total price at which the Design-Builder agrees to provide all Work and other services to Owner in accordance with the terms and conditions of the Contract Documents and the scope of work for the Project.

§ 15.5.1 In accordance with the Project schedule, the Design-Builder shall prepare the Design-Builder's Proposal as a Guaranteed Maximum Price for the Owner's review in a form acceptable to Owner. The Guaranteed Maximum Price in the proposal shall be the sum of the Design-Builder's estimate of the Cost of the Work, the Contingency and the Design-Builder's Fee.

§ 15.5.2 To the extent that the Drawings and Specifications are anticipated to require and are identified to Owner to require further development, the Guaranteed Maximum Price includes the costs attributable to such further

development consistent with the Contract Documents and reasonably inferable therefrom. Design-Builder will identify and notify the Owner of the proposed Guaranteed Maximum Price increase or decrease resulting from a change in the Drawings or Specifications within 10 days after receipt of the same, or any such claim for a Guaranteed Maximum Price increase shall be barred. Notwithstanding any provision of the Contract Documents seemingly to the contrary, the Guaranteed Maximum Price shall not be increased without a concomitant increase to the scope defined at the time of establishment of the Guaranteed Maximum Price or the most recent Contract Price Amendment. Reductions in scope shall result in a concomitant reduction in the Guaranteed Maximum Price.

§ 15.5.3 The Design-Builder shall include with the Design-Builder's Proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Guaranteed Maximum Price proposal, including assumptions under this Agreement, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Contingency; and the Design-Builder's Fee;
- .4 The dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based, if not otherwise stated in this Agreement;
- .5 A schedule of values breaking down the Guaranteed Maximum Price Proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the Procurement Requirements; and
- .6 A date by which the Owner must accept the Design-Builder's Proposal.

§ 15.5.4 In preparing the Design-Builder's Proposal, the Design-Builder shall include its proposed contingency ("Contingency"), which shall not exceed 5% of the estimated Cost of the Work. The Contingency shall be applied by Design-Builder solely to cover unanticipated costs reimbursable as Cost of the Work that exceed the estimated Cost of the Work but are not included in a Change Order. Design-Builder's application of the Contingency shall not change the Guaranteed Maximum Price. Change Orders shall not increase the Contingency. The Contingency may be used only with the Owner's prior written authorization, which shall not be unreasonably withheld. The status of the Contingency will be evaluated by Owner and the Design-Builder on a regular basis to reallocate unused or unneeded Contingency to Owner, or to allow the Owner to potentially add scope, to enhance aspects of the Project, or otherwise pay for Change Orders without increase to the Guaranteed Maximum Price. Such reallocation shall be based on an evaluation of remaining risk to the Project, and such reallocation shall not be unreasonably opposed or delayed by the Design-Builder. The Design-Builder shall provide a monthly status of the Construction Contingency with each Application for Payment, including its specific line-item application and the basis therefor. Any portion of the Contingency not used or applied as provided above shall, at Owner's election, either be applied to pay for Owner-directed Change Orders or shall reduce the Guaranteed Maximum Price at the time of Substantial Completion.

§ 15.5.5 The Design-Builder shall meet with the Owner to review the Design-Builder's Proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 15.5.6 If the Owner notifies the Design-Builder that the Owner has accepted the Design-Builder's Proposal in writing before the date specified in the proposal, the Design-Builder's Proposal shall be deemed effective without further acceptance from the Design-Builder. Following acceptance of a Guaranteed Maximum Price, the Owner and Design-Builder shall execute the Contract Price Amendment amending this Agreement (on form acceptable to Owner). The Contract Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based, which shall be consistent with the Procurement Requirements.

§ 15.5.7 The Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Contract Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 15.5.8 The Design-Builder is responsible for confirming the Guaranteed Maximum Price proposal is consistent with the latest approved Plans and Specifications.

§ 15.5.9 The Design-Builder shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted, whether or not yet effective, at the time the Contract Price Amendment is executed, but only to the extent included in the definition of the Cost of the Work.

§ 15.5.10 Unless Owner directs otherwise, the Design-Builder shall not charge more than an amount stated in the Contract Price Amendment, for the Cost of the Work of all “general conditions” items of Design-Builder listed in Attachment E, which general conditions items shall be set forth as a not-to-exceed sum in the Contract Price Amendment (“General Conditions Maximum Charge”).

§ 15.5.11 Prior to execution of the Contract Price Amendment, Design-Builder shall not commence demolition or construction of any aspect of the Work unless Owner directs in writing to proceed on a time-and-materials basis, or unless Owner and Design-Builder have agreed upon a not-to-exceed price for such aspect of the Work.

§ 15.5.12 The Contract Price Amendment may include allowance amounts within the Guaranteed Maximum Price for the items of work identified in the Contract Price Amendment (“Allowances”). If the costs of any item to which an Allowance applies shall be greater than the amount of the Allowance, Design-Builder shall so notify Owner and if Owner authorizes the Allowance Work, the Construction Cost and Guaranteed Maximum Price shall be increased by such difference without adding any additional Construction Fee. If the cost of any item to which an Allowance applies shall be less than the amount of the Allowance, the Construction Cost and Guaranteed Maximum Price shall be decreased by the amount of such difference. Work covered under an Allowance shall be accounted for on the same basis as extra work (i.e., the same percentages for overhead and profit and general conditions that apply for extra work would be applicable to Allowance Work).

§ 15.5.13 The Contract Price Amendment may include line items for subcontract amounts within the Guaranteed Maximum Price for items of work identified in the Contract Price Amendment. Unless otherwise agreed, if the actual subcontract price for work to which the subcontract line-item number applies shall be less than the line-item amount of the subcontract in the Contract Price Amendment, the Construction Cost and Guaranteed Maximum Price shall be decreased by the amount of such difference.

§ 15.5.14 Any Design-Builder or subcontractor proposals referenced as part of the Contract Documents (whether herein, in the Contract Price Amendment, or any other amendment or change order) are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

§ 15.5.15 In the event the Owner determines, in its discretion, to authorize Work in advance of approval of the Design-Builder’s Proposal (“Early Work”), the Design-Builder shall not proceed with such Early Work without mutual execution of an amendment to this Contract stating the specifications, timing and price of such Early Work (“Early Work Amendment”). Permissible Early Work shall be limited to early procurement of materials and supplies, site development and related activities, and any other advance Work related to important components of the Project for which performance prior to establishment of the Contract Price will materially and positively affect the development or completion of the Project. Except in the event of emergency as approved in advance by Owner, no Early Work or Owner-directed Change Order work will proceed except on a lump-sum or not-to-exceed basis.

Article 16

§ 16 Construction

§ 16.1 The Design-Builder's representative will devote all of his or her time as necessary to the Project as may be appropriate to and consistent with full and timely performance of this Agreement by Design-Builder. The Design-Builder may not remove or replace Key Team Members, so long as they are employed under the Design-Builder, without thirty (30) calendar days’ advance written notice to the Owner. The Design-Builder will consult with the Owner and obtain the Owner’s approval of any new Key Team Members for the Project. New or replacement Key Team Members must have adequate experience with similar projects.

§ 16.2 The Design-Builder will perform this Agreement and render decisions in a timely manner to avoid delay in the progress of the Project and the Work of the Design-Builder or Sub-Contractors. The Design-Builder shall work cooperatively to obtain for the Owner the improvements covered by the Owner's program and scope of Work at the lowest cost consistent with quality workmanship, materials, and durability. The Design-Builder shall, at no cost to the Owner, promptly and satisfactorily correct any services Owner reasonably finds to be defective or not in conformity with the requirements of this Agreement.

§ 16.3 Progress Reports

§ 16.3.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders;
- .6 Pending Change Order status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 16.3.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's workforce report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 16.4 Design-Builder's Construction Schedules

§ 16.4.1 The Construction schedule, including the time required for design and construction, shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 16.4.2 The Design-Builder shall provide the Work in general accordance with the most recent schedules submitted to the Owner.

§ 16.4.3 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Consultants, and subcontractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Design-Builder and subcontractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its

consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications.

§ 16.4.4 Design-Builder's Submittals

§ 16.4.4.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in this Agreement, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 16.4.4.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

§ 16.4.4.3 The Design-Builder shall perform no portion of the Work for which the Contract Documents require Submittals until the Owner has approved the respective Submittal.

§ 16.4.4.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Contract Documents. The Work may deviate from the Contract Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Contract Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 16.4.4.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 16.4.4.6 The Design-Builder shall be and operate as an independent Contractor under this Contract and in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Design-Builder be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Design-Builder accepts the relationship of trust and confidence between Design-Builder and Owner and agrees to furnish its best professional skill, judgment and efforts to accomplish the Work in an expeditious manner consistent with the best interests of Owner. Design-Builder acknowledges that it has a relationship of special trust with Owner, and that Owner is relying on Design-Builder's expertise in entering into this Contract. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Design-Builder as an agent for or joint ventures with Owner.

§ 16.5 Labor and Materials

§ 16.5.1 Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 16.5.2 When a material or system is specified in the Contract Documents, the Design-Builder may make substitutions only in accordance with this Agreement.

§ 16.5.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit people or people not properly skilled in tasks assigned to them.

§ 16.5.4 The Design-Builder may make substitutions only with the consent of the Owner, after evaluation by the Owner and in accordance with a executed Change Directive or Change Order. After the Contract has been executed,

the Owner may consider a written request for the substitution of material or products in place of those specified in the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the Contract Sum or Time.

§ 16.5.5 By requesting a substitution, the Design-Builder represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the Contract Sum or Time due to the substitution, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Design-Builder will be responsible for the reasonable costs of any time the Owner expend in reviewing a Design-Builder substitution request. Should the Design-Builder request substitution with a material or system of lesser quality and/or cost, if approved by the Owner Representative, the Design-Builder shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

§ 16.5.6 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract. The Design-Builder shall not permit employment of unfit people or people not skilled in tasks assigned to them. The Owner may require in writing the Design-Builder to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Design-Builder shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by Owner.

§ 16.5.7 The Design-Builder agrees that each of its employees, subcontractors' employees and principals/owners involved in the Work may, at the option of the Owner, be subject to a security check, at any time, through the local police department or other venue. Notwithstanding the foregoing, Design-Builder, and not the Owner, remains solely responsible for performing background checks on, and screening for public safety all subcontractors at any tier and employees, and, to the extent allowed by law, shall provide such screening methodologies and information to Owner upon request.

§ 16.5.8 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 16.5.9 Except for those persons or entities already identified or required in the Contract Price Amendment, the Design-Builder, as soon as practicable after execution of the Contract Price Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any proposed person or entity or (2) that the Owner requires additional time for review.

§ 16.5.9.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 16.6 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Contract Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner as a record of the Work as constructed.

§ 16.7 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 16.8 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cut or otherwise altering the Work.

§ 16.9 Cleaning Up

§ 16.9.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 16.9.2 If the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 16.10 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 16.11 Mutual Responsibility

§ 16.11.1 The Design-Builder shall afford the Owner and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Contract Documents.

§ 16.11.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except to defects not then reasonably discoverable.

§ 16.11.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 16.11.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors.

§ 16.12 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

§ 16.13 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Contract Documents.

§ 16.14 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Consultants, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 16.15 The Owner has the authority to reject Work that does not conform to the Contract Documents. The Owner shall have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, Consultants,

subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 16.16 The Owner shall determine the date or dates of Substantial Completion and the date of final completion in accordance with this Agreement.

§ 16.17 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

§ 16.18 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 16.19 Decisions to Withhold Certification

§ 16.19.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Contract Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in this Agreement. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of:

- .1 defective Work, including design and construction, not remedied (150% of the corrective cost may be withheld);
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the design professionals, Consultants, subcontractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 any other grounds for withholding under the Agreement or at law.

§ 16.19.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 16.19.3 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 16.19.4 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and all manuals, including O&M manuals and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 16.20 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of removing its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made. The Owner shall never be obligated to accept nonconforming Work.

§ 16.21 EFFECTS OF TERMINATION BY OWNER

§ 16.21.1 Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner, the Design-Builder shall promptly:

- .1 Stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- .3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 Assign to the Owner all of the right, title and interest of the Design-Builder under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts. Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 Use its best efforts to sell any property of the types referred to in this section. The Design-Builder shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Design-Builder;
- .8 Take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Design-Builder in which the Owner has an interest; and
- .9 Continue performance only to the extent not terminated.

§ 16.21.2 The Design-Builder shall, from the effective Date of Termination until the expiration of three years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Design-Builder, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Design-Builder under this Contract and relating to the terminated Work.

§ 16.21.3 In arriving at any amount due the Design-Builder after termination, in addition to any other permitted deductions, the following deductions shall be made:

- .1 All un-liquidated advance or other prior payments on account made to the Design-Builder applicable to the terminated portion of the Contract;
- .2 Any claim pursued under the Contract which the Owner may have against the Design-Builder, including without limitation liquidated damages;
- .3 An amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 The agreed priced for or the proceeds of sale of any materials, suppliers or other things acquired by the Design-Builder or sold, pursuant to the provisions of this Agreement, and not otherwise recovered by or credited to the Owner.

§ 16.21.4 The Design-Builder shall refund to the Owner any amounts paid by the Owner to the Design-Builder in excess of costs reimbursable under the Contract Documents.

§ 16.21.5 The Owner may have costs reimbursable under this Agreement audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Design-Builder.

§ 16.21.6 To the fullest extent allowed by law, the damages and relief from termination by the Owner specifically provided in this Agreement shall be the Design-Builder's sole entitlement in the event of termination.