

## DESIGN CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and INTEGRATED COMMUNITY DEVELOPMENT, a limited liability company (Design-Build Entity), as follows:

### RECITALS

WHEREAS, the City desires to obtain professional design services for the design of plans and general construction contract documents for the Senior Activity Center at 4343 North Blackstone Avenue (Project); and

WHEREAS, the City desires to utilize a Progressive Design Build delivery method to design and build the Project; and

WHEREAS, the selected design-build team composed of [DESIGN-BUILDER NAME] and its sub-consultants, including architects and engineers from [SUB-CONSULTANTS NAME], shall provide design services and hereby represents that it desires to and is professionally and legally capable of performing the services call for by this Agreement; and

WHEREAS, this Agreement will be administered for the City by its Department of Public Works Director (Director) or designee.

1. Contract Documents. The “Request for Qualifications”, “Specifications”, the “DBIA Progressive Design Build Agreement”, as modified, and the “DBIA Standard Form of General Conditions of Contract Between Owner and Design-Builder”, as modified, for design services related to a Senior Activity Center at 4343 North Blackstone Avenue, copies of which are annexed hereto as part of Exhibit 1, together with all the documents specifically referred to in said annexed documents, are hereby incorporated into and made part of this Contract, and shall be known as the Contract Documents.
2. Price. For the monetary consideration of \$634,117, as set forth in **Exhibit 1**, Design-Builder promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of the City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.
3. Payment. The City accepts the Design-Builder’s Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Design-Builder agrees to accept electronic payment from the City.
4. Scope of Services. Design-Builder shall perform the services described herein and in **Exhibit 1** to complete the design of the Project more fully described in **Exhibit 1**, and this shall include all work incidental to, or necessary to perform, such design services even though not specifically described in **Exhibit 1**. By entry into this Agreement and upon City’s issuance of a written “Notice to Proceed”, City

contracts for the services in Phase One for design. Design-Builder shall not perform any other Phase of the Agreement, and this Agreement shall not be a contract for any other Phase, until further performance is authorized by City's issuance of a written "Notice to Proceed" for such additional phase(s). It shall, however, remain Design-Builder's offer to perform all remaining phases described herein. In the event Design-Builder performs without City's prior written authorization, Design-Builder will not be entitled to compensation for such services.

The DBIA Design Build Agreement (Agreement), as modified, contains additional terms and conditions related to this Contract. In the event of a conflict between this Contract and the Agreement, this Contract shall take precedence. However, if this Contract does not address a legal issue for this Project, the parties shall be governed by the provisions of the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Design-Builder's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,  
A California municipal corporation

INTEGRATED COMMUNITY  
DEVELOPMENT,  
A limited liability company

By: \_\_\_\_\_  
Scott Mozier  
Public Works Director  
Public Works Department

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

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Title: \_\_\_\_\_  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

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

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Brandon M. Collet  
Supervising Deputy City Attorney  
City Attorney's Office

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

Dated: \_\_\_\_\_

ATTEST:  
TODD STERMER, CMC  
City Clerk

REVIEWED BY:  
[NAME]  
[TITLE]

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

\_\_\_\_\_

Dated: \_\_\_\_\_

Addresses:  
CITY:  
City of Fresno  
Attention: Mike Mooneyham, PE,  
Professional Engineer  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-8623  
E-mail: mike.mooneyham@fresno.gov

DESIGN-BUILDER:  
INTEGRATED COMMUNITY  
DEVELOPMENT  
Attention: Jake Lingo, Senior Vice  
President  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364  
Phone: 818-974-2966  
E-mail: jakelingo@icdemail.com

Attachment:

Exhibit 1 – Contract Documents including Scope of Services

Exhibit A – Owner’s Project Criteria

Exhibit C – Federal Requirements

Exhibit D – (Intentionally Omitted)

Exhibit E – Disclosure of Conflict of Interest

Federal Wage Rates

General Conditions

# Progressive Design- Build Agreement

## EXHIBIT 1

**Document No. 544**

Second Edition, 2022

© Design-Build Institute of America  
Washington, D.C.





# Progressive Design-Build Agreement

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2023, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

*City of Fresno  
2600 Fresno Street  
Fresno, CA 93721*

**DESIGN-BUILDER:**

*Integrated Community Development  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364*

**PROJECT:**

*Senior Activity Center 4343 North Blackstone Avenue*

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

## **Article 1**

### **General**

- 1.1 Duty to Cooperate. 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 this Agreement
- 1.2 Definitions. Terms, words, and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")
- 1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### 2.1 General Services.

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

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

#### 2.2 Phased Services.

2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.1.1 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of 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 Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 2.3.

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

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

2.3.1.1 The Contract Price shall be in accordance with Section 7.1

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

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

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

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

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

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

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

2.3.2 Review and Adjustment to Proposal.

2.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the 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 Proposal.



2.3.2.2 Acceptance of Proposal. If Owner accepts the 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 (Contract Price Amendment). 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 Contract Price Amendment, as it may be revised.

2.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the 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 Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.2 above;
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

2.3.2.4 If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 2.3.2.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.3 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 2.3.2.3(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 Documents**

3.1 The Contract Documents are comprised of the following:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

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

3.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

- 3.1.4 The General Conditions of Contract;
- 3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- 3.1.6 Exhibit B, Scope of Services; and
- 3.1.7 The following other documents, if any:

## **Article 4**

### **Interpretation and Intent**

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

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

4.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

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

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

## **Article 5**

### **Ownership of Work Product**

5.1 Any reports, information, or other data prepared or assembled by the Design Builder pursuant to this Agreement shall not be made available to any individual or organization by the Design Builder without the prior written approval of the City. During the term of this Agreement, and thereafter, the Design Builder shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models,

source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

5.2 Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Design Builder pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Design Builder. The Design Builder grants the City a copyright license to use such drawings and writings. The Design Builder shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings, and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by the Design Builder will be at the City's sole risk and without liability or legal exposure to the Design Builder. The Design Builder may keep a copy of all drawings and specifications for its sole and exclusive use.

5.3 If the Design Builder should subcontract all or any portion of the services to be performed under this Agreement, the Design Builder shall cause each subcontractor to also comply with the requirements of this Section 5.

5.4 This Section 5 shall survive expiration or termination of this Agreement.

## **Article 6**

### **Contract Time**

6.1 **Date of Commencement.** The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 **Substantial Completion and Final Completion.**

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

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.14 of the General Conditions of Contract.

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

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

6.4 **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by \_\_\_\_\_

(\_\_\_\_\_) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. (If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any), or Final Completion.

## **Article 7**

### **Contract Price**

#### 7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Six Hundred Thirty-Four Thousand One Hundred Seventeen Dollars (\$634,117) 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.

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

7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

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

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of TEN percent (10%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit hereto.

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

***[Check one box only.]***

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

or

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

7.4 Design-Builder's Fee: Not used

7.5 Cost of the Work.

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

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

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

7.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in the Design-Builder's Proposal and performing the function set forth in said Proposal. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a TEN percent (10%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

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

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

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

7.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

7.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

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

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

7.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

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

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

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

7.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

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

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

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

7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

7.5.1.21 Accounting and data processing costs related to the Work.

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

***[Design-Builder and Owner may want to consider adding the following Section 7.5.1.23 to address the payment of warranty work.]***

7.5.1.23 Owner and Design-Builder agree that an escrow account in the amount of Six Hundred Thirty-Four Thousand One Hundred Seventeen Dollars (\$634,117) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

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

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

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

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

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

7.6 The Guaranteed Maximum Price.

7.6.1 Design-Builder guarantees that it shall not exceed the GMP of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).*

7.6.2 The GMP includes a Contingency in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

***[Choose one of the following.]***

\_\_\_\_\_ FIFTY \_\_\_\_\_ percent (50%) to Design-Builder and  
\_\_\_\_\_ FIFTY \_\_\_\_\_ percent (50%) to Owner.

or

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

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

7.7 Allowance Items and Allowance Values.

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

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

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

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

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.



7.8 Performance Incentives.

7.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in the Design-Builder's Proposal.

## Article 8

### Procedure for Payment

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: (Insert terms.)

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the FIFTEENTH (15TH) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

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

8.3 Retainage on Progress Payments.

8.3.1 Owner will retain FIVE percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

8.3.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

***[If Owner and Design-Builder have established a warranty reserve pursuant to Section 7.5.1.23 above, the following provision should be included.]***

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final

Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

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

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

8.7 Prompt Progress Payment to Subcontractors.

All Contracts and Subcontracts (all tiers), shall contain the following provisions:

8.7.1 Prompt Payment To Subcontractors A Design-Builder, prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the Owner's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the Design-Builder, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both low-and very low-income prime contractors and subcontractors as well as those that are not.

8.7.2 Prompt Payment Of Funds Withheld To Subcontractors. The Owner shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Owner of the contract work and pay retainage to the Design-Builder based on these acceptances. The Design-Builder, prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Owner. Federal regulations (49 CFR 26.29) require that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both low-and very low-income prime contractors and subcontractors as well as those that are not.

## Article 9

### Termination for Convenience

9.1 Upon ten (10 days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

9.1.1 All services performed and Work executed and for proven loss, cost, or expense in connection with the services and Work;

9.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

*[Choose one of the following.]*

The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

or

Overhead and profit in the amount of TEN percent (10%) on the sum of items 9.1.1 and 9.1.2 above.

9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

9.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid ZERO percent (0%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid TEN percent (10%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.3 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 5 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

## Article 10

### Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Scott Mozier, PE  
Public Works Director  
2600 Fresno Street  
Fresno, CA 93721

559-621-8650

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Mike Mooneyham, PE  
Professional Engineer  
2600 Fresno Street  
Fresno, CA 93721  
559-621-8623

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Benjamin Lingo  
Principal  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364  
818-974-9246

Charles Brumbaugh  
Principal  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364  
818-974-9395

10.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Jake Lingo  
Senior Vice President  
20750 Ventura Boulevard, Suite 155  
Woodland Hills, CA 91364  
818-974-2966

## Article 11

### **Bonds and Insurance**

11.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

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

Performance Bond.

***(Check one box only. If no box is checked, then no bond is required.)***

Required                       Not Required

Payment Bond.

***[Check one box only. If no box is checked, then no bond is required.]***

Required                       Not Required

Other Performance Security.

***[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]***

Required                       Not Required

## Article 12

### **Other Provisions**

12.1 Other provisions, if any, are as follows: (Insert any additional provisions.)

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner’s Project Criteria

Exhibit B – Scope of Services

Exhibit C – Federal Requirements

Exhibit D – (Intentionally Omitted)

Exhibit E – Disclosure of Conflict of Interest

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")

Contract Price Amendment, if any.

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

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
Scott Mozier, PE  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
Public Works Director  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Washington, DC 20004

(202) 682-0110  
[dbia@dbia.org](mailto:dbia@dbia.org)

## EXHIBIT A

### OWNER'S PROJECT CRITERIA

#### Progressive Design-Build Agreement Between

#### City of Fresno (City) and Integrated Community Development (Design-Build Entity)

#### SENIOR ACTIVITY CENTER AND AFFORDABLE HOUSING PROJECT

### 1. Project Delivery and Objectives

- 1.1. The Senior Activity Center (Center) and Senior Affordable Housing Project (Housing) will be designed and constructed in two phases using the progressive design-build delivery method as follows:
  - 1.1.1. Preconstruction Phase (Phase One): Prepare design to approximately 80 percent complete and establish a Guaranteed Maximum Price (GMP) proposal.
  - 1.1.2. Construction Phase (Phase Two): Upon award of a contract for the GMP or lump-sum price by the Owner, complete design, construction, and post-construction tasks including site facilities testing, as-built recording, warranty, and support.
- 1.2. Construction will consist of a 30,000 square foot Senior Activity Center as well as up to 100 units of Senior Affordable Housing. The City intends to own, manage, and operate the Senior Activity Center; while the Design-Build Entity will own, manage and operate the Senior Affordable Housing.
- 1.3. The site shall be designed to accommodate the Senior Activity Center and affordable housing units, optimizing use of shared spaces (e.g., parking and other amenities) as much as possible. Together Center and Housing shall be referred to as the Facility.
- 1.4. The Senior Activity Center must be located on parcel 426-253-17 and the Senior Affordable Housing must be developed on parcel 426-253-19.
- 1.5. The City's objectives for delivery of the Project are as follows:
  - 1.5.1. Design a high-quality Center, while engaging with the community to include needed features and amenities
  - 1.5.2. Deliver a high-quality Facility in accordance with industry construction standards within the prescribed schedule and budget
  - 1.5.3. Ensure a high degree of cost and schedule certainty
  - 1.5.4. Achieve an optimal balance of risk allocation between the City and the Design-Builder
  - 1.5.5. Develop the two City owned parcels in a coordinated, efficient, and complimentary manner to best serve the targeted senior community
  - 1.5.6. Provide a Center to offer classes, activities, and resources to support, enhance and encourage an active healthy lifestyle for an active senior population
  - 1.5.7. Provide a safe, comfortable, and accessible environment for senior living and socializing

### 2. Communications and Submittals

- 2.1. Regular meetings will be held through the life of the project. The Owner and Design-Builder will work together to determine the appropriate frequency, duration, and format (virtual or in-person).



- 2.2. All document submittals must be addressed to the Project Manager for the City of Fresno. Document delivery may be via email, mail, Microsoft Teams, or file transfer protocol. A transmittal cover sheet must be utilized for all document submittals.

### **3. Funding and Financing**

- 3.1. The work hereunder constitutes a “public work” as defined in Chapter 1, Part 7, Division 2 of the California Labor Code, and Contractor shall cause the work to be performed as a “public work” in accordance with such Chapter of the California Labor Code. The Council of the City of Fresno has adopted Resolution No. 82 297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of worker needed in the execution of Contracts for the City. Information specific to the Work to be done under this Contract can be obtained by contacting the Contract Compliance Officer at the City of Fresno office of Construction Management, (559) 621-5600.
- 3.2. This is a federal project funded in full or in part by the Community Development Block Grant (CDBG) Program as administered by the U.S. Department of Housing and Urban Development (HUD). This project is subject to the payment of minimum wages mandated by the Davis-Bacon Act of 1931. A copy of the Federal wage rates is enclosed in the contract Agreement between the Owner and Design-Builder.
- 3.3. This project is subject to the payment of State or Federal wage rates, whichever rate is higher.
- 3.4. The successful Design-Build Entity will be responsible for financing the Senior Affordable Housing Development.
- 3.5. The City may contribute an amount, to be determined through development proposals submitted in response to the City’s Affordable Housing Development Notice of Funding Availability, toward the Senior Affordable Housing Development. All funds contributed to this Development may consist of a combination of Federal, State, or local sources. Without this contribution the Housing is infeasible. However, this does not commit the City to provide any funds towards the development of the Housing.
- 3.6. A ground lease and service contract will be negotiated between the selected Design-Build Entity and the City, for a period of 55 years, for the Senior Affordable Housing Development.
- 3.7. The site located at 4323-4333 N. Blackstone Ave, Fresno, California, (APN 426-253-19) is owned by the City and will remain under the City’s ownership.
- 3.8. The Design-Builder will enter into a development agreement for a low-cost, long-term ground lease transaction for the Senior Affordable Housing site and agrees to accept the Housing Property in its present state and condition, as-is.
- 3.9. The Property was purchased using a combination of Community Development Block Grant funds and Measure P funds and has been determined by the Fresno City Council and the State’s Housing and Community Development Department (HCD) to be surplus exempt property under a qualifying exemption but is still subject to certain conditions of the Surplus Land Act and the requirements of California Government Code §§ 54220-54234.

### **4. Site Overview**

- 4.1. This site consists of two contiguous parcels: Fresno County Tax Assessor Parcels 426-253-17 and 426-253-19. The site is located west of Blackstone Avenue, between Holland and Swift Avenues, as shown below (Figure 1). The northern parcel has been vacated and will be demolished to allow for the development of a Senior Activity Center. The southern parcel currently has tenants that will be relocated by City to allow for demolition and the development of Senior Affordable Housing.



Figure 1: Site Location

4.2. For information on allowable land uses, please reference the link below:

[https://library.municode.com/ca/fresno/codes/code\\_of\\_ordinances?nodid=MUCOFR\\_CH15CIDECOINRE\\_PTIIBAOVDI\\_ART11MIEDIMX&showChanges=true](https://library.municode.com/ca/fresno/codes/code_of_ordinances?nodid=MUCOFR_CH15CIDECOINRE_PTIIBAOVDI_ART11MIEDIMX&showChanges=true)

4.3. APN 426-253-17 (Senior Activity Center):

4.3.1. Zoning Highlights

- Size: 4.25 Acres
- Zoning: CMX (Corridor/Center Mixed-Use District)
- The CMX district is intended to allow for either horizontal or vertical mixed-use development along key circulation corridors in the city where height and density can be easily

accommodated. Ground-floor retail and upper-floor residential or offices are the primary uses, with residential uses, personal and business services, and public and institutional space as supportive uses. Development will facilitate the transformation of existing transportation corridors into vibrant, highly walkable areas with broad, pedestrian-friendly sidewalks, trees, landscaping, and local-serving uses with new buildings that step down in relationship to the scale and character of adjacent neighborhoods.

- Residential Density du/ac: 16 Minimum, No Maximum
- Height (Maximum): 60 Feet

4.4. APN 426-253-19 (Senior Affordable Housing):

4.4.1. Zoning Highlights

- Size: 1.26 Acres
- Zoning: CMX (Corridor/Center Mixed-Use District)
- The CMX district is intended to allow for either horizontal or vertical mixed-use development along key circulation corridors in the city where height and density can be easily accommodated. Ground-floor retail and upper-floor residential or offices are the primary uses, with residential uses, personal and business services, and public and institutional space as supportive uses. Development will facilitate the transformation of existing transportation corridors into vibrant, highly walkable areas with broad, pedestrian-friendly sidewalks, trees, landscaping, and local-serving uses with new buildings that step down in relationship to the scale and character of adjacent neighborhoods.
- Residential Density du/ac: 16 Minimum, No Maximum
- Height (Maximum): 60 Feet

4.5. Utilities:

4.5.1. The site has access to:

- Water (City of Fresno)
- Trash (City of Fresno)
- Sewer (City of Fresno)
- Storm Water (Fresno Metropolitan Flood Control)
- Gas (PG&E)
- Electric (PG&E)

**5. Senior Activity Center Scope of Work**

5.1. The size of the facility and specific site features and amenities will be determined through a community engagement process and may include features such as community education rooms, aquatic facilities, a commercial kitchen, multi-purpose spaces, and indoor and outdoor recreational and fitness facilities. All aspects of the design should prioritize accessibility. The exact size of the Senior Activity Center will be determined based on the feature selection following community engagement, but 30,000 square feet of indoor space is anticipated. The building may be multi-story or single-story depending on various factors such as community input and budget.

- 5.2. The Design-Builder shall include the following systems in the facility and shall work with the City to define the requirements during the design phase. These systems include, but are not limited to:
- 5.2.1. Building Management System Metasys (or similar system) for the purpose of integrating and controlling energy efficient lighting and HVAC systems
  - 5.2.2. Emergency standby generator
  - 5.2.3. Access control
  - 5.2.4. Interior and exterior security cameras
  - 5.2.5. Security system
  - 5.2.6. IDF Rooms
  - 5.2.7. Structural cabling for network communication
  - 5.2.8. Low voltage cabling
  - 5.2.9. Fiber connectivity between buildings/future buildings
  - 5.2.10. City standard enterprise networking equipment (switches, access points, voip phones) from Cisco
  - 5.2.11. Install a locking lid Christy P-48 vault and 4" conduit from the outside the Senior Activity Center to the MPOE.
  - 5.2.12. Directional bore to install (2) 1.5" HDPE conduits from the new Senior Activity Center vault to the existing ITS vault on the east side of Blackstone Avenue.
  - 5.2.13. Install, terminate, and splice a 144-count fiber optic cable from the Senior Activity Center MPOE to the existing ITS vault.
  - 5.2.14. Install Conduits for future EV Charging Infrastructure

## **6. Community Engagement Process**

- 6.1. The City, in collaboration with Southwest Strategies, is facilitating the first phase of the community engagement process July 5 – August 30, 2023, including the staffing of a Senior Center Outreach Headquarters; a nine (9) meeting workshop series; survey gathering; and door-to-door campaigning.
- 6.2. The Design-Builder shall actively participate in the first phase of the engagement process including:
- 6.2.1. Attendance of at least one-half (1/2) of the scheduled in-person community meetings.
  - 6.2.2. Provide, at minimum, one (1) staff member for 20 hours per week for purposes of staffing the Senior Center Outreach Headquarters through August 30, 2023.
  - 6.2.3. Provide data-entry support for physical paper surveys.
- 6.3. The Design-Builder shall propose a second phase of the community engagement process to include:
- 6.3.1. At minimum seven (7) in-person and two (2) hybrid/virtual community meetings for purposes of presenting and collecting feedback on the Design-Builder's schematic design. Including all collateral required for advertising in print, digital, and social media.
  - 6.3.2. At minimum, one (1) in-person and one (1) hybrid/virtual community meetings for purposes of presenting the final Design-Builder's 80%/Pre-construction design to the public. Including all collateral required for advertising in print, digital, and social media. Recommended in-person meeting location is the Senior Center Outreach Headquarters.

- 6.3.3. All materials presented to the public, in any medium, must be translated into Hmong, Spanish, and Punjabi by the Design-Builder or their sub-consultant and submitted to the City for review and approval prior to public release, unless explicitly approved by the City.
- 6.3.4. Provide, at minimum, one (1) staff member for 40 hours per week for purposes of staffing the Senior Center Outreach Headquarters beginning September 1, 2023, until such time the building will be demolished, or Design-Builder has entered the Construction phase, whichever comes first.

## **7. Senior Affordable Housing Development Scope of Work**

- 7.1. Affordable rental housing development for Seniors, consisting of studio, one bedroom, and two-bedroom units. Development to also include parking, which may be shared with the neighboring activity center.
- 7.2. The proposed development and affordability restrictions support the findings that the property qualifies as exempt from the California Surplus Land Act as stated in Government Code Section 37364(a) which requires:
  - 7.2.1. Minimum of 80% of the area of any parcel shall be used for development of housing (remaining 20% could be ancillary commercial or park/open space use);
  - 7.2.2. Not less than 40% of the total number of housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to, or less than, 75 percent of the maximum income of lower income households (80% of area median income) and at least half of which (20% of the units) shall be affordable to very low-income households (50% of area median income); and
  - 7.2.3. Dwelling units shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years and shall be recorded against the property; and
  - 7.2.4. Other income restrictions shall apply depending on funding sources. In addition, the site may be subject to the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program requirements for very low-, low- and moderate-income housing, and any other affordability requirements of proposed funding sources.
- 7.3. HCD requires that a Covenant or Restriction to be recorded on the Property. The affordable covenant/restriction states if 10 or more units of housing is ever built on the property 15% of the units must remain affordable for 45-55 years (depending on whether rental or owner-occupied units.)

## **8. Sustainability**

- 8.1. All development must meet or exceed the requirements as stated in the following:
  - 8.1.1. Fresno Municipal Code Section 4-116
  - 8.1.2. California Building Energy Efficiency Standards – Title 24

## **9. Standard Drawings and Standard Specifications**

- 9.1. The development of the Senior Activity Center and Affordable Housing must be in compliance with City of Fresno Standard Drawings and Standard Specifications.
- 9.2. For information on City of Fresno Standard Drawings and Standard Specifications, please reference the link below:

<https://www.fresno.gov/publicworks/developer-doorway/#tab-8>

## 10. Environmental Clearance

10.1. The City has completed an Environmental Assessment for the development of both parcels, with a Finding of No Significant Impact [24 CFR 58.40(g)(1); 40 CFR 1508.27] (Attachment D). It will ultimately be the responsibility of the Design-Builder to ensure all environmental requirements/mitigations are completed as part of the Environmental Assessment Findings, as shown below:

### 10.1.1. Mitigation Measures and Conditions [40 CFR 1505.2(c)]

- Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

### 10.1.2. Clean Air - Compliance Measures:

- According to the San Joaquin Valley Air Pollution Control District (District), the Project specific annual criteria pollutants emissions from construction and operation emissions of are not expected to exceed any of the District significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI). Other potential air quality impacts related to Toxic Air Contaminants, Ambient Air Quality Standards, Hazards and Odors, may require assessments and mitigation. In addition, the Project may be subject to other District rules, which include but are not limited to: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), Rule 4702 (Internal Combustion Engines - Phase 1), Rule 4201 (Internal Combustion Engines - Phase 2), and Rule 4101 (Visible Emissions).

### 10.1.3. Contamination and Toxic Substances [24 CFR Part 50.3(i) & 58.5(i)(2) - Mitigation Measures:

- Mitigation Measures may be required if the following conditions are encountered during redevelopment of the subject site:
  - Former fuel storage tank(s) and/or piping or impacts to soil from former fuel storage tanks and/or piping are identified
  - Impacts to soil in the vicinity of the former dry cleaners or auto repair are identified
  - Asbestos and/or lead based paint is identified in building materials upon completion of the comprehensive surveys

10.2. A qualified consultant should be contacted to assess potential subject site impacts and to support compliance with regulatory requirements. Mitigations measures may include a limited subsurface investigation to assess potential soil, soil gas, and/or groundwater impacts.

10.3. At the time the Environmental Assessment, there were no plans to renovate or demolish the multi-tenant commercial buildings along the southern portion of the subject site. However, further environmental analysis is planned to evaluate the impacts of demolishing these buildings to development Senior Affordable Housing.

## EXHIBIT B

### SCOPE OF SERVICES

#### Progressive Design-Build Agreement Between

#### City of Fresno (City) and Integrated Community Development (Design-Build Entity)

#### Senior Activity Center

##### Scope of Work

The City seeks to develop a new Senior Activity Center and Affordable Housing on two contiguous City-owned properties in central Fresno, located at 4323-4343 North Blackstone Avenue (APN 426-253-19 and APD 426-253-17). The new development will expand services to the community by connecting seniors to vital resources such as the senior hot meal program, health and fitness programs, wellness programs, transportation services, volunteer opportunities, educational and arts programs, and technology programs.

The size, specific site features, and amenities of the Senior Activity Center will be determined through a community engagement process and may include features such as community education rooms, aquatic facilities, a commercial kitchen, multi-purpose spaces, and indoor and outdoor recreational and fitness facilities. All aspects of the design should prioritize accessibility. The exact size of the Senior Activity Center will be determined based on the feature selection following community engagement, but a minimum of 30,000 square feet of indoor space is anticipated. The building may be multi-story or single-story depending on various factors such as community input and budget. The site shall be designed to accommodate the Senior Activity Center and up to 100 units of affordable housing, optimizing use of shared spaces (e.g., parking, and other amenities) as much as possible.

##### Scope of Services – Preconstruction Services Phase 1

- Task 01 – Site Assessment
  - Review and verify project site and existing conditions
  - Review zoning regulations
  - Review regulatory requirements and planning and development standards
  - Review existing technical documentation, surveys, and engineering reports
  - Survey subsurface utility locations
  - Perform additional engineering studies as required to support design and cost estimating
  - Provide geotechnical testing as required
- Task 02 – Preliminary Master Site Plan
  - Develop a Master Site Plan concept to be utilized as the initial starting point for public engagement
- Task 03 – Community Engagement Campaign
  - Develop a community engagement campaign to engage the community in the design process
  - Review previously gathered community feedback defining needed features and amenities and potentially meet with prior consultant(s) if necessary



- Prepare materials for and lead inclusive community engagement initiatives, including community meetings
- Present design development plans (up to and including 80%) at community meetings, gather additional feedback, and incorporate in subsequent designs
- Provide materials and engagement opportunities in accessible settings in multiple languages to include at minimum English, Spanish, Hmong, Punjabi, and ASL
- Provide thoughtful leadership in innovative or nontraditional means of engaging hard-to-reach individuals and communities
- Social media, print, radio, television, mail, etc.
- Provide one staff member for 40 hours per week at the Senior Center Outreach Headquarters as specified in the Owner's Project Criteria
- Task 04 – Plan Development
  - Develop the architectural/engineering design (including preparing and submitting intermediate design review packages) based on active engagement with the community and City
  - Provide an Opinion of Probable Construction Cost with each plan revision
  - Confirm adequacy of existing NEPA/CEQA documentation as design progresses
- Task 05 – Proposed Design and Cost Assessment
  - Produce the basis-of-design report and preliminary cost estimate
  - Summarize preliminary design criteria
  - Develop preliminary design including preliminary drawings and technical specification outlines
  - Develop proposed schedule
  - Regulatory requirements and permit acquisition planning
  - Develop project budget estimate
- Task 06 - Project Management:
  - Develop and implement Project Management Plan
  - Develop and implement Quality Plan
  - Develop and implement Change Management Plan
  - Develop a project execution plan and project schedule
  - Administer bi-weekly team meetings and updates with City staff
  - Submit progress reports as required
  - Submit progress payment and invoicing documentation
  - Prepare a project cost model and provide detailed cost estimates as the design and design alternatives are advanced
  - Prepare, submit, and negotiate a GMP or lump-sum price to complete the Construction Services Phase 2:
    - GMP proposal development
    - Final construction work plan and schedule development
    - Final regulatory and permitting plan



- Phase 2 contract finalization and negotiation meetings

**Compensation**

Compensation for all services described above. Fees will be billed monthly in accordance with the work completed.

**PRECONSTRUCTION SERVICES PHASE 1**

**\$ 634,117**

**Additional Service Fees**

There would be no additional services without prior written authorization by the City.

**Schedule**

Time allotted for each phase is described in detail in Agreement Section 1 Scope of Services and is summarized below.

Part 1: Programming and Schematic Design	60 calendar days
Part 2: Design Development Phase	90 calendar days
Part 3: Construction Document Phase	120 calendar days
Part 4: Bidding Phase Assistance	No defined duration
Part 5: Construction Phase Assistance	No defined duration

**EXHIBIT C**  
**FEDERAL REQUIREMENTS**

**Requirements Checklist**

	<b>Federal Requirement</b>	<b>Applicability Threshold</b>
I	False Information	All Contracts
	Access to Project Site and Records	
	Equal Employment Opportunity Form: Certification of Compliance of Affirmative Action (only required for non-construction contracts more than \$50,000)	
	Suspension and Debarment	
	Subcontracting with Small, Minority Firms, and Women's Business Enterprises Form: Good Faith Effort Solicitation List Form: Good Faith Effort Certification	
	Procurement of Recovered Materials	
	Energy Efficiency	

	<b>Federal Requirement</b>	<b>Applicability Threshold</b>
II	Anti-Lobbying	Contracts in excess of \$100,000
III	Clean Air Act	Contracts in excess of \$150,000

	<b>Construction Contracts</b>	<b>Applicability Threshold</b>
IV	Accessibility Requirements	All Construction Contracts
V	Federal Labor Standards Form: Current DB Wage Determination	Construction contracts in excess of \$2,000
VI	Contract Work Hours and Safety Standards	Contracts in excess of \$100,000 that involve the employment of mechanics or laborers
VII	Section 3 Clause Form: Section 3 Plan Form: Section 3 Assurance Form: Section 3 Workforce Breakdown Form: Section 3 Subcontract Breakdown	Contracts that (1) involve public construction, housing rehabilitation, or housing construction and (2) are in excess of \$100,000
VIII	Bonding Requirements	For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$250,000 as of March 2018)

## CDBG REQUIREMENTS

### **False Information**

Bidder is advised that providing false, fictitious or misleading information with respect to CDBG funds may result in criminal, civil or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801 or another applicable statute. Bidder shall promptly refer to City and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds. Bidder shall ensure that contractual language in third party contracts enforces these provisions.

### **Access to Project Site and Records**

Bidder will provide access to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Contractor will retain all required records for three years after final payments are made and all other pending matters are closed.

Bidder will provide suitable access to the project site at all reasonable times during construction to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives. Contractor shall also meet all reporting requirements to allow City to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282).

### **Equal Employment Opportunity**

Bidder shall abide by all Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. All contracts and subcontracts entered into will contain the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an

## CDBG REQUIREMENTS

investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### ***Reporting Requirements***

Bidder and any proposed subcontractor shall comply with the filing requirements of 41 CFR §60-1.7 by filing Standard Form 100 (EEO-1) ***only if*** (1) the bidder has 50 or more employees; and (2) the contract value will be greater than \$50,000.

Bidder and any proposed subcontractor shall complete the Affirmative Action Program Certification of Compliance ***only if*** (1) the bidder has 50 or more employees; (2) the work is for non-construction supply or service; and (2) the contract value will be greater than \$50,000.

### ***Elimination of Segregated Facilities***

Bidder shall ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

## CDBG REQUIREMENTS

### **Suspension and Debarment**

By submitting a bid/proposal under this solicitation, the Bidder certifies that neither it nor any person or firm who has an interest in the Bidder's firm is a person or firm ineligible to be awarded Government contracts, contracts or participate in programs pursuant to 2 CFR Part 180.

The Bidder agrees that no part of this work shall be subcontracted to any person or parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). In addition, bidders shall ensure that contractual language in third party contracts enforce this provision.

### **SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Bidder shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms described in Executive Orders 11625, 12432 and 12138, and 2 CFR part 200:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
5. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

#### **Definitions:**

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Labor surplus area firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority business enterprise (MBE) means a business enterprise that is at least 51 percent owned by a minority group or groups including: a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Small business, small business concern or small business enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

## CDBG REQUIREMENTS

Women's business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

### **PROCUREMENT OF RECOVERED MATERIALS**

Bidder must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **ENERGY EFFICIENCY**

Bidder will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy **and Conservation (42 U.S.C. 6201)**.

### **ANTI-LOBBYING**

For contracts in excess of \$100,000, the Bidder certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Further, the contractor agrees to disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

### **CLEAN AIR ACT**

For contracts in excess of \$150,000, the Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **ACCESSIBILITY REQUIREMENTS**

All buildings and residential structures designed, constructed, or altered is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

All facilities designed and constructed shall be readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

### **FEDERAL LABOR STANDARDS**

#### ***Davis Bacon***

Bidder will comply with all applicable standards, orders, or requirements of the Davis Bacon Act, as amended (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by

## CDBG REQUIREMENTS

the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. (State prevailing wage rates required in these Specifications may be higher. Contractor and subcontractors shall pay whichever rate is higher.)

### ***Copeland Anti-Kickback***

Bidder will comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled. The Bidder and each Subcontractor must submit a weekly statement on the wages paid to each employee performing on covered work during the prior week.

### **CONTRACT WORK HOURS AND SAFETY STANDARDS**

Bidder will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). The contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **SECTION 3**

Bidder agrees to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by the submission of their bid, the Bidder certifies that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

#### ***Definitions***

For purpose of this section, Section 3 residents are defined as: 1) residents of public housing; or 2) individuals that reside in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended and meet the definition of a low- or very low-income person as defined by HUD.

For purpose of this section, Section 3 business concerns are defined as one of the following: 1) businesses that are 51 percent or more owned by Section 3 residents; 2) businesses whose permanent, full-time employees include persons, at least 30 percent of whom are current Section 3 residents or were Section 3 residents within 3 years of the date of first employment with the business concern; or 3) businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in the two previous categories.

### **CONTRACT CLAUSE**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

## CDBG REQUIREMENTS

- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than 3.7
- F. Those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- G. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- H. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



CDBG REQUIREMENTS  
**Insert Current Applicable Federal Wage Rate**

**EXHIBIT E**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
Senior Activity Center

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
City, State, Zip

Additional page(s) attached.

# Standard Form of General Conditions of Contract Between Owner and Design-Builder

**Document No. 535**

Third Edition, 2022

© Design-Build Institute of America  
Washington, D.C.





## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of Owners, Design-Builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as “Agreement”). It may also be incorporated by reference into other related agreements, as between Design-Builder and Design Consultant, and Design-Builder and Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner’s Permit List            Article 5 Insurance and Bonds            Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional’s Services	Design-Builder’s obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder’s insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner’s Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder’s Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner’s Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.
11.6.2	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

# TABLE OF CONTENTS

<b>Article</b>	<b>Name</b>	<b>Page</b>
Article 1	General .....	1
Article 2	Design-Builder's Services and Responsibilities .....	3
Article 3	Owner's Services and Responsibilities .....	7
Article 4	Hazardous Conditions and Differing Site Conditions .....	9
Article 5	Insurance and Bonds .....	10
Article 6	Payment .....	12
Article 7	Indemnification .....	14
Article 8	Time .....	16
Article 9	Changes to the Contract Price and Time .....	17
Article 10	Contract Adjustments and Disputes .....	18
Article 11	Stop Work and Termination .....	20
Article 12	Electronic Data .....	23
Article 13	Miscellaneous .....	24



# **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** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (2022 Edition); DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition); DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2022 Edition); or DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects* (2022 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.” For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, for DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal, and the Deviation List, if any. For DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any.

**1.2.3** California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, “Latest Edition” shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.

**1.2.4** *City, Buyer, Owner, Vendee, City of Fresno* shall each mean and refer to the City of Fresno, California.

**1.2.5** *City Standard Specifications* - City of Fresno, Standard Specifications, Department of Public Works, dated September 2010 and as amended from time-to-time.

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

**1.2.7** *Construction Manager* shall mean and refer to the Owner’s authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager shall be the single point of contact for all correspondence, submittals, progress payment requests, and contacts to and from the Contractor.

**1.2.8** *Council, City Council* shall each mean and refer to the Council of the Buyer.

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

Documents.

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

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

**1.2.12** *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

**1.2.13** *Engineer, City Engineer* shall mean and refer to the City Engineer and any duly authorized representative.

**1.2.14** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.15** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.16** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

**1.2.17** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.18** *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price* or with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*, or DBIA Document No. 545, *Progressive Design-Build Agreement for Water and Wastewater Projects*.

**1.2.19** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

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

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

**1.2.22** *Purchasing Manager* shall mean and refer to the Purchasing Manager of the Buyer.

**1.2.23** *Site* is the land or premises on which the Project is located.

**1.2.24** *State Standard Specifications* - State of California, Department of Transportation, Standard Specifications, Latest Edition.

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

**1.2.26** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.27** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.28** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

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

**2.1.2** Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not

relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the 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** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement 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.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

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

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

**2.4.1.1** Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however,

Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

**2.4.1.2** On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

**2.4.1.4** If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

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

**2.4.3** Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

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

## **2.5 Legal Requirements.**

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

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

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

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

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**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 and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, 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.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash, graffiti and vandalism, and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash,

graffiti, U.S.A. markings, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 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 (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes 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 Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety 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 and others as applicable.

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

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

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

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the

nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

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

**3.1.2** Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

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

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

**3.2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.4** A legal description of the Site;

**3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.



**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**

**3.3.1** At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

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

### **3.4 Owner's Representative.**

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

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List attached as an exhibit to the Agreement.

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

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon

encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees expenses, and costs to enforce this agreement, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) 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.

**4.2.2** 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** MINIMUM LIMITS DETAILED BELOW APPLY DURING DESIGN PHASE (PHASE 1) ONLY. THE HIGHER LIMITS DETAILED IN 5.1.2 MUST BE IN FORCE PRIOR TO ANY CONSTRUCTION (PHASE 2).

(a) Throughout the life of this Agreement, DESIGN-BUILDER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-

VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by OWNER’S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to OWNER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DESIGN-BUILDER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DESIGN-BUILDER shall be withheld until notice is received by OWNER that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to OWNER. Any failure to maintain the required insurance shall be sufficient cause for OWNER to terminate this Agreement. No action taken by OWNER pursuant to this section shall in any way relieve DESIGN-BUILDER of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by OWNER that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DESIGN-BUILDER shall not be deemed to release or diminish the liability of DESIGN-BUILDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify OWNER shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DESIGN-BUILDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DESIGN-BUILDER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to DESIGN-BUILDER’s profession.

MINIMUM LIMITS OF INSURANCE DESIGN/BUILD DESIGN-BUILDER

DESIGN-BUILDER shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to OWNER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. PROFESSIONAL LIABILITY (Errors and Omissions):

- (i) \$2,000,000 per claim/occurrence; and,
- (ii) \$4,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event DESIGN-BUILDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the OWNER, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

DESIGN-BUILDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DESIGN-BUILDER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the OWNER'S Risk Manager or his/her designee. At the option of the OWNER'S Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OWNER, its officers, officials, employees, agents and volunteers; or

(ii) DESIGN-BUILDER shall provide a financial guarantee, satisfactory to OWNER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall OWNER be responsible for the payment of any deductibles or self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to OWNER, except ten (10) days for nonpayment of premium. DESIGN-BUILDER is also responsible for providing written notice to the OWNER under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DESIGN-BUILDER shall furnish OWNER with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for OWNER, DESIGN-BUILDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile, Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER for all ongoing and completed operations under Commercial General Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the DESIGN-BUILDERS' insurance shall be primary and no contribution shall be required of OWNER. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, OWNER requires and shall be entitled to coverage for the higher limits of liability maintained by DESIGN-BUILDER.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) For any claims related to this Agreement, DESIGN-BUILDER'S insurance coverage shall be primary insurance with respect to the City of Fresno, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the OWNER, its officers, officials, agents, employees and volunteers shall be excess of the DESIGN-BUILDER'S insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees and volunteers.

If the Professional (Errors and Omissions) policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by DESIGN-BUILDER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by DESIGN-BUILDER, DESIGN-BUILDER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to OWNER for review.
5. These requirements shall survive expiration or termination of the Agreement.

PROVIDING OF DOCUMENTS - DESIGN-BUILDER shall furnish OWNER with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the OWNER'S Risk Manager or his/her designee prior to OWNER'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of OWNER, DESIGN-BUILDER shall immediately furnish OWNER with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DESIGN-BUILDER shall also be required to provide all documents noted herein.

SUBCONTRACTORS -If DESIGN-BUILDER subcontracts any or all of the services to be performed under this Agreement, DESIGN-BUILDER shall require, at the discretion of the OWNER Risk Manager or designee, subcontractor (s) to enter into a separate Side Agreement with the Owner to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by OWNER Risk Manager or designee. If no Side Agreement is required, DESIGN-BUILDER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and DESIGN-BUILDER shall ensure that OWNER, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with DESIGN-BUILDER, and OWNER, prior to commencement of any work by the subcontractors.

**5.1.2** PHASE 2 BUILD Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(a) Throughout the life of this Agreement, DESIGN-BUILDER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by OWNER'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those

amounts stated therein. However, the insurance limits available to OWNER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DESIGN-BUILDER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DESIGN-BUILDER shall be withheld until notice is received by OWNER that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to OWNER. Any failure to maintain the required insurance shall be sufficient cause for OWNER to terminate this Agreement. No action taken by OWNER pursuant to this section shall in any way relieve DESIGN-BUILDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by OWNER that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DESIGN-BUILDER shall not be deemed to release or diminish the liability of DESIGN-BUILDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify OWNER shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DESIGN-BUILDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DESIGN-BUILDER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to DESIGN-BUILDER's profession.

## MINIMUM LIMITS OF INSURANCE DESIGN/BUILD DESIGN-BUILDER

DESIGN-BUILDER shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to OWNER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

### 1. COMMERCIAL GENERAL LIABILITY

- (i) \$5,000,000 per occurrence for bodily injury and property damage;
- (ii) \$5,000,000 per occurrence for personal and advertising injury;
- (iii) \$10,000,000 aggregate for products and completed operations; and,
- (iv) \$10,000,000 general aggregate applying separately to the work performed under the Agreement.

### 2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

### 3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

### 4. PROFESSIONAL LIABILITY (Errors and Omissions):

- (i) \$2,000,000 per claim/occurrence; and,
- (ii) \$4,000,000 policy aggregate.



5. BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

6. CONTRACTOR'S POLLUTION LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$2,000,000 per occurrence or claim; and,
- (ii) \$4,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by DESIGN-BUILDER pursuant to the Agreement.

#### UMBRELLA OR EXCESS INSURANCE

In the event DESIGN-BUILDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the OWNER, its officers, officials, employees, agents and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

DESIGN-BUILDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DESIGN-BUILDER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the OWNER'S Risk Manager or his/her designee. At the option of the OWNER'S Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OWNER, its officers, officials, employees, agents and volunteers; or

(ii) DESIGN-BUILDER shall provide a financial guarantee, satisfactory to OWNER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall OWNER be responsible for the payment of

any deductibles or self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to OWNER, except ten (10) days for nonpayment of premium. DESIGN-BUILDER is also responsible for providing written notice to the OWNER under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DESIGN-BUILDER shall furnish OWNER with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for OWNER, DESIGN-BUILDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General, Automobile, and Pollution Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) All such policies of insurance shall be endorsed so the DESIGN-BUILDERS' insurance shall be primary and no contribution shall be required of OWNER. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, OWNER requires and shall be entitled to coverage for the higher limits of liability maintained by DESIGN-BUILDER.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) For any claims related to this Agreement, DESIGN-BUILDER'S insurance coverage shall be primary insurance with respect to the City of Fresno, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the OWNER, its officers, officials, agents, employees and volunteers shall be excess of the DESIGN-BUILDER'S insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees and volunteers.

(viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

If the Professional (Errors and Omissions) policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by DESIGN-BUILDER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by DESIGN-BUILDER, DESIGN-BUILDER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to OWNER for review.
5. These requirements shall survive expiration or termination of the Agreement.

PROVIDING OF DOCUMENTS - DESIGN-BUILDER shall furnish OWNER with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the OWNER'S Risk Manager or his/her designee prior to OWNER'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of OWNER, DESIGN-BUILDER shall immediately furnish OWNER with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DESIGN-BUILDER shall also be required to provide all documents noted herein.

SUBCONTRACTORS -If DESIGN-BUILDER subcontracts any or all of the services to be performed under this Agreement, DESIGN-BUILDER shall require, at the discretion of the OWNER Risk Manager or designee, subcontractor (s) to enter into a separate Side Agreement with the Owner to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by OWNER Risk Manager or designee. If no Side Agreement is required, DESIGN-BUILDER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and DESIGN-BUILDER shall ensure that OWNER, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with DESIGN-BUILDER, and OWNER, prior to commencement of any work by the subcontractors.

#### **5.4 Bonds and Other Performance Security.**

**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

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

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** 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.

#### **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 hereof.

**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.

#### **6.4 Design-Builder's Payment Obligations.**

**6.4.1** Design-Builder will pay 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 hereof.

#### **6.5 Substantial Completion.**

**6.5.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.5.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.5.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

**6.5.4** On the date that the Owner issues the Certificate of Substantial Completion, the Owner shall provide Design-Builder with the final punch list identifying the remaining minor corrective items to be completed for final completion of the Project.

When the Design-Builder considers the final punch list work to be complete, it shall request Owner to perform a final walk through of the Project to determine if said punch list work is complete and whether Design-Builder has otherwise completed all of its obligations under the Contract Documents.

## **6.6 Completion.**

The Owner shall record the Notice of Completion when the entire Work including, but not limited to Design-Builder's closeout document obligations are fully satisfied, Design-Builder's punch list(s) and work shall have been completed to the satisfaction of the Owner.

However, the Owner, at its sole option, may accept completion of the Contract and have the Notice of Completion recorded when the entire Work including individual portions of the Work shall have been completed to the satisfaction of the Owner, except for minor corrective items, as distinguished from incomplete items.

Regardless of the cause therefore, the Design-Builder may not maintain any claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the work on the Project.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, 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;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties, As-Built drawings, marked up Record documents, and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner 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 of any United States patent or copyright, 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 from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright 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, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**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 or copyright (i) 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 (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. 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.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

#### **7.2 Payment Claim Indemnification.**

**7.2.1** 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 from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, 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 Owner that such a claim 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. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

#### **7.3 Design-Builder's General Indemnification.**

**7.3.1** To the furthest extent allowed by law, including California Civil Code section 2782, DESIGN-BUILDER shall indemnify, defend and hold harmless OWNER and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time,

property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. DESIGN-BUILDER'S obligations as set forth in this section shall apply regardless of whether OWNER or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of OWNER or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DESIGN-BUILDER, whenever there is any causal connection between the DESIGN-BUILDER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DESIGN-BUILDER expressly agrees to undertake a duty to defend OWNER and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DESIGN-BUILDER expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DESIGN-BUILDER as reasonably determined by OWNER.

Upon the tender by OWNER to DESIGN-BUILDER, DESIGN-BUILDER shall be bound and obligated to assume the defense of OWNER and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from OWNER or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DESIGN-BUILDER that if OWNER tenders a defense of a claim on behalf of OWNER or any of its officers, officials, employees, agents, or volunteers and DESIGN-BUILDER fails, refuses or neglects to assume the defense thereof, OWNER and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DESIGN-BUILDER shall be bound and obligated to reimburse OWNER and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether OWNER provided approval for, or did not review or object to, any insurance DESIGN-BUILDER may have procured in a accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by OWNER, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DESIGN-BUILDER should subcontract all or any portion of the work to be performed under this Contract, DESIGN-BUILDER shall require each subcontractor to Indemnify, hold harmless and defend OWNER and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.



## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** 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.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

**9.1.4** Approval of any change order by the Owner is subject to Resolution No. 2017-158 as adopted by the City Council. The approval authority defined in Resolution No. 2017-158 shall be based on the current awarded contract price for each Phase as approved by City Council.

## **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** 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.

## **9.3 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. 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 Contract Price Adjustments.**

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

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

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

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for

such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** 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.

# **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. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information 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 disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

#### **10.2.2 Claims for Additional Time.**

Extension of time, when granted, will be based upon the effect of delays to the Project as a whole and will not be granted for noncontrolling delays to minor included portions of the Work unless it can be shown that such delays did, in fact, delay the progress of the Project as a whole. The Design-Builder shall not be entitled to damages or additional payment due to these delays except to the extent the delay exceeds the original Contract duration for Substantial Completion, and any extension hereunder other than any extension granted due to Owner caused delay, when Owner is responsible for the delay, the delay is unreasonable under the circumstances involved, not within the contemplation of the parties, and such delay causes actual damage to the Design-Builder. The Owner shall not be entitled to liquidated damages for Design-Builder delays unless the delay by Design-Builder exceeds the original Contract duration for Substantial Completion and any extension of time to which the Design-Builder is entitled to under the Specifications.

If delays are caused by unforeseen events beyond the control of the Design-Builder, such delays will entitle the Design-Builder to an extension of time as provided herein. War, governmental regulations, priorities, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of Work, other similar action of the elements, inability to obtain materials, equipment or labor because of Federal Government restrictions arising out of the National Defense or War Program, required Extra Work, action or inaction by the Owner, or other specific reasons as may be further described in the Specifications may constitute such a delay.

If the Design-Builder is delayed by the failure of the Owner to furnish necessary rights of way or materials agreed to be furnished by it, or by failure to supply necessary plans or instructions concerning the Work, after written request therefore, the Design-Builder shall be entitled to an extension of time as provided herein.

### **10.2.3 Claims and Disputes.**

#### **10.2.3.1 General.**

The Design-Builder and Owner shall make good faith efforts to resolve any and all Claims and disputes in a timely manner that may from time to time arise during Design-Builder's performance of the Work. Claims, including those alleging an error or omission shall be directed to the Owner's Construction Manager for action as provided in the "Resolution of Claims and Disputes," below.

It shall be a condition precedent to Claims review by the Public Works Director or his or her designated representative and to mediation or litigation between the Design-Builder and Owner as to all such matters arising prior to the date final payment is due, that a formal decision on all Design-Builder Claims be made by the Construction Manager. It shall be a condition precedent that the Design-Builder appeal any disputed Claim to the Public Works Director prior to initiating mediation or litigation. It shall be a condition precedent that the Design-Builder mediate any disputed Claim through non-binding mediation as provided herein, prior to initiating litigation. Unless mutually waived in writing by both parties, these provisions apply regardless of 1) whether such matters relate to execution and progress of the Work, or 2) the extent to which the Work has been completed.

Notice of Intent to Claim by Design-Builder must be made within 72 hours after occurrence of the event giving rise to such Claim, or within 72 hours after the claimant first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. Notice of Intent to Claim and Claims must be made by written notice.

At all times during the course of the dispute resolution process pursuant to the "Resolution of Claims and Disputes," the Design-Builder shall continue with the Work as directed, in a diligent manner and without delay, or shall conform to the Owner's decision or order, and shall be governed by all applicable provisions of the Contract. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract if this should become necessary.

The making of final payment shall not constitute a waiver of Claims by the Owner including, but not limited to, the following:

- (i) liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- (ii) failure of the Work to comply with the requirements of the Contract Documents; or
- (iii) terms of special warranties required by the Contract Documents.

Design-Builder shall promptly provide an unconditional waiver and release upon final payment in accordance with California Civil Code section 3262 and these Contract Documents. Except to the extent of any Claim arising from City's sole or active negligence, and except to the extent Design-Builder expressly describes any other disputed Claims for which prior written notice has been given the City and lists the respective dollar amounts in an unconditional waiver and release, the making of final payment shall constitute a waiver of Claims by the Design-Builder pertaining to any and all costs, expenses, changes or other Claims related to Contract Price or Contract Time, including any synergistic effects attributed to multiple Change Orders. In the event of any disputed Claims between the City and Design-Builder, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

#### **10.2.3.2 Resolution of Claims and Disputes.**

(1) Decision of Construction Manager:

a. If the Design-Builder believes any Work or demand to be outside the requirements of the Contract or believes that omissions, conflicts, errors, or discrepancies will cause or have caused the Design-Builder additional costs or delays in the performance of the Work, he/she shall file a written Notice of Intent to Claim with the Construction Manager within 72 hours after occurrence of the event giving rise to the Claim, or within 72 hours after the Design-Builder or its subcontractor first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. If a written Notice of Intent to Claim is not submitted within this time period, the Design-Builder shall waive his or her right to further Claims on the issue and any synergistic effects related to such Claim.

1. Within 10 working days following the Notice of Intent to Claim, the Design-Builder shall provide a Notice of Claim with complete supporting data for the Claim of the cost and delay related to such omissions, conflicts, errors, discrepancies, or Work alleged to be outside the requirements of the Contract. Notwithstanding the foregoing, if all supporting data cannot reasonably be made available within said 10 working days, then Design-Builder shall provide all then available supporting data along with a request for additional time, stating a time certain, to obtain the remainder of supporting data along with both an explanation of the nature of such supporting data and the reason why additional time is necessary to provide same to the Construction Manager.

2. If a written Notice of Claim, along with complete supporting data or all then available supporting data and reasonable request for additional time with explanation as required above, is not submitted within 10 working days following the Notice of Intent to Claim, the Design-Builder shall waive his or her right to make further Claims on the issue and any synergistic effects related to such Claim.

3. The Design-Builder's request for additional time to provide the remainder of its supporting data shall be deemed acceptable to Owner unless the Construction Manager rejects in writing Design-Builder's request within 5 working days from receipt of Design-Builder's request. If the Construction Manager rejects Design-Builder's request for additional time, then Design-Builder shall either provide complete supporting data immediately upon receipt of such rejection or within any time acceptable to the Construction Manager as stated in his or her written rejection, whichever is later (unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager).

b. The Construction Manager will review any and all Claims and take one or more of the following preliminary actions in writing within 10 working days of receipt of written Notice of Claim and complete supporting data: 1) request additional supporting data from the Design-Builder; 2) reject the Claim in whole, or in part, stating reasons for rejection; or, 3) recommend approval of the Claim. In the event the Construction Manager has not taken any preliminary action within 10 working days, then the Claim is deemed rejected unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for taking preliminary action. The Construction Manager will make his or her decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The Construction Manager may also, but is not obligated to, notify the surety on Design-Builder's performance bond of the nature and amount of the Claim.

c. If the Construction Manager requests additional supporting data from the Design-Builder, the Design-Builder shall supply the additional information to the Construction Manager within 10 working days unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for supplying such information. The Construction Manager will have 10 working days from the receipt of additional supporting data to provide a written decision unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for providing such decision. In the event the Construction Manager has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design-Builder, then the Claim is deemed rejected and this shall constitute Design-Builder's automatic request for an appeal meeting with the Public Works Director unless the Design-Builder submits a written withdrawal of its Claim.

d. If the Claim is rejected in whole or in part by a written decision of the Construction Manager, the Design-Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted, and the Claim is amended; accordingly, or 2) the Design-Builder requests an appeal meeting with the Public Works Director. Failure to timely request an appeal meeting with the Public Works Director following receipt of the written decision constitutes acceptance by the Design-Builder of the Construction Manager's decision. If the Owner and Design-Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes.

(2) Decision of Public Works Director

a. The Public Works Director, or his or her designee, shall meet with the Design-Builder and the Construction Manager within 15 working days (unless necessary to accommodate the Public Works Director's schedule, or that of his or her designee, but in no event longer than 20 working days; or unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager) from the Design-Builder's timely submittal of his or her request, or any automatic request hereunder, for a meeting. The Design-Builder may make a presentation in support of his or her Claim. No attorney may take part in the presentation or defense of the Claim in the meeting with the Public Works Director, or his or her designee. Nothing herein shall prevent an attorney from providing advice to a party either before or after the meeting. In the event the meeting with the Public Works Director, or his or her designee, has not been conducted within the time provided herein or as agreed upon in writing by Design-Builder and Construction Manager, then the Claim is deemed rejected and, unless the Design-Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

b. Within 10 working days (unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager) from the meeting with the Design-Builder and the Construction Manager, the Public Works Director, or his or her designee, shall render a written decision and a copy thereof shall be personally delivered, or mailed return receipt requested, to the Design-Builder. In the event the Public Works Director, or his or her designee, has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design-Builder, then the Claim is deemed rejected and, unless the Design-Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

c. If the Claim is rejected in whole or in part by a written decision of the Public Works Director, or his or her designee, the Design-Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted and the Claim is amended accordingly; or 2) the Design-Builder rejects the decision of the Public Works Director, or his or her designee. Failure to timely notify the Construction Manager of either following receipt of the Public Works Director's written decision, or that of his or her designee, shall constitute acceptance by the Design-Builder of the Public Works Director's decision, or that of his or her designee. If the Owner and Design-Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes. If the Design-Builder rejects the written decision of the Public Works Director or his or her designee, the parties shall proceed to mediation as provided herein.

### (3) Mediation

a. In the event that the Claim is not resolved after exhausting all aforementioned administrative measures, then the Design-Builder must participate in non-binding mediation with City before the Design-Builder may initiate litigation.

b. The parties shall mutually select, in writing, a mediator with at least 5 years' experience in the construction industry. In the event that the parties are unable to agree on a mediator within 15 working days of Design-Builder's rejection of the decision of the Public Works Director or his or her designee, the City may select the mediator. Mediation, including at least one session requiring physical attendance by all parties, shall begin within 15 working days of selection of the mediator, unless necessary to accommodate the mediator's schedule. The parties shall share the mediator's fees and any administrative costs of mediation equally. The mediation shall be held in Fresno, California, unless another location is mutually agreed upon by the parties in writing. In the event the parties are unable to reach a mutually acceptable resolution of the Claim within 20 working days of the start of mediation, unless extended or otherwise terminated by written mutual agreement of the parties, mediation shall terminate.

c. If the Owner and Design-Builder are able to resolve their dispute the Owner will promptly process any required Contract changes. Any settlement reached in principle must be in writing and is subject to approval by the City Manager or City Council consistent with City laws and policies. Should the dispute remain unresolved, the parties may resort to other dispute resolution procedures.

d. All statements made during the mediation shall be confidential and subject to sections 703.5, 1119 and 1152 of the California Evidence Code.

(4) Government Claims Act. Nothing herein is intended by the parties to waive any requirements of the Design-Builder to comply with the Government Claims Act including, without limitation, California Government Code section 905; and Design-Builder agrees that it shall remain responsible for complying with said section regarding any Claim. The parties agree, however, that the timeline for the Design-Builder to file a claim under the Government Claims Act is tolled until exhaustion of the Design-Builder of its administrative remedies hereunder (i.e., either upon termination of mediation, or upon written mutual waiver of mediation by the parties, whichever first occurs).

(5) Litigation

a. If the Design-Builder continues to dispute the Work demanded of him/her after exhausting all aforementioned administrative measures, the Design-Builder may institute legal proceedings, but only after final acceptance of the Project by the Owner.

Unless specifically waived by the Owner, in writing, the submission of a dispute for mediation in accordance with the above provisions shall be a condition precedent to the Design-Builder's right to initiate a suit, action or other proceeding against the Owner for damages.

b. In the event Owner initiates suit, action, or other proceeding against the Design-Builder for damages, the prevailing party in such suit or action shall be entitled to recover reasonable attorney's fees and costs of suit.

c. In the event Design-Builder initiates suit, action, or other proceeding against the Owner, the Owner shall be entitled to recover reasonable attorneys' fees and engineering defense costs if the Design-Builder is not awarded, by the arbitrator or court, a dollar amount greater than 50 percent of the Design-Builder's original Claim for damages.

d. The Design-Builder shall include, or cause to be included, a requirement in all subcontracts of all tiers of Subcontractors for this Project that whenever the Subcontractor disputes the Work demanded of him/her, he/she shall cooperate and comply with the Claims and Dispute procedures contained herein including, without limitation, exhausting all administrative measures prior to instituting legal proceedings, and instituting legal proceedings only after final acceptance of the Project by the Owner.

**10.3 Mediator**

The Owner shall be responsible for fifty percent (50%) of the Mediator costs. If needed, the owner's share of the cost shall be added through a contract change order. The dollar amount listed in the bid item is an estimate only and will be included in each Bidder's Proposal. Invoices of the Mediator shall be paid by the Design-Builder only upon direct written authorization from the Owner.

Final payment to Design-Builder will be based on fifty percent (50%) of the total amount of Owner approved invoices of the Mediator actually billed to Owner by Design-Builder. The Design-Builder shall include the specified lump sum bid item on the Bid Proposal for payment of Owner's share of costs for the Mediator. Payment will be made under this bid item by issuance of a Change Order approved by the Owner and charged against this lump sum allocation.

This bid item may be increased, decreased, or deleted in its entirety and is not to be construed as additional money owed to the Design-Builder. If no Change Order is issued against this bid item, the Contract Price shall be reduced by the full amount of the bid item included in the Bid Proposal for the Mediator.

The Design-Builder shall have no claim for anticipated overhead or profit should the Owner fail to issue any Change Orders against this bid item.

**10.4 Duty to Continue Performance.**

**10..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 for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

**10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET**



FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.7.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

## **Article 11**

### **Stop Work and Termination**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

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

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

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**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 cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence 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 to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, 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, materials, equipment and other items. 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. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a

Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

### **11.3 Termination for Convenience.**

**11.3.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

11.3.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

11.3.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

11.3.1.3 The amount set forth in Article 8 of the Agreement.

**11.3.2** If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

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

#### **12.2 Transmission of Electronic Data.**

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

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

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles.

### **13.5 Severability.**

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

### **13.6 No Waiver.**

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

### **13.7 Headings.**

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

### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

### **13.9 Amendments.**

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

### **13.10 Attorney's Fees.**

**13.10.1** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant of the Contract Documents, the prevailing party in such proceeding shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

### **13.11 Interpretation.**

**13.11.1** The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be

**ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning**

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